Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/19/2017 4:39:05 PM
To: Ken.Alex@gov.ca.gov
CC: Olp, Kevin@EPA [Kevin.Olp@calepa.ca.gov]
Subject: West Oakland Title VI complaint accepted for investigation
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - RECIPIENTS - 7-18-2017.pdf

FYI

Late yesterday EPA and DOT issued a formal "acceptance for investigation" letter to the City and Port, attached. Per the letter the City and Port may respond if they choose within the next 30 days. During that time EPA and DOT will be putting together their investigative plan. EPA's procedures are described in the Case Resolution Manual, a link to which is included in the letter. Keep in mind this is a joint DOT-EPA investigation and that the complainants suggested in their complaint that DOT take a lead role. Please feel free to call me to discuss this further.

Richard
Office: (415) 947-4104
Personal Matters / Ex. 6

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

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

July 18, 2017

The Honorable Libby Schaaf
Mayor, City of Oakland
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Michael Colbruno
President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, CA 94607

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

Dear Mayor Schaaf and Mr. Colbruno:

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

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

have determined that the complaint meets the jurisdictional requirements of both Agencies, and therefore the complaint will be jointly investigated.

Accordingly, the investigation will focus on:

1. Whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the Oakland Army Base subjects the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

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

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

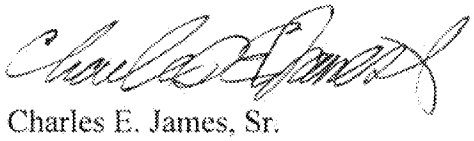
This does not foreclose resolution of matters raised in the complaint through informal resolution, including alternative dispute resolution (ADR). Both DOT's and EPA's nondiscrimination regulations provide that DOCR and ECRCO will attempt to resolve complaints informally whenever possible. 49 C.F.R.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

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights

protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with DOCR and ECRCO.

Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's DOCR, or Ericka Farrell, Case Manager in EPA's ECRCO, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Farrell can be reached at (202) 564-0717, or farrell.ericka@epa.gov.

Sincerely,



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

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 11/7/2017 7:11:12 PM
To: dvintze@baaqmd.gov; akirk@baaqmd.gov
Subject: Today's City meeting

Dave & Alison

So glad my other commitments got cancelled today and I was able to dial into the meeting with the City. Not going totally pollyanna here but it seemed to me this was the most motion we've seen from the City in quite a while. Together with the posture laid out in your comment letter to the Port last Friday it looks like you have succeeded in reframing the issues and getting some buy in, at least from the City. Have to be curious what has changed.

One question - "the document" or "action plan" that was referenced several times - should I assume that is the 16 page "BAAQMD emissions reductions actions for the Port of Oakland/Former OAB" document dated August 2017 ? I hear occasional references to a 120 page plus version of this. If that could be shared, subject to whatever groundrules required, that would be appreciated.

Thanks

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/19/2017 4:33:48 PM
To: cynthia.marvin@arb.ca.gov; dbreen@baaqmd.gov; David Vintze [DVintze@baaqmd.gov]; Yura, Elizabeth@ARB [eyura@arb.ca.gov]; Alison Kirk [AKirk@baaqmd.gov]; 'Lee, Anna, Public Health, CAPE' [Anna.Lee@acgov.org]
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Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - RECIPIENTS - 7-18-2017.pdf

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Michael Colbruno
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530 Water Street
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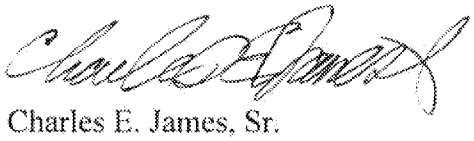
Sincerely,



Charles E. James, Sr.
Director
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Lilian S. Dorka
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cc:

Deborah Jordan
Acting Deputy Regional Administrator
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EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
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Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 9/7/2017 3:34:57 PM
To: Israels, Ken [Israels.Ken@epa.gov]
Subject: W.O. 9/26 mtg/call with City/Port
Attachments: 9262017 mtg invite.pdf

Here's the meeting invite and call in number, 9/26 10-12 PDT. Are you still in AZ on that day ?

Grow, Richard

Subject:	Meeting with Oakland (Port and City) Re: Informal Resolution of the Title VI Complaint (Call in number: Conference Line/Code / Ex. 6
Location:	EPA Headquarters, 1200 Pennsylvania Ave. NW, Washington, DC (William Jefferson Clinton Building), 4th Floor, Room 4045
Start:	Tue 9/26/2017 10:00 AM
End:	Tue 9/26/2017 12:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Organizer:	Minoli, Kevin
Required Attendees:	howard.caro-lopez@dot.gov; Johahna Johnson (Johnson.Johahna@epa.gov); ryan.fitzpatrick@dot.gov; Redden, Kenneth; Rhines, Dale; Grow, Richard; Packard, Elise; deeana.jang@dot.gov; McGhee, Debra; Strauss, Alexis; O'Lone, Mary; Garnett, Desean; Dorka, Lilian; yvette.rivera@dot.gov; Temple, Kurt
Optional Attendees:	Trudeau, Shaun; Mills, Derek

Please enter via our north side entrance. Upon clearing security, someone will escort you to the meeting location. Any questions, please call 202-564-8040. Thank you.

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 2/8/2018 4:52:31 PM
To: sggrant@envirocommunications.com
CC: Margaret Gordon [margaret.woeip@gmail.com]
Subject: FW: Clarification: Question: Truck Management Plan - studies and scope

Surlene

I just noticed that, while you were in the distribution list for my initial exchange with the City regarding the TMP back in December, you weren't included in the exchange this week. Please feel free to call any time. Thank you.

Richard
Office: (415) 947-4104

Personal Matters / Ex. 6

From: Grow, Richard
Sent: Wednesday, February 07, 2018 5:01 PM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Margaret Gordon (margaret.woeip@gmail.com) <margaret.woeip@gmail.com>; Brian Beveridge (brian.woeip@gmail.com) <brian.woeip@gmail.com>; Andrea Gardner <agardner@portoakland.com>; Gilchrist, William <WGilchrist@oaklandnet.com>; Ranelletti, Darin <DRanelletti@oaklandnet.com>; brian.woeip@gmail.com
Subject: Clarification: Question: Truck Management Plan - studies and scope

Pat

Thank you. To try to be clear, my suggestion was for the TMP planning process, i.e. the one being conducted by the City and Port, to be modified to incorporate into it (the planning process) the information and implications of these studies. I'm always supportive of WOEIP having even more public forums on these studies, and have appreciated the ones they have already held, but the point of my suggestion had to do with the effect on the TMP project itself.

Richard

From: McGowan, Patricia [PMcGowan@oaklandnet.com]
Sent: Wednesday, February 7, 2018 4:27 PM
To: Grow, Richard
Cc: Margaret Gordon (margaret.woeip@gmail.com); Brian Beveridge (brian.woeip@gmail.com); Andrea Gardner; Gilchrist, William; Ranelletti, Darin
Subject: RE: Question: Truck Managament Plan - studies and scope

Hi Richard,
I am not ignoring your e-mail, just the opposite in fact. I am discussing it again with Bill Gilchrist and Darin Ranelletti. And on a related e-mail Surlene Grant is discussing with Ms. Margaret the content of the public meeting WOEIP is planning to hold regarding the Google/EDF/Aclima study.

We'll get back to you next week.

Thanks,
Pat

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

-----Original Message-----
From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Tuesday, February 06, 2018 8:33 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin <DRanelletti@oaklandnet.com>; Brian Beveridge <brian.woeip@gmail.com>; Margaret Gordon <margaret.woeip@gmail.com>
Subject: Question: Truck Managament Plan - studies and scope

Greetings, Patricia

It's been a while since I heard from you on the suggestions in my December 4 email, below. Could you please get back to me regarding the status of these issues ?

Thank you

Richard Grow
US EPA
Region 9
(415) 947-4104

-----Original Message-----
From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, December 13, 2017 11:55 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin <DRanelletti@oaklandnet.com>
Subject: RE: Truck Managament Plan - studies and scope

Hello Richard,
Please excuse my delay in replying to your e-mail. As you may know, City staff was on strike from Dec. 5 - 11, so I was unable to reply during that period.

Thank you for your attendance at the Dec. 2 public meeting and your compliment that you found it to be an excellent public workshop. Your comments/suggestions about the scope of the West Oakland Truck Management Plan are under consideration by the City and Port team. I will be in touch again as the City/Port team work through these suggestions.

Best regards,
Patricia

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

-----Original Message-----
From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Monday, December 04, 2017 11:50 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com
Subject: Truck Managament Plan - studies and scope

Patricia McGowan (cc William Gilchrist, Andrea Gardner, Surlene Grant)

This note is to follow up on the suggestion I put forward at the excellent community workshop on trucks in West Oakland which you hosted this past Saturday. In my remarks Saturday I made reference to a suggestion previously put forward by Ms. Margaret Gordon of the WOEIP at the July 10 meeting at City Hall which you also hosted, and during which EDF presented the findings from its "Street View" project documenting on a fine scale (block by block) the levels and distribution of black carbon. At the July 10 meeting Ms. Gordon suggested that the 20 or so parties gathered around the table, representing perhaps a dozen organizations, agencies and interests, work collaboratively together to assess and address the implications of the studies findings with regard to mitigation of the effects revealed by the study.

My suggestion this past Saturday was that you, along with others carrying out this latest "truck management plan" exercise, incorporate into the current planning effort time to for participants in the planning effort to consider the EDF/Google study as well as a more recent UC Berkeley assisted "100 x 100" West Oakland black carbon monitoring study. As I mentioned Saturday, there may be no community in the country for which there is a richer availability of local scale air pollutant data. It seems here that it would be unfortunate to not make use of this information in coming up with a truck plan addressing the public health impacts of truck-related operations in West Oakland.

Regarding the scope of the TMP, I hope you will be open to the possibility that consideration of this additional information could have some effect on the scope of the plan itself. It was clear from the discussions Saturday that the issue of the scope of the TMP is itself an issue of quite some concern to many stakeholders. This also goes to the assurances I had previously received from both yourself and Claudia Cappio at the August 23 Air Quality Stakeholders meeting, assurances that the scope of the TMP had not already been set, but would rather be set by way of the interactive process which you would be convening this fall. I found this encouraging, as well as consistent with the language of mitigation measure 4.3-7, committing to a truck management plan and enumerating 8 potential "elements", while also including the caveat that the plan "is not limited to" that list of elements.

I understand that you have been assuming the viability of a "five step" planning process as laid out at the Saturday meeting, with the next (i.e. third) meeting to be focused on "prioritization" of measures proposed by City staff based on the first two meetings, and acknowledge that my suggestions might result in the TMP process taking a bit longer, but hope that you will consider whether they might also add to

the quality of and support for the plan. There may be some logic in getting a common understanding of, and agreement on, the scope of the plan before moving on to prioritizing components of the plan.

Please feel free to call me directly to discuss this further, and thanks again for the very educational event this past weekend.

Richard Grow
US EPA
Region 9
(415) 947-4104

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 11/6/2017 4:22:32 PM
To: Alison Kirk [AKirk@baaqmd.gov]
Subject: RE: Comment Letter from BAAQMD for Port Board Meeting 11/9/17 item 5.1

Very nice.

From: Alison Kirk [AKirk@baaqmd.gov]
Sent: Friday, November 3, 2017 11:39 AM
To: dedgerly@portoakland.com
Cc: David Vintze; Henry Hilken; Karen Schkolnick; afournier@baaqmd.gov; Jean Roggenkamp; dbreen@baaqmd.gov; Jack Broadbent; Grow, Richard; Marvin, Cynthia@ARB; Cappio, Claudia; Lakin, Matt; Machol, Ben
Subject: Comment Letter from BAAQMD for Port Board Meeting 11/9/17 item 5.1

Hello,

Attached please find BAAQMD's comment letter and attachment for the 11/9/17 Board of Port Commissioners meeting.

These items are in reference to Agenda item 5.1: Ordinance and Resolution to approve Lease with CenterPoint-Oakland Development I, LLC for a Transload and Distribution Facility on the Former Oakland Army Base.

I would appreciate it if you could reply to this email and let me know it has been received. Thanks in advance!

Please contact me if you have any questions.

Sincerely,

Alison Kirk, AICP
Senior Environmental Planner
415-749-5169

The Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 2/8/2018 1:12:22 AM
To: Personal Address / Ex. 6
Subject: FW: Clarification: Question: Truck Management Plan - studies and scope

Ms. Margaret and Brian

Please let me know if I need to explain better the difference (in my view) of (1) their actually taking the studies into the TMP process vs. (2) them wishing you well in your (EIP) having yet another public briefing on the studies without them making any commitment to build the implications of those studies into the TMP. You've already done this some number of times, they've been at at least one of them, in fact Pat hosted one at City Hall, after which they blithely proceeded to hire Surlene and set up a five step TMP process which ignored the studies. Their process I've tried to suggest wouold include a step, or setps, within the TMP process, in which the studies and their implications are presented, discussed, and the outcomes and suggestions from those discussions incorporated into the process as it proceeds from there. No ?

Richard

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Sent: Wednesday, February 7, 2018 5:01 PM
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Cc: Margaret Gordon; Personal Address / Ex. 6 Andrea Gardner; Gilchrist, William; Ranelletti, Darin; brian.woeip@gmail.com
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Thanks,
Pat

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

-----Original Message-----
From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Tuesday, February 06, 2018 8:33 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin <DRanelletti@oaklandnet.com>; Brian Beveridge
Personal Address / Ex. 6
Subject: Question: Truck Managament Plan - studies and scope

Greetings, Patricia

It's been a while since I heard from you on the suggestions in my December 4 email, below. Could you please get back to me regarding the status of these issues ?

Thank you

Richard Grow
US EPA
Region 9
(415) 947-4104

-----Original Message-----
From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, December 13, 2017 11:55 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin <DRanelletti@oaklandnet.com>
Subject: RE: Truck Managament Plan - studies and scope

Hello Richard,
Please excuse my delay in replying to your e-mail. As you may know, City staff was on strike from Dec. 5 - 11, so I was unable to reply during that period.

Thank you for your attendance at the Dec. 2 public meeting and your compliment that you found it to be an excellent public workshop. Your comments/suggestions about the scope of the West Oakland Truck Management Plan are under consideration by the City and Port team. I will be in touch again as the City/Port team work through these suggestions.

Best regards,
Patricia

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

-----Original Message-----
From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Monday, December 04, 2017 11:50 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com
Subject: Truck Managament Plan - studies and scope

Patricia McGowan (cc William Gilchrist, Andrea Gardner, Surlene Grant)

This note is to follow up on the suggestion I put forward at the excellent community workshop on trucks in West Oakland which you hosted this past Saturday. In my remarks Saturday I made reference to a suggestion previously put forward by Ms. Margaret Gordon of the WOEIP at the July 10 meeting at City Hall which you also hosted, and during which EDF presented the findings from its "Street View" project documenting on a fine scale (block by block) the levels and distribution of black carbon. At the July 10 meeting Ms. Gordon suggested that the 20 or so parties gathered around the table, representing perhaps a dozen organizations, agencies and interests, work collaboratively together to assess and address the implications of the studies findings with regard to mitigation of the effects revealed by the study.

My suggestion this past Saturday was that you, along with others carrying out this latest "truck management plan" exercise, incorporate into the current planning effort time to for participants in the planning effort to consider the EDF/Google study as well as a more recent UC Berkeley assisted "100 x 100" West Oakland black carbon monitoring study. As I mentioned Saturday, there may be no community in the country for which there is a richer availability of local scale air pollutant data. It seems here that it would be unfortunate to not make use of this information in coming up with a truck plan addressing the public health impacts of truck-related operations in West Oakland.

Regarding the scope of the TMP, I hope you will be open to the possibility that consideration of this additional information could have some effect on the scope of the plan itself. It was clear from the discussions Saturday that the issue of the scope of the TMP is itself an issue of quite some concern to many stakeholders. This also goes to the assurances I had previously received from both yourself and Claudia Cappio at the August 23 Air Quality Stakeholders meeting, assurances that the scope of the TMP had not already been set, but would rather be set by way of the interactive process which you would be convening this fall. I found this encouraging, as well as consistent with the language of mitigation measure 4.3-7, committing to a truck management plan and enumerating 8 potential "elements", while also including the caveat that the plan "is not limited to" that list of elements.

I understand that you have been assuming the viability of a "five step" planning process as laid out at the Saturday meeting, with the next (i.e. third) meeting to be focused on "prioritization" of measures proposed by City staff based on the first two meetings, and acknowledge that my suggestions might result in the TMP process taking a bit longer, but hope that you will consider whether they might also add to the quality of and support for the plan. There may be some logic in getting a common understanding of, and agreement on, the scope of the plan before moving on to prioritizing components of the plan.

Please feel free to call me directly to discuss this further, and thanks again for the very educational event this past weekend.

Richard Grow
US EPA
Region 9
(415) 947-4104

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/13/2017 12:21:45 AM
To: LUEHE, DOUGLAS [luehe.douglas@epa.gov]
CC: Machol, Ben [Machol.Ben@epa.gov]; McDaniel, Penelope [MCDANIEL.PENELOPE@EPA.GOV]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: Fw: AGENDA: Meeting on Emissions Reductions for the Port of Oakland's/Former Oakland and Base Development
Attachments: Agenda- July 14- POA_OAB Meeting.docx

FYI

From: Aloha de Guzman <adeguzman@baaqmd.gov>
Sent: Wednesday, July 12, 2017 12:44 PM
To: CCappio@oaklandnet.com; MDNichols@oaklandnet.com; Tess Lengyel; adao@alamedactc.org; abockelman@mtc.ca.gov; Beba Sanchez; Matt Maloney; cynthia.marvin@arb.ca.gov; Grow, Richard; mdavis@portoakland.com; anna.lee@acgov.org
Cc: Sheng Thao ; Jack Broadbent; Maricela Martinez; Vanessa Johnson; dbreen@baaqmd.gov
Subject: AGENDA: Meeting on Emissions Reductions for the Port of Oakland's/Former Oakland and Base Development

On Behalf of Director Kaplan and the Bay Area Air Quality Management District:

Attached is the agenda for the meeting on Friday July 14, 2017.

Thank you!

Regards,

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782| Cell: 415.745.5633
adeguzman@baaqmd.gov| www.baaqmd.gov

Interagency Meeting on Emissions Reductions for the Port of Oakland's/Former Oakland and Base Development

Alameda County Transportation Commission
1111 Broadway, Room D,
Oakland, CA 94607

July 14, 2017 - 12 noon to 2:00pm

Meeting Goal:

The goal of this meeting is to devise a workplan that harnesses and coordinates the resources of the participating entities:

- To reduce emissions and health impacts in the West Oakland Community from current operations at the Port of Oakland; and
- To prevent emissions and health impacts in the West Oakland Community from future operations at the former Oakland Army Base.

Meeting Format:

This meeting is to be solutions oriented. It is a given that each of the government entities participating in this meeting has extensive knowledge regarding both Port of Oakland (Port) and the former Oakland Army base (OAB).

The meeting is structured to allow the Bay Area Air Quality Management District (Air District) to present its views on possible solutions (revised "strawman" proposal) to achieving the goals listed above. The Air District's "strawman" is meant to provide a platform for an actionable workplan which can be taken back to each of the government's oversight bodies (Boards, Councils, Commissions, etc.) for approval, funding and action.

Interagency Meeting on Emissions Reductions for the Port of Oakland's/Former Oakland and Base Development

AGENDA

12:00 – 12:10pm Introductions and Welcome by Director Kaplan

12:10 – 12:40pm Overview (BAAQMD)

- *Historical emissions & reductions efforts*
- *Current emissions & reductions efforts*
- *Future emissions concerns*
- *Outline of possible emissions reductions solutions*
  - *Regulation & Enforcement Action*
  - *Use of Partner Authorities*
  - *Grant Funding*

12:40 – 1:30pm Group Discussion

1:30 – 2:00pm Action Item recap, Assignments and Next Steps

2:00pm Adjourn

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 11/16/2017 3:34:12 PM
To: Israels, Ken [Israels.Ken@epa.gov]
Subject: 8:30 Alexis' conference room: Meeting re City an Port response and draft Framework Markup
Attachments: Port Clean Draft Informal Resolution Agreement.docx; City and Port DRAFT REDLINE to EPA DOT Draft 11_10_2013.pdf; City-Port joint Rx 11_10_2013.pdf

Ken – Meant to alert you to this. First chat within EPA on City/Port counteroffer that arrived Monday, prep for call with DOT likely next week. Alexis available for first 30 mins she said. RG

From: Temple, Kurt
Sent: Thursday, November 16, 2017 7:13 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>
Cc: Harrison, Brenda <Harrison.Brenda@epa.gov>
Subject: Re: Meeting re City an Port response and draft Framework Markup

The number and code for today's call re Oakland

Conference Line/Code / Ex. 6

From: Temple, Kurt
Sent: Monday, November 13, 2017 1:23 PM
To: Temple, Kurt; Dorka, Lilian; Rhines, Dale; McGhee, Debra; Keeler, Katsumi; Rhodes, Julia; O'Lone, Mary; Garnett, Desean; Grow, Richard; Strauss, Alexis
Cc: Harrison, Brenda
Subject: Meeting re City an Port response and draft Framework Markup
When: Thursday, November 16, 2017 11:30 AM-12:30 PM.
Where: Room 2528

Conference Line/Code / Ex. 6

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 11/6/2017 4:20:59 PM
To: Machol, Ben [Machol.Ben@epa.gov]; mcdaniel.penny@epa.gov
Subject: FW: Comment Letter from BAAQMD for Port Board Meeting 11/9/17 item 5.1
Attachments: DRAFT Port-OAB Action List Nov 3.pdf; BAAQMD ltr to POAK Board Item 5.1.pdf

Deliberative Process / Ex. 5

From: Alison Kirk [AKirk@baaqmd.gov]
Sent: Friday, November 3, 2017 11:39 AM
To: dedgerly@portoakland.com
Cc: David Vintze; Henry Hilken; Karen Schkolnick; afournier@baaqmd.gov; Jean Roggenkamp; dbreen@baaqmd.gov; Jack Broadbent; Grow, Richard; Marvin, Cynthia@ARB; Cappio, Claudia; Lakin, Matt; Machol, Ben
Subject: Comment Letter from BAAQMD for Port Board Meeting 11/9/17 item 5.1

Hello,

Attached please find BAAQMD' s comment letter and attachment for the 11/9/17 Board of Port Commissioners meeting.

These items are in reference to Agenda item 5.1: Ordinance and Resolution to approve Lease with CenterPoint-Oakland Development I, LLC for a Transload and Distribution Facility on the Former Oakland Army Base.

I would appreciate it if you could reply to this email and let me know it has been received. Thanks in advance!

Please contact me if you have any questions.

Sincerely,

Alison Kirk, AICP
Senior Environmental Planner
415-749-5169

The Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

ALAMEDA COUNTY
Pauline Russo Cutter
Scott Haggerty
Rebecca Kaplan
Nate Miley

CONTRA COSTA COUNTY
John Gioia
David Hudson
(Vice Chair)
Karen Mitchoff
Mark Ross

MARIN COUNTY
Katie Rice
(Secretary)

NAPA COUNTY
Brad Wagenknecht

SAN FRANCISCO COUNTY
Edwin M. Lee
Hillary Ronen
Jeff Sheehy

SAN MATEO COUNTY
David Canepa
Carole Groom
Doug Kim

SANTA CLARA COUNTY
Margaret Abe-Koga
Cindy Chavez
Liz Kniss
(Chair)
Rod G. Sinks

SOLANO COUNTY
Pete Sanchez
James Spering

SONOMA COUNTY
Teresa Barrett
Shirlee Zane

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

Connect with the
Bay Area Air District:

November 3, 2017

Joan H. Story
President, Board of Port Commissioners
Port of Oakland
30 Water Street
Oakland, CA 94607

Subject: **Ordinance and Resolution to approve Lease with CenterPoint-Oakland Development I, LLC for a Transload and Distribution Facility on the Former Oakland Army Base**

Dear Ms. Story and Members of the Board of Port Commissioners (Board):

The Bay Area Air Quality Management District (Air District) has reviewed Agenda item 5.1 on your November 9, 2017 meeting and is requesting that the Board:

- Delay approval of any resolution or ordinance on this item until the Port of Oakland (Port) has developed and funded the emission reduction programs (in concert with the City of Oakland (City)) identified by the former Oakland Army Base (OAB) Environmental Impact Report (EIR) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP); and

- Developed criteria via a public process to determine when low emission equipment or strategies are "readily available" or "cost effective."

As currently drafted, Agenda item 5.1 seeks to authorize the Port of Oakland (Port) Executive Director to enter a ground lease with CenterPoint-Oakland Development I, LLC, (the Developer) for the design, construction, finance, operation, and maintenance of a transload and distribution facility (Project). The proposed Project seeks to build a 440,800-square foot facility with approximately 140 dock doors, and parking for 365 autos and 70 trailers for warehouse, storage, other maritime trade and logistics uses. The proposed location is approximately 27 acres at the former Oakland Army Base (OAB) land the Port has named the Seaport Logistics Complex.

As stated in the Board's Agenda Report, this and any project on the former OAB is required to comply with the OAB Environmental Impact Report (EIR) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP). As you may recall, the SCA/MMRP was adopted by the Oakland City Council (City) and the Port to mitigate the significant health and air quality impacts expected to occur in the West Oakland community and impacts to regional air quality resulting from the build out of the OAB. However, many the SCA/MMRPs require the City and the Port to develop emission reduction programs that have not been developed, such as:

- MM 4.4-3a: "The Port shall develop and implement a criteria pollutant reduction program aimed at reducing or off-setting Port-related emissions in West Oakland from its maritime and rail operations to less than significant levels..."

- MM 4.4-4 "The City and the Port shall jointly create, maintain and fund on a fair share basis, a truck diesel emission reduction program. The program shall be sufficiently funded to strive to reduce redevelopment related contributions to local West Oakland diesel emissions to less than significant levels ...."

- MM 4.4-5: "Major developers shall fund on a fair share basis BAAQMD – recommended feasible Transportation Control Measures (TCMs) for reducing vehicle emissions from commercial, institutional, and industrial operations, as well as all CAP [Clean Air Plan] TCMs the BAAQMD has identified as appropriate for local implementation ...."

- MM 4.4-6: "...the City and Port shall implement sustainable development policies and strategies related to new development design and construction..."

- MM 5.4-1: "The City and the Port shall encourage, lobby, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality..."

- MM GCC-1: "The project applicant shall retain a qualified air quality consultant to develop a Greenhouse Gas (GHG) Reduction Plan for City review and approval. The applicant shall implement the approved GHG Reduction Plan..."

- Some of the mitigation measures include language that would require emission reduction actions only if low emission equipment or strategies are "readily available" or "cost effective".

To date, neither the City nor the Port has developed or funded the emission reduction programs identified above or developed any criteria to determine when low emission equipment or strategies are "readily available" or "cost effective." The Air District recommends that the Port develop the emission reduction programs and guidance identified above in a forum that seeks public input prior to acting on this Project. The Air District believes that any resolution adopted by the Board relative to this project should include clear language and direction to staff and the proposed tenants/operators that ensures the maximum use of zero and near zero emission equipment at the time of building permit issuance, and requires upgrades into the future as fully zero emissions equipment options become available.

To assist the Board, City and Port in determining what is "readily available" or "cost effective," the Air District has attached its draft "BAAQMD Emissions Reductions Actions for the Port of Oakland/Former Oakland Army Base," (August 2017) document. The Air District is currently finalizing this document in consultation with both Port and City staff and expects some minor changes to it based on those discussions. However, the technology suggestions in this document

have been reviewed by the California Air Resources Board and represent what the Air District believes to be most protective of community health and air quality relative to equipment that is currently and reasonably available.

West Oakland remains the most disproportionately impacted community in the Bay Area due in part to its proximity to the Port. Since 2001, the Air District has invested over 80 million dollars of public funds to reduce diesel particulate matter (DPM) emissions from Port truck, maritime and rail operations and over $50 million to reduce emissions on adjacent highways. In 2018, the Air District projects another approximately $70 million dollars in incentive funds will be available for the purchase of zero and near zero emission equipment and technologies that could be used at the Port and OAB. The Air District stands ready to assist current and prospective tenants/operators at the Port and OAB in taking advantage of these funds.

However, these incentives alone cannot address the air quality related health issues in the West Oakland community. It is important that the Board play a leadership role in reducing the impacts of the Port's operations by directing its staff to honor the spirit and letter of the mitigation measures required in the SCA/MMRP. This includes specifying requirements for zero and near zero equipment and operations as part of new leases and ordinances.

Air District staff is available to assist the Board or Port staff with questions about these comments. If you have any questions, please contact Alison Kirk, Senior Planner, at (415) 749-5169 or akirk@baaqmd.gov.

Sincerely,

Damian Breen
Deputy Air Pollution Control Officer

Attachment: BAAQMD Emissions Reductions Actions for the Port of Oakland/Former Oakland Army Base – Draft Document (August 2017)

cc: BAAQMD Director Pauline Russo Cutter
BAAQMD Director Scott Haggerty
BAAQMD Director Rebecca Kaplan
BAAQMD Director Nate Miley
Cynthia Marvin, California Air Resources Board
Claudia Cappio, City of Oakland
Richard Grow, EPA
Matt Lakin, EPA
Ben Machol, EPA

Oakland Seaport Facilities

Siting or expanding seaport facilities, in, or near, communities already highly impacted by diesel pollution, carries a responsibility to build and operate a state-of-the-art facility with emissions as close to zero as technologically possible. Future port projects should include emerging zero emission technology for the trucks, locomotives, ship, tug boats, transport refrigeration units and support equipment that may serve, or operate, at ports. The City of Oakland (City) and Port of Oakland (Port) should take advantage of the planned construction and operational expansion to introduce changes that will lay the foundation for this technology and reduce regional emissions, minimize criteria pollutants and toxic air contaminants as well as the localized health risk from the Port's current and future operations. All projects should require the use of the cleanest technologies, support and encourage the development and demonstration of advanced technologies, with the ultimate goal of requiring the use of zero and near-zero emission technologies as soon as they are available. This requirement for the cleanest equipment is consistent with the City and the Port commitments made in the 2010 document, *A Bold Vision: Redeveloping the Former Oakland Army Base* ("*A Bold Vision*") and the 2009 *Maritime Air Quality Improvement Plan* (MAQIP).

The following actions need to be taken to ensure that Port operations or construction activities do not increase cumulative air quality impacts now or in the future.

1. <u>Port-Wide Actions</u>

   1.1. Require that all tenants and onsite construction contractors comply with and monitor compliance with all applicable air quality regulations for heavy duty-diesel trucks, including the Air Resources Board's (ARB) Tractor-Trailer Greenhouse Gas Reduction Regulation, Period Smoke Inspection Program, Off-Road Regulation, and Statewide Truck and Bus Regulation. To document compliance, require that fleets provide ARB Certificates of Compliance for the equipment regulations and copies of annual smoke test results.

   1.2. Incorporate contractual language into tenant lease agreements to ensure that tenants comply with all applicable air quality regulations, are using the cleanest technologies for their equipment (in both construction and operations) and understand their responsibilities of building and maintaining a green facility as well as compliance with diesel regulations.

   1.3. Require that the cleanest possible construction practices and equipment are utilized. This should include eliminating idling of diesel powered equipment, requiring the use of zero and near-zero emission equipment and tools to the greatest extent feasible, and providing the necessary infrastructure, like electric hookups, to support that equipment.

   1.4. Implement and plan accordingly for the necessary infrastructure to support zero emission and near-zero emission technology vehicles and equipment at

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the Port. This includes physical, energy, and fueling infrastructure for construction equipment, on-site vehicles, and equipment, and medium-heavy and heavy-heavy duty trucks. ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm.

At a minimum, both the Port and City should adopt targets for electric raceway circuit installation as part of initial facility construction. This will ensure sufficient electrical power is available for EV charging at sites under development and minimizes future costs to install infrastructure for zero and near zero emissions vehicles.

1.5. Develop a Sustainable Leasing Program whereby the Port and City shall work with tenants to develop and implement a policy incentive-based sustainable leasing program to attract the cleanest ships, ships that utilize shore power, zero and near-zero technologies, and otherwise incorporate technological and operational practices that reduce freight related emissions.

1.6. Require tenants to use cleaner technologies over time as they become available and feasible. This can be accomplished by requiring tenants to develop an annual Technology Review Program to identify any new emissions-reduction technologies that may reduce emissions at the Port, including the feasibility of zero and near-zero emissions technologies for heavy-duty trucks, yard equipment, tugs, vessels, and bulk handling equipment. If the technology review demonstrates the new technology will be effective in reducing emissions and the Port or City determines that installation or use of the technology is feasible, the tenant shall implement such technology within 12 months of the Port or City's determination (see Appendix A for examples of possible Technology Review Program projects).

1.7. Ensure existing and future tenants are compliant now and in the future with ARB's Transport Refrigeration Regulation. If not already implemented, incorporate operating practices that eliminate the amount of time that a transport refrigeration system powered by a fossil-fueled internal combustion engine can operate utilizing the combustion system at the Port. Furthermore, plan and design cold storage facilities that incorporate zero emission all-electric plug-in transport refrigeration systems, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration sufficient to meet Port growth.

1.8. Require the use of cargo handling equipment (CHE), including yard trucks, handlers, gantry cranes, fork lifts, that is the cleanest available technology (LPG/LNG, renewable diesel, electric, hydrogen, electric hybrid) and use zero and near- zero emission technology for equipment that is commercially

available now and in the future, as more zero-emission equipment becomes commercially available, as committed to in *A Bold Vision*. ARB's Technology Assessment: Mobile Cargo Handling Equipment, provides information on current and projected development of CHE, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/che_tech_report.pdf. Additionally, tenants should be required to demonstrate how their yard lay out maximizes their ability to use zero emissions equipment such as electric rail mounted gantry cranes.

1.9. Require the use of commercial harbor craft (CHC) technologies that exceed the Tier 2 or 3 requirements of CARB's CHC Regulation. There are some zero and near- zero emissions technology for equipment that is commercially available now, and additional projects are underway demonstrating the capability of CHC to achieve emission lower than Tier 4 marine and off-road emission standards. Some of these solutions may require retrofit with aftermarket emission control devices. ARB's Technology Assessment: Commercial Harbor Craft, provides information on current and projected development of CHC, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/draft_chc_technology_assessment.pdf.

1.10. Require that all medium-heavy and heavy-heavy duty on-road and yard trucks, including any alternative fuel vehicles, meet or exceed the 2010 emission standards. Support the deployment of zero and near-zero technologies including utilizing zero emission (such as battery electric or fuel cell electric) forklifts, electrified rail mounted gantry cranes, and battery electric and hybrid electric medium-duty trucks to the fullest extent feasible. At a minimum, all forklifts should be required to meet a zero emission standard. As it becomes available, require that medium-heavy and heavy-heavy duty trucks traveling within 100 miles of the site use zero and near-zero technology and require that yard trucks with similar duty cycles (less than hundred miles daily) convert to zero and near-zero technology. ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm.

1.11. During all construction activities, require that off-road construction equipment meet Tier 4 engine standards, if not available, require equipment that meets Tier 3 engine standards. Tenants shall keep a list of available equipment and submit to the Port or City upon request.

1.12. Require that all on-site service vehicles, light-duty vehicles and equipment (operational and during construction activities), and property maintenance

equipment use zero emission technology and, if zero-emission technology is unavailable, that all vehicles and equipment meet the cleanest applicable emission standard.

1.13. Require that all projects include a robust traffic plan that moves truck traffic away from residents reducing truck traffic in neighborhoods, reduces and enforces truck speeds to reduce exposure to noise and increase safety, and discourages new development near truck routes. Coordinate and consult with the West Oakland community on site-wide truck traffic circulation.

1.14. Properly integrate truck parking, terminal parking, security systems, electronic gates systems, and other freight transport infrastructure to maximize achievable efficiencies.

1.15. Require future project design plans include operational support to demonstrate and deploy zero and near-zero emission freight equipment.

1.16. Require ships that enter the Port area pay emissions-based berthing fees or other user fees. The fees shall be used to reduce emissions and exposure in West Oakland.

1.17. Require that ocean-going vessels comply with fuel requirements for both the California Ocean-Going Vessel Regulation and the North American Emission Control Area Requirements.

1.18. Provide support (logistical and financial) for demonstration projects to encourage the use of alternative and/or advanced technologies. ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source and port equipment technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm.

1.19. Utilize concepts to enhance community engagement as outlined in the U.S. Environmental Protection Agency Draft Environmental Justice Primer for Ports, "The Good Neighbor Guide to Building Partnerships and Social Equity" released in July 2016. This document provides a road map to assess current community engagement and outlines strategies to assist the City and the Port to enhance neighboring community relationships. The document can be found at https://www.epa.gov/ports-initiative/draft-environmental-justice-primer-ports

1.20. Utilize grant funding from Federal, State and local programs to reduce air pollution emissions and health risk from diesel exhaust. Incorporate a collaborative process between tenants and the Port and/or the City to apply for funding to support zero-emission freight related diesel equipment technologies.

1.21. Require that all recycling facilities and metal melting facilities that include re-

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melting furnaces for the melting of alloys, within the Port, the OAB project area, and within 1,000 feet of the West Oakland community meet the best available control technology (BACT) standards as defined by the BAAQMD.

2. Former OAB – Both City of Oakland and Port Owned Areas

Below are measures that will help the City and Port meet the requirements of the Oakland Army Base 2013 Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCA/MM). *Note:* the City and Port must reduce emissions at the OAB property *beyond* what is required by CARB regulations to meet the requirements of the SCA/MM. These measures also are consistent with measures in the *Maritime Air Quality Improvement Plan* (MAQIP), A Bold Vision, the City of Oakland's Standard Condition of Approval, and air quality mitigation measures in the Environmental Impact Report for 2013 *Plan Bay Area*. When measures are adapted from specific sources, these sources are noted in parenthesis.

The City and Port shall implement all measures listed under Item 1 Port-Wide Activities as applicable, and in addition shall implement the following measures:

2.1. All trucks shall be prohibited from idling more than two minutes when loading and unloading, staging or when not in active use for extended periods of time. Exemptions from the two-minute idling rule would be allowed when required for safety or when equipment is in use. (Plan Bay Area)

2.2. An appointment/ITS system shall be implemented that minimizes truck idling and queuing for the movement of containers.

2.3. Prior to implementation of zero-emission harbor craft described in Item 1.9 above:

2.3.1. Prior to 2023, all CHC accessing the new OAB port facilities will meet USEPA Tier 4 standards (or cleaner) for both propulsion and auxiliary engines, or zero emissions technologies such as: batteries, shorepower, or hydrogen fuel cell.

2.3.2. NOx emissions can be controlled with selective catalytic reduction systems. For example, implement emission reduction control measures to replace tugboat engines with low NOx technology (for example, through the expansion of the existing cargo handling equipment re-powering and retrofitting program, part of the Berths 55-58 Project air quality mitigation program).

2.4. All the mobile cargo handling equipment will be electric equipment. (MAQIP) The Air District suggest this be broadened to allow for other zero emissions fuels

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(Hydrogen) and for near zero emissions equipment in the event that full zero emissions equipment in not commercially available.

2.5. Buildings shall meet LEED Platinum certification standards. All buildings shall provide sources of energy. Solar, wind, mechanical, tidal or solar generated hydrogen systems will be investigated to determine their feasibility.

2.6. The developer shall be required to plant trees and/or vegetation throughout the OAB. Trees that are best suited to trapping PM shall be planted, including one or more of the following: Pine (Pinus nigra var. maritima), Cypress (X Cupressocyparis leylandii), Hybrid popular (Populus deltoids X trichocarpa), and Redwoods (Sequoia sempervirens). (Plan Bay Area)

2.8. All existing land uses serving sensitive receptors within 1,000 feet of the Project boundaries shall be equipped with HEPA air filtration systems rated MERV 13 or better. The Port and City will establish a fund and contribute on a fair share basis to the cost of installing and maintaining the MERV 13 systems and provide educational materials to owners and occupants explaining how to maximize the benefits of these systems.

2.9. Consistent with SCA/MM 4.4-5, when redevelopment activity generates more than 20,000 square feet of employment-generating land uses, or generates 100 or more local jobs, the City, Port and developers will fund on a fair share basis Transportation Control Measures (TCMs) for reducing vehicle emissions from commercial, institutional, and industrial operations. See SCA/MM 4.4-5 for a full list of TCMS and include the following:

2.10. Commute Benefits Program

2.10.1 To design and implement a Commute Benefits Program, the City, Port, and private developers need to form a committee and assign a representative to the committee. Committee representatives will include two West Oakland community members, an employee representative, and a representative from the Port and from the City. (Note that all employers with 50 or more full-time employees in the Bay Area are subject to the Bay Area Commuter Benefits Program [BAAQMD regulation 14, Rule 1]. For more information, please see https://commuterbenefits.511.org)

2.10.2 Design and locate buildings to facilitate transit access, e.g., locate building entrances near transit stops, and eliminate building setbacks. Construct transit facilities such as bus turnouts/bus bulbs, benches, shelters, and improving transit bus service to the area. Provide on-site services, such as cafeterias, banks, dry cleaners, and convenience market so that employees can walk to these services. Include bicycle and pedestrian facilities in the design.

2.10.3 Transit, Bicycle and Pedestrian Access: Include sidewalks, multi-use paths and bike lanes in the project design. Provide secure, weather-protected bicycle parking for employees, Provide showers and lockers for employees bicycling or walking to work. Provide safe, direct access for bicyclists to adjacent bicycle routes. Provide direct, safe, attractive pedestrian access from project to transit stops and adjacent development.

2.10.4 Mange Travel Demand and Provide Transit Service: Encourage OAB tenants to use carpools, vanpools, and public transit by providing incentives. Provide a shuttle to and from the West Oakland BART station. Establish mid-day shuttle service for worksite to food service establishments/commercial areas. Provide preferential parking for carpool and vanpool vehicles. Implement parking fees for single occupancy vehicle commuters.

2.11. New Stationary Sources

2.11.1 On the OAB property, new stationary sources that are added as part of the project must reduce emissions beyond what is required by CARB and BAAQMD, whenever possible. For example, the cleanest available stand-by diesel generators and portable generators will be required. The City and Port shall fund this on a fair share basis.

3. Former OAB -City of Oakland Owned Areas

West Gateway Bulk Terminal (Marine Terminal and Rail Expansion)

3.1. Implement all applicable site-wide actions based on specific operations in this subject area.

3.2. Specify the public review release date and expected content for each of the remaining Subject Plans for this project, subject to Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans). It is expected that the remaining Subject Plans will be released in a timeframe that will allow for meaningful public review and response by the City of Oakland, or project developer, prior to when they are scheduled according to the approved SCA/MM. The list of Subject Plans can be found on page 46 in SCA/MM at http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak042281.pdf

3.3. Require that berths providing shore power now or in the future, can accommodate changes to vessel sizes and various berthing configurations. The ARB At-Berth Regulation currently requires 80% compliance of ocean going vessels by 2020. Vessel operations should meet 100 percent shore power compliance rate for all vessels or incorporate other technologies, such as emissions capture and control systems, to maximize emission reductions from

all vessels in advance of the regulation. ARB's Sustainable Freight: Pathways to Zero and Near-Zero Emissions Discussion Document has identified the development and proposal of amendments to the At-Berth that could expand the regulation to include smaller fleets and/or additional vessel types to the current At Berth Regulation. Additionally, hybrid technologies have shown success at achieving emission reductions in certain tugs based on duty, engine size, and location and should be incorporated into operations, where possible.

Accelerate the turnover of line-haul locomotives servicing the Port to Tier 4 line-haul, ARB proposed Tier 5, or Zero emissions locomotives as expeditiously as possible, with the goal of 95 percent of operations to be performed at a minimum Tier 4 standard by 2023. In addition establish standards that require:

3.4.1. All diesel switch engines to have 15-minute idling limit devices installed and operational; and to use emulsified fuels or other equivalently clean alternative diesel fuel.

3.4.2. No non-essential idling. Class 1 helper locomotives will be turned off while on OAB properties. If, for safety reasons, helper locomotives need to be on then they will meet similar control requirements as line haul locomotives.

3.4. The Port, Union Pacific (UP) Railway, and/or BNSF Railway should commit to providing co-funding, facility access, and operational support for the development and demonstration of interstate line-haul locomotive technology with zero-emission capability. This would include, but is not limited to, a hybrid-electric locomotive with all electric capability. ARB's Technology Assessment: Freight Locomotives, provides information on current and projected development of freight locomotives, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/freight_locomotives_tech_report.pdf

3.5. Incorporate conditions into lease agreements with BNSF and/or UP to ensure that switch locomotives meet a minimum Tier 4 emissions level by 2023.

3.6. Phase in the replacement of diesel powered switcher locomotives with electric rail car movers, within the Port or City owned rail properties.

Prologis East and Central Gateway (Ambient Transload/Warehouse/Truck Services)

3.7. Implement all applicable site-wide actions based on specific operations in this subject area.

North Gateway (Recycling and Rail Right Of Way Expansion)

3.8. Implement all applicable site-wide actions based on specific operations in this subject area.

4. Former OAB Port of Oakland Owned Areas

Central Gateway (Ambient Transload/Warehouse/Rail Yard /Port Logistics/Warfs)

4.1. Implement all applicable site-wide actions based on specific operations in this subject area.

4.2. Specify the public review release date and expected content for each of the remaining Subject Plans for this project, subject to Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans). It is expected that the remaining Subject Plans will be released in a timeframe that will allow for meaningful public review and response by the City of Oakland, or project developer, prior to when they are scheduled per the SCA/MM. The list of Subject Plans can be found on page 46 in SCA/MM at http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak042281.pdf.

5. Port of Oakland (Non-Former OAB Areas)

Cool Ports Oakland, LLC (Temperature Controlled Transload/Warehouse/Rail Expansion)

5.1. Implement all applicable site-wide actions based on specific operations in this subject area.

5.2. Ensure existing and future tenants are compliant now and in the future with ARB's Transport Refrigeration Regulation. Incorporate operating practices that eliminate the amount of time that a transport refrigeration system powered by a fossil-fueled internal combustion engine can operate utilizing the combustion system while at the Port. Require the use of zero emission all-electric plug-in transport refrigeration systems and ensure the design plan includes the necessary infrastructure. ARB's Technology Assessment: Transport Refrigerators, provides information on the current and projected development for transport refrigerators, including current and anticipated costs at widespread deployment. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/tru_07292015.pdf.

5.3. Accelerate the turnover of line-haul locomotives servicing the Port to Tier 4, ARB proposed Tier 5, or Zero emissions locomotives as expeditiously as possible, with the goal of 95 percent of operations to be performed at a minimum Tier 4 standard by 2023. Furthermore, the Port, Union Pacific (UP) Railway, and/or BNSF Railway should commit to providing co-funding, facility access, and operational support for the development and demonstration of

interstate line-haul locomotive technology with zero-emission capability. This would include, but is not limited to, a hybrid-electric locomotive with all electric capability. ARB's Technology Assessment: Freight Locomotives, provides information on current and projected development of freight locomotives, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/freight_locomotives_tech_report.pdf.

5.4. Incorporate conditions into lease agreements with BNSF and/or UP to ensure that switch locomotives meet a minimum Tier 4 emissions level by 2023.

5.5. Phase in the replacement of diesel powered switcher locomotives with electric rail car movers, within the Port or City owned rail properties.

5.6. Plan and design for the necessary infrastructure to ensure 100 percent, plug-in equipped, to accommodate future growth volumes of TRU's or expansion of this area.

5.7. Implement a policy that limits the amount of time that a transport refrigeration system powered by a fossil-fueled internal combustion engine can operate utilizing the combustion system while on Site.

5.8. Encourage the use of zero emission all-electric plug-in refrigeration systems, hydrogen fuel cell and cryogenic transport refrigeration systems.

5.9.

Port Terminal/Maritime Operations (Inner, Middle, Outer Harbors, and Seventh Street)

5.10. Implement all applicable site-wide actions based on specific operations in this subject area.

5.11. Accelerate the turnover of line-haul locomotives servicing the Port to Tier 4, ARB proposed Tier 5, or Zero emissions locomotives as expeditiously as possible, with the goal of 95 percent of operations to be performed at a minimum Tier 4 standard by 2023. Furthermore, the Port, Union Pacific (UP) Railway, and/or BNSF Railway should commit to providing co-funding, facility access, and operational support for the development and demonstration of interstate line-haul locomotive technology with zero-emission capability. This would include, but is not limited to, a hybrid-electric locomotive with all electric capability. Incorporate conditions into lease agreements with BNSF and/or UP to ensure that switch locomotives meet a minimum Tier 4 emissions level by 2023.ARB's Technology Assessment: Freight Locomotives, provides information on current and projected development of freight locomotives, including current and anticipated costs at widespread development. This

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assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/freight_locomotives_tech_report.pdf.

5.12. Phase in the replacement of diesel powered switcher locomotives with electric rail car movers, within the Port or City owned rail properties.

5.13. Require that berths providing shore power now or in the future, can accommodate changes to vessel sizes and various berthing configurations. The ARB At-Berth Regulation currently requires 80% compliance of ocean going vessels by 2020. Vessel operations should meet 100 percent shore power compliance rate for all vessels or incorporate other technologies, such as emissions capture and control systems, to maximize emission reductions from all vessels in advance of the regulation. ARB's Sustainable Freight: Pathways to Zero and Near-Zero Emissions Discussion Document has identified the development and proposal of amendments to the At-Berth that could expand the regulation to include smaller fleets and/or additional vessel types to the current At Berth Regulation. Additionally, hybrid technologies have shown success at achieving emission reductions in certain tugs based on duty, engine size, and location and should be incorporated into operations, where possible.

Appendix A

Technology Review Program

Development of a Technology Review Program is consistent with the requirements of Mitigation Measures in the Oakland Army Base 2013 Standard Conditions of Approval and Mitigation Monitoring and Reporting (SCA/MM) Program. Below are recommended Technology Review Programs that can be implemented to reach the goals of the SCA/MM.

In consultation with regional agencies and stakeholders, the City and Port shall implement Technology Review Programs, such as:

- The City and Port should administer a minimum of a one year demonstration project, prior to 2020, of zero and near-zero emission truck technology. This demonstration project shall be conducted in cooperation with regional and state agencies and stakeholders.

- Research and funds shall be used to identify and test hybrid diesel electric locomotives and conduct a demonstration of locomotive DOC or DPF retrofits.

- Feasibility studies of electrification of freight/passenger rail from Port intermodal yards to the Bay Area Air Quality Management District's boundaries conducted in conjunction with the Metropolitan Transportation

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Commission, Capital Corridor JPA, Union Pacific, and Burlington Northern Santa Fe railroads.

- Investigation of renewable energy generation via mechanical systems that utilize truck weight to generate electricity.

- Study of a "virtual container yard" system that integrates truck movements with container moves to minimize emissions and maximize efficient use of trucking fleets.

Example TAP Studies

As a possible framework for the Technology Review Program, consider the work of the San Pedro Ports Technology Advancement Program (TAP). TAP is a joint program of the Ports of Long Beach and Los Angeles through the Ports' joint Clean Air Action Plan (CAAP) adopted in 2006. The CAAP guides the Ports in their commitment to reduce the health risks and air emissions associated with port-related operations, while allowing port development and growth to continue. The CAAP focuses on near-term strategies, targeting significant reductions in diesel PM, nitrogen oxides (NOx), and sulfur oxides (SOx). The following is a selected list of demonstration projects completed through the TAP program:

- Balqon E-30 Electric Terminal Tractor Development and Demonstration Project

This vehicle was built as a demonstration vehicle and designed specifically for drayage operations. The prototype E-30 all-electric terminal tractor successfully completed cargo terminal tests in 2008.

Following the completion of cargo terminal tests during 2008, the Los Angeles Harbor Commission approved the purchase of 20 electric trucks from the manufacturer as part of the "Green Terminal" program. The Green Terminal program will also include the production of five on-road electric trucks.

This demonstration project was followed with a project to evaluate and demonstrate a lithium-ion battery as a technological upgrade to the lead-acid battery pack used in the previous TAP demonstration. The advanced technology lithium-ion batteries were anticipated to provide more than double the vehicle range, without adding additional weight. A one-day demonstration of the Nautilus E30 confirmed a range of over 150 miles on a single charge with unloaded conditions at 80% depth of discharge. However, this project was never completed.

- Capacity Plug-In Hybrid Electric Terminal Tractor (2010)

The TAP program conducted a three-week trial of a diesel-electric plug-in hybrid terminal tractor that uses a small diesel generator and a large lead-acid battery pack to provide power for vehicle operation. While this demonstration showed a 44

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percent reduction in NOx emissions and a 56 percent reduction in PM emissions, compared to 2009 diesel yard tractors, the demonstration utilized a Tier 4-interim generator drive engine, and therefore does not meet CARB's Cargo Handling Equipment regulation of Tier 4 engines.

- Hybrid Yard Tractor Development & Demonstration (2010)

This TAP study investigated the feasibility and commercial viability of using advanced technology drive systems in cargo handling equipment. The three hybrid yard hostlers underwent six months of operation and in-use testing and could perform all the tasks required of yard hostlers in real-world port operations, and were well accepted by drivers and maintenance staff. Fuel economy and emissions benefits were evaluated, but a difference discovered in the mechanical specifications of the vehicles limited comparability. Based on all the evaluations and analyses conducted, the hybrid system is estimated to provide a 12 percent to 18 percent improvement in fuel economy. Further development of the hybrid system is underway to improve fuel economy and emissions reductions. A follow-up study was conducted entitled "Hybrid Yard Tractor Development and Demonstration – Beta Test".

- Alternative Petroleum Technologies (APT) Emulsified Biodiesel Fuel Demonstration (2011)

To demonstrate the viability and effectiveness of the emulsified biodiesel fuel in cargo handling equipment, APT performed a two-phased demonstration that consisted of an evaluation of the emulsified fuel with and without a diesel oxidation catalyst (DOC) in a laboratory setting and a real-time demonstration of the fuel in yard equipment at a port terminal.

The demonstration successfully proved that APT's emulsified B-20 blend mitigated an increase in NOx emissions, while also providing additional reductions in PM when coupled with a verified diesel emissions control system. This provides port drayage operators an alternative fuel selection for their existing fleet of container yard equipment.

As of April 2014, APT planned to pursue CARB verification of the emulsified biodiesel fuel for sale to existing cargo handling equipment fleet operations in the State.

- Liquefied Natural Gas Yard Tractor Demonstration (2007)

This Project was designed to develop, test and design a business case for LNG yard tractors. Phase 1 focused on development of LNG yard tractor specifications, procurement, and installation of temporary LNG refueling. Phase 2 included operation of the LNG yard tractors at a marine terminal for a period of eight months. Phase 3 of the project was the development of a business case assessment to

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determine the cost effectiveness and return on investment of using LNG equipment as opposed to diesel.

During emissions testing, the LNG yard tractor produced lower PM emissions than on-road diesel engine equipped with a diesel oxidation catalyst and closed crankcase ventilation system. However, NOx emissions from the LNG yard tractor were approximately 21 percent higher than NOx emissions from this same on-road diesel engine configuration.

- ACTI Advanced Maritime Emission Control System (AMECS) Project (2008)

ACTI developed the AMECS as an alternative pollution control method for ocean-going vessels that are not configured to use shore power, also known as "cold ironing", while at berth. The goal was to demonstrate pollution reduction efficiencies equal to cold ironing for nitrogen oxides (NOx), sulfur oxides (SOx), and particulate matter (PM). The AMECS was demonstrated at Metropolitan Stevedore/Port of Long Beach on multiple vessels with varying exhaust stack configurations. During the demonstration period, two full-scale emission reduction efficiency tests were conducted, the results of which were independently verified by two testing laboratories. During emissions testing, NOx and PM emissions were reduced by 99 percent and 95.5 percent, respectively. In addition, sulfur oxides (SOx) were reduced by 99 percent, and volatile organic compound (VOC) emissions were reduced by greater than 97 percent. Further demonstration of this technology is necessary to determine how it functions in day-to-day operations, including evaluation of costs, durability, integration into operations.

- APL Singapore Slide Valve & Water-In-Fuel (WiFE) Emulsion Demonstration Program (2009)

Two emission control technologies were demonstrated - the use of slide valves in the vessel's main engines, and water-emulsified bunker fuel using an innovative onboard water in fuel emulsifier. The primary objectives of the demonstration projects were to a) evaluate the particulate matter (PM) emission reduction effectiveness of retrofitting OGV main engines with an improved injector design known as a slide valve; and b) demonstrate demand-based onboard water in fuel emulsification system and measure the NOx reduction effectiveness of varying the water content.

Project test conditions resulted in an evaluation that indicated the benefits of slide valves appear to be limited. Testing of the WiFE system aboard the APL Singapore showed water concentrations as high as 48 percent were successfully demonstrated, yielding NOx reductions on the order of 30 percent. A further study was completed in 2012.

- Bluefield Holdings Krystallon Ocean Going Vessel Scrubber (2013)

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The primary focus of this project was to demonstrate the reduction of emissions of sulfur oxides (SOx) from an Ocean Going Vessel using an exhaust gas cleaning device to meet the International Maritime Organization (IMO) fuel sulfur limits in Emission Control Areas (ECA) and further to reduce particulate matter (PM), and volatile organic compound (VOC) emissions. This project demonstrated the potential for PM and SOx reductions that can be achieved through OGV retrofit using commercially available scrubbing technology. Additional research is needed further evaluate the potential for OGV engine emission reductions from scrubbers on main engines to comply with IMO ECA regulations.

- Foss Maritime Green Assist™ Hybrid Tugboat (2010)

Foss Maritime developed this diesel electric hybrid tugboat and named it the *Carolyn Dorothy*. The *Carolyn Dorothy* became a full working member of the Foss Maritime tug fleet on March 1, 2009. Since this time, the hybrid tug demonstrated performance comparable to a conventional Dolphin Class tugboat. The hybrid tugboat achieved emission reductions that exceed original targets (to reduce both NOx and PM by approximately 44 percent) when compared with the Dolphin tugs currently operating in the San Pedro Bay. The *Carolyn Dorothy* reduced PM, NOx and CO2 emissions by 73 percent, 51 percent and 27 percent, respectively. Based on this evaluation, there is evidence that this technology reduces fuel consumption by approximately 20 to 30 percent.

- OGV Slide Valve Low-Load Emissions Evaluation (2013)

This project is a follow up to the 2008 demonstration of a slide-type fuel values, and sought to test a new type of OGV main engine fuel valve (SV C36) designed to improve combustion properties by eliminating sac volume (i.e., fuel drips) at the valve nozzle. The elimination of the sac volume results in lower fuel oil consumption. In addition, slide valve nozzles incorporate an optimized spray pattern designed to improve the combustion process - this is intended to reduce overall emissions, including hydrocarbon, NOx and particulate matter. The visible smoke level is also greatly reduced because of the improved combustion. Among other findings, results showed that SV C26 nozzles did emit less diesel particulate matter (DPM) at low loads compared to the two conventional fuel valve configurations. At low loads, SV emits up to 50 percent less DPM than conventional C3 and C11 fuel valves and up to 65 percent less DPM for cylinder-lubrication-corrected particulate-emission results. Overall, SV C26 nozzles emit over 90 percent less total hydrocarbons compared to the two conventional fuel valve configurations.

California Energy Commission Projects

In addition to the emissions reduction studies that are being undertaken as part of the TAP, the California Energy Commission (Energy Commission) released a Grant Solicitation for “Sustainable Freight Transportation Projects” under the Alternative and Renewable Fuel and Vehicle Technology Program (ARFVTP). This grant

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solicitation funded projects that demonstrate medium- and/or heavy-duty advanced vehicle technologies at California seaports. The three projects selected as part of this solicitation propose to demonstrate:

- 9 zero emissions rubber tired gantry cranes
- 15 battery electric yard tractor's
- 7 natural gas hybrid electric trucks
- 3 zero emissions top handlers
- 20 near zero natural gas trucks

Results of these demonstrations should inform the Technology Review Program established as part of the Oakland Army Base 2013 SCA/MM Program.

DRAFT

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/19/2017 1:56:13 AM
To: Margaret Gordon [margaret.woeip@gmail.com]; Brian Beveridge [brian.woeip@gmail.com]
Subject: T6 Acceptance letters
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - COMPLAINANTS - 7-18-2017 (1).pdf; Final Letter of Acceptance for Investigation - Oakland City and Port - RECIPIENTS - 7-18-2017.pdf

In case these didn't get to you by other means. They went out electronically around 4 pm this aft PDT. Richard

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

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

July 18, 2017

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

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

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

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

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

Accordingly, the investigation will focus on:

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

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

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

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

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

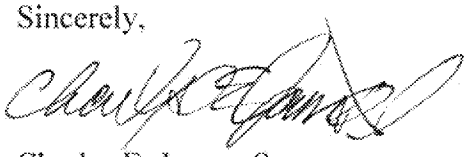
No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual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

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

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

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

Sincerely,



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

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

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

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

July 18, 2017

The Honorable Libby Schaaf
Mayor, City of Oakland
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Michael Colbruno
President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, CA 94607

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

Dear Mayor Schaaf and Mr. Colbruno:

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

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have determined that the complaint meets the jurisdictional requirements of both Agencies, and therefore the complaint will be jointly investigated.

Accordingly, the investigation will focus on:

1. Whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the Oakland Army Base subjects the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

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

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

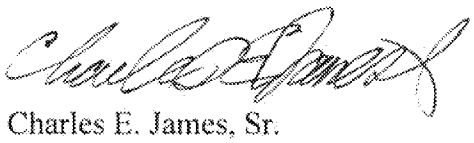
This does not foreclose resolution of matters raised in the complaint through informal resolution, including alternative dispute resolution (ADR). Both DOT's and EPA's nondiscrimination regulations provide that DOCR and ECRCO will attempt to resolve complaints informally whenever possible. 49 C.F.R.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

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights

protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with DOCR and ECRCO.

Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's DOCR, or Ericka Farrell, Case Manager in EPA's ECRCO, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Farrell can be reached at (202) 564-0717, or farrell.ericka@epa.gov.

Sincerely,



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

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 2/8/2018 1:01:29 AM
To: McGowan, Patricia [PMcGowan@oaklandnet.com]
CC: Personal Address / Ex. 6 Personal Address / Ex. 6 Brian Beveridge Andrea Gardner [agardner@portoakland.com]; Gilchrist, William [WGilchrist@oaklandnet.com]; Ranelletti, Darin [DRanelletti@oaklandnet.com] Personal Address / Ex. 6
Subject: Clarification: Question: Truck Management Plan - studies and scope

Pat

Thank you. To try to be clear, my suggestion was for the TMP planning process, i.e. the one being conducted by the City and Port, to be modified to incorporate into it (the planning process) the information and implications of these studies. I'm always supportive of WOEIP having even more public forums on these studies, and have appreciated the ones they have already held, but the point of my suggestion had to do with the effect on the TMP project itself.

Richard

From: McGowan, Patricia [PMcGowan@oaklandnet.com]
Sent: Wednesday, February 7, 2018 4:27 PM
To: Grow, Richard
Cc: Margaret Gordon Personal Address / Ex. 6 Andrea Gardner; Gilchrist, William; Ranelletti, Darin
Subject: RE: Question: Truck Managament Plan - studies and scope

Hi Richard,
I am not ignoring your e-mail, just the opposite in fact. I am discussing it again with Bill Gilchrist and Darin Ranelletti. And on a related e-mail Surlene Grant is discussing with Ms. Margaret the content of the public meeting WOEIP is planning to hold regarding the Google/EDF/Aclima study.

We'll get back to you next week.

Thanks,
Pat

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

-----Original Message-----
From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Tuesday, February 06, 2018 8:33 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin <DRanelletti@oaklandnet.com>; Brian Beveridge
Personal Address / Ex. 6
Subject: Question: Truck Managament Plan - studies and scope

Greetings, Patricia

It's been a while since I heard from you on the suggestions in my December 4 email, below. Could you please get back to me regarding the status of these issues ?

Thank you

Richard Grow
US EPA
Region 9
(415) 947-4104

-----Original Message-----
From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, December 13, 2017 11:55 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin <DRanelletti@oaklandnet.com>
Subject: RE: Truck Managament Plan - studies and scope

Hello Richard,

Please excuse my delay in replying to your e-mail. As you may know, City staff was on strike from Dec. 5 - 11, so I was unable to reply during that period.

Thank you for your attendance at the Dec. 2 public meeting and your compliment that you found it to be an excellent public workshop. Your comments/suggestions about the scope of the West Oakland Truck Management Plan are under consideration by the City and Port team. I will be in touch again as the City/Port team work through these suggestions.

Best regards,
Patricia

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

-----Original Message-----
From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Monday, December 04, 2017 11:50 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com
Subject: Truck Managament Plan - studies and scope

Patricia McGowan (cc William Gilchrist, Andrea Gardner, Surlene Grant)

This note is to follow up on the suggestion I put forward at the excellent community workshop on trucks in West Oakland which you hosted this past Saturday. In my remarks Saturday I made reference to a suggestion previously put forward by Ms. Margaret Gordon of the WOEIP at the July 10 meeting at City Hall which you also hosted, and during which EDF presented the findings from its "Street View" project documenting on a fine scale (block by block) the levels and distribution of black carbon. At the July 10 meeting Ms. Gordon suggested that the 20 or so parties gathered around the table, representing perhaps a dozen organizations, agencies and interests, work collaboratively together to assess and address the implications of the studies findings with regard to mitigation of the effects revealed by the study.

My suggestion this past Saturday was that you, along with others carrying out this latest "truck management plan" exercise, incorporate into the current planning effort time to for participants in the planning effort to consider the EDF/Google study as well as a more recent UC Berkeley assisted "100 x 100" West Oakland black carbon monitoring study. As I mentioned Saturday, there may be no community in the country for which there is a richer availability of local scale air pollutant data. It seems here that it would be unfortunate to not make use of this information in coming up with a truck plan addressing the public health impacts of truck-related operations in West Oakland.

Regarding the scope of the TMP, I hope you will be open to the possibility that consideration of this additional information could have some effect on the scope of the plan itself. It was clear from the discussions Saturday that the issue of the scope of the TMP is itself an issue of quite some concern to many stakeholders. This also goes to the assurances I had previously received from both yourself and Claudia Cappio at the August 23 Air Quality Stakeholders meeting, assurances that the scope of the TMP had not already been set, but would rather be set by way of the interactive process which you would be convening this fall. I found this encouraging, as well as consistent with the language of mitigation measure 4.3-7, committing to a truck management plan and enumerating 8 potential "elements", while also including the caveat that the plan "is not limited to" that list of elements.

I understand that you have been assuming the viability of a "five step" planning process as laid out at the Saturday meeting, with the next (i.e. third) meeting to be focused on "prioritization" of measures proposed by City staff based on the first two meetings, and acknowledge that my suggestions might result in the TMP process taking a bit longer, but hope that you will consider whether they might also add to the quality of and support for the plan. There may be some logic in getting a common understanding of, and agreement on, the scope of the plan before moving on to prioritizing components of the plan.

Please feel free to call me directly to discuss this further, and thanks again for the very educational event this past weekend.

Richard Grow
US EPA
Region 9
(415) 947-4104

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:57:47 PM
To: ryan.fitzpatrick@dot.gov
Subject: Port/OAB - events on the ground

Ryan

Welcome back, hope you had a grand time.

You haven't missed much but thank you for kicking the thing out the door today.

Mainly checking in to let you know there have been many meetings, discussions on the ground etc out here involving key players, a fairly dramatic attempt at resetting the table by BAAQMD, RB and Councilperson Rebecca Kaplan last Friday etc etc. I haven't talked at all with ECRCO about this, not wanting to distract them in any way from getting the letter out. There was an EPA-DOT call on 7/6 which Yvette may have caught you up on. We can talk when you're ready, I think the on-the-ground choreography will matter a lot.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/17/2018 11:00:08 PM
To: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: Draft MAQIP agenda
Attachments: Draft MAQIP Agenda Meeting 1_Jan15pm (002).docx

From Greg Nudd from yesterday's co-chairs mtg

Draft Agenda for Review by CoChairs
MAQIP Task Force Meeting #1
January 26, 2018 • Port of Oakland
Half-day Meeting

Time	Topic
9:30 to 10:00 10:00-10:30 am	Arrival and Greetings Welcome and Introductions • Chris Lytle (Executive Director) • Richard Sinkoff (Environmental Programs and Planning) • CONCUR Inc, introduce co-chairs, meeting purpose, agenda review
10:30 – 10:45	MAQIP Refresher – "Where We've Been, Where are Heading" • Planning Framework- MAQIP Initiation • Planning Framework - 2018 • Key Findings of Interviews • Clarifying Questions
10:45 –11:05	MAQIP Setting • Setting in 2006-2008 • Setting in 2018: Regulatory Changes: state is accelerating the regulatory process; AB 617 • Clarifying questions
11:05 – 12:00	MAQIP Implementation • MAQIP Plan • MAQIP Plan achievements • Implementation status: Past, current, and expected emissions reductions • Clarifying Questions
12:00–12:30 pm	Lunch • Opportunity for informal networking
1:00 – 1:40	Preparations for Meeting 2: February 23 • Information Needs, key presentations
1:40 – 1:55	• Additional Public comments • Final comments, next steps, meeting wrap up
2:00	Adjourn

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:48:10 PM
To: Kaplan, Rebecca [RKaplan@oaklandnet.com]
Subject: Re: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

It's out there and public in the sense that all interagency correspondence is (unless marked otherwise, and this isn't). Everyone probably got their electronic copies in the past 1-1/2 hrs, which I would guess they may not all be aware of it yet. Probably the letter to Earthjustice isn't public - that's up to them. EPA didn't do a release though did prepare a "desk statement", meaning a statement for use in responding to any public inquiries. I don't see any reason you can't make use of it.

Richard

From: Kaplan, Rebecca <RKaplan@oaklandnet.com>
Sent: Tuesday, July 18, 2017 4:42 PM
To: Grow, Richard
Subject: Re: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Thanks very much.

P.S. Is this public?

Best wishes,
-RK

From: Grow, Richard <Grow.Richard@epa.gov>
Sent: Tuesday, July 18, 2017 4:13:40 PM
To: Kaplan, Rebecca
Cc: Thao, Sheng
Subject: Fw: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Rebecca

Separate letter to complainants to follow.

Richard

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 3:52 PM
To: officeofthemayor@oaklandnet.com; colbruno@portcommissioner.com
Cc: Rivera, Yvette (OST); Charles.james@dot.gov; Jang, Deeana (OST); Fitzpatrick, Ryan (OST); Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin

Subject: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Dear Mayor Schaaf and Mr. Colbruno:

I am writing on behalf of the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), to notify you that, per the attached Letter of Acceptance, the agencies have accepted for investigation the above-referenced civil rights complaint. The attached Letter of Acceptance has also been mailed to you via certified mail. Please let us know if you have any questions.

Sincerely,

Lilian S. Dorka

Lilian Sotolongo Dorka, Esq.
Director, External Civil Rights Compliance Office
EPA, Office of General Counsel
202-564-9649
WJC-N Room 2450

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 2/7/2018 7:02:02 PM
To: Margaret Gordo Personal Address / Ex. 6
Subject: Goals: Air Mapping Workshop to the West Oakaland Community

Ms. Margaret, Brian

Hopefully we can meet soon, but in the meantime I want to offer a thought or two on the role of the studies vis a vis the TMP. When I raised the question of the use of the studies in the TMP in the December 2 meeting, I did not have in mind something directed at the community for the communities education, but rather something directed at the City and Port in a way that would have an effect on the TMP. My recollection is that many conclusions or implications have already been drawn, by EDF, UCB, WOEIP as to the implications of the study. Those implications, and yes others also, now need to be pulled into and addressed within the planning process. Any process that doesn't commit the City/Port to addressing the issues implicated by the studies – ie beyond thank you for your input – would be of questionable value in my view.

Richard

From: Margaret Gordon Personal Address / Ex. 6
Sent: Wednesday, February 07, 2018 10:29 AM
To: Thomas Kirchstetter <twkirchstetter@lbl.gov>; Chelsea Preble <cvpreble@berkeley.edu>; Fern Uennatornwaranggoon <puennatornwaranggoon@edf.org>; Maria Harris <mharris@edf.org>; Gabriela Zayas del Rio <gzayasdelrio@edf.org>; Brian Beveridge Personal Address / Ex. 6
Subject: Air Mapping Workshop to the West Oakaland Community

Dear Everyone,

Good morning, WOEIP as taken the lead, for the City and Port regarding introduction of the update data and research from EDF and UC Berkeley to the Truck Management Plan. I've good news, Surlene the facilitator Truck Management Plan has agreed that there will a workshop on the data and research to the participates of TMP from EDF and UC Berkeley. There no date, time or location set. We all do need to meet to fre a possible a poplar education program for the West Oakland community. Will have more details by Thursday or Friday. Can you'll please forward dates and times we can come together to structure the workshop.

Ms.M

--
Ms. Margaret Gordon/Co-Director
West Oakland Environmental Indicators Project

349 Mandela Parkway
Oakland, CA 94607
510-257-5647 Direct line
www.woeip.org

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/11/2017 7:51:58 PM
To: Machol, Ben [Machol.Ben@epa.gov]
CC: McDaniel, Penelope [MCDANIEL.PENELOPE@EPA.GOV]; Donez, Francisco [Donez.Francisco@epa.gov]
Subject: RE: Kaplan/BAAQMD initiative: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

BTW Alexis' chief of staff Doug Luehe plans to attend and I have been providing him with general background on the players, likely attendees, background on the Port/OAB issues etc. Richard

---

From: Machol, Ben
Sent: Wednesday, June 28, 2017 10:53 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: McDaniel, Penelope <MCDANIEL.PENELOPE@EPA.GOV>; Donez, Francisco <Donez.Francisco@epa.gov>
Subject: RE: Kaplan/BAAQMD initiative: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hi Richard,

Hopefully they will get more traction this time. I assume the port will be in attendance as well, correct? I couldn't tell from the email from Aloha.

Let's set up a time for you and Penny, Francisco, and me to talk beforehand, to make sure you're adequately prepared.

Ben Machol, P.E.
Manager, Technology & Partnerships Office
U.S. Environmental Protection Agency, Region 9
75 Hawthorne St. (AIR-9)
San Francisco, CA 94105
machol.ben@epa.gov
(415) 972-3770

From: Grow, Richard
Sent: Wednesday, June 28, 2017 10:16 AM
To: Machol, Ben <Machol.Ben@epa.gov>
Cc: McDaniel, Penelope <MCDANIEL.PENELOPE@EPA.GOV>; Adams, Elizabeth <Adams.Elizabeth@epa.gov>; Lakin, Matt <Lakin.Matthew@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>
Subject: FW: Kaplan/BAAQMD initiative: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Ben

Deliberative Process / Ex. 5

Richard

From: Grow, Richard
Sent: Wednesday, June 28, 2017 10:09 AM
To: Strauss, Alexis <Strauss.Alexis@epa.gov>
Cc: Miller, Amy <Miller.Amy@epa.gov>; LUEHE, DOUGLAS <luehe.douglas@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>
Subject: Kaplan/BAAQMD initiative: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Deliberative Process / Ex. 5

Richard

From: Aloha Galimba [mailto:agalimba@baaqmd.gov]
Sent: Wednesday, June 28, 2017 8:48 AM
To: abockelman@mtc.ca.gov; Grow, Richard <Grow.Richard@epa.gov>; cynthia.marvin@arb.ca.gov; Karen Schkolnick <kschkolnick@baaqmd.gov>; muntu.davis@acgov.org; anna.lee@acgov.org
Cc: Sheng Thao <sthao@oaklandnet.com>
Subject: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hello,

The Bay Area Air Quality Management District is inviting you – or a representative from your organization - to attend a working meeting on solutions for reducing emissions and health impacts in the West Oakland Community from current operations at the Port of Oakland and future operations at the former Oakland Army Base.

This meeting will be hosted by Oakland Council Member at Large, Rebecca Kaplan, at the Alameda County Transportation Commission, which is located at 11th and Broadway in Downtown Oakland on **Friday July 14, 2017 between 12 pm – 2 pm**.

The goal of this meeting is to devise a workplan that harnesses and coordinates the resources of the participating entities.

Please confirm your participation with me with a CC to Ms. Kaplan' assistant Sheng Thao at Sthao@oaklandnet.com. If you have any questions or concerns, please feel free to reach out to me directly.

Thank you and have a great rest of the day!

Regards,

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782| Cell: 415.745.5633
agalimba@baaqmd.gov| www.baaqmd.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/11/2017 7:46:20 PM
To: LUEHE, DOUGLAS [luehe.douglas@epa.gov]
Subject: Attendees: Info on Friday Port mtg: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Deliberative Process / Ex. 5

Richard

From: Grow, Richard
Sent: Tuesday, July 11, 2017 9:51 AM
To: LUEHE, DOUGLAS <luehe.douglas@epa.gov>
Subject: Info on Friday Port mtg: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting
Importance: High

Doug – Here's the info on the Friday 12-2 meeting being convened by BAAQMD and Councilwoman Kaplan. I won't be coming in that day but will be coming to the meeting from Berkeley. The office is very close to the Oakland City Center BART station.

Richard

From: Aloha de Guzman [mailto:adeguzman@baaqmd.gov]
Sent: Monday, July 10, 2017 4:03 PM
To: abockelman@mtc.ca.gov; Grow, Richard <Grow.Richard@epa.gov>; cynthia.marvin@arb.ca.gov; Karen Schkolnick <kschkolnick@baaqmd.gov>; muntu.davis@acgov.org; anna.lee@acgov.org; MDNichols@oaklandnet.com
Cc: Sheng Thao <sthao@oaklandnet.com>; dbreen@baaqmd.gov; Maricela Martinez <mmartinez@baaqmd.gov>; Vanessa Johnson <vjohnson@baaqmd.gov>; Beba Sanchez <BSanchez@mtc.ca.gov>
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting
Importance: High

Hello everyone,

Here is the address of the meeting location:
ACTC
1111 Broadway, Oakland, CA 94607 -- Room D

If you have any questions or concerns, please feel free to reach out to me or Ms. Kaplan's assistant Sheng Thao at sthao@oaklandnet.com or 510-238-7082.

Thank you!

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600
San Francisco, Ca 94105
Office: 415.749.4782| Cell: 415.745.5633
adeguzman@baaqmd.gov

From: Aloha Galimba
Sent: Wednesday, June 28, 2017 8:48 AM
To: 'abockelman@mtc.ca.gov' <abockelman@mtc.ca.gov>; 'grow.richard@epa.gov' <grow.richard@epa.gov>; 'cynthia.marvin@arb.ca.gov' <cynthia.marvin@arb.ca.gov>; Karen Schkolnick <kschkolnick@baaqmd.gov>; 'muntu.davis@acgov.org' <muntu.davis@acgov.org>; 'anna.lee@acgov.org' <anna.lee@acgov.org>
Cc: Sheng Thao <sthao@oaklandnet.com>
Subject: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hello,

The Bay Area Air Quality Management District is inviting you – or a representative from your organization - to attend a working meeting on solutions for reducing emissions and health impacts in the West Oakland Community from current operations at the Port of Oakland and future operations at the former Oakland Army Base.

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Please confirm your participation with me with a CC to Ms. Kaplan' assistant Sheng Thao at Sthao@oaklandnet.com. If you have any questions or concerns, please feel free to reach out to me directly.

Thank you and have a great rest of the day!

Regards,

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782| Cell: 415.745.5633
agalimba@baaqmd.gov| www.baaqmd.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:25:19 PM
To: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: Re: Ltr to City/Port: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

30 days for city and port to respind, emanwhile we work with hq to put together an "investigative plan". But what really happens is Ryan is back from India and I need to catch him and others up on developments at BAAQMD, ARB and City Council coming out of all of last week's meetings. Spoke with Kaplan for nearly an hour yesterday. In in the morning.

From: BANDROWSKI, MIKE
Sent: Tuesday, July 18, 2017 4:21 PM
To: Grow, Richard
Subject: RE: Ltr to City/Port: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Thanks Richard. What happens next?

Mike Bandrowski | Manager, Office of Air Toxics, Radiation and Indoor Air
U.S. Environmental Protection Agency | Region 9| Air Division, Air-6 | 75 Hawthorne St | San Francisco, CA 94105 |Tel 415.947-4194 | bandrowski.mike@epa.gov

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From: Grow, Richard
Sent: Tuesday, July 18, 2017 4:07 PM
To: LUEHE, DOUGLAS <luehe.douglas@epa.gov>; Adams, Elizabeth <Adams.Elizabeth@epa.gov>; Lakin, Matt <Lakin.Matthew@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Miller, Amy <Miller.Amy@epa.gov>
Cc: Johnson, Kathleen <Johnson.Kathleen@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>; Israels, Ken <Israels.Ken@epa.gov>
Subject: Ltr to City/Port: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Importance: High

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 3:52 PM
To: officeofthemayor@oaklandnet.com; colbruno@portcommissioner.com
Cc: Rivera, Yvette (OST); Charles.james@dot.gov; Jang, Deeana (OST); Fitzpatrick, Ryan (OST); Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin
Subject: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Dear Mayor Schaaf and Mr. Colbruno:

I am writing on behalf of the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), to notify you that, per the attached Letter of Acceptance, the agencies have accepted for investigation the above-referenced civil rights complaint. The attached Letter of Acceptance has also been mailed to you via certified mail. Please let us know if you have any questions.

Sincerely,

Lilian S. Dorka

Lilian Sotolongo Dorka, Esq.
Director, External Civil Rights Compliance Office
EPA, Office of General Counsel
202-564-9649
WJC-N Room 2450

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/11/2017 7:28:55 PM
To: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Buss, Jeffrey [Buss.Jeffrey@epa.gov]; Chew, Andrew [Chew.Andrew@epa.gov]; Davidson, Ken [Davidson.Ken@epa.gov]; Donez, Francisco [Donez.Francisco@epa.gov]; Freed, Rachel [freed.rachel@epa.gov]; Gutierrez, Roberto [Gutierrez.Roberto@epa.gov]; Kelly, Shaheerah [Kelly.Shaheerah@epa.gov]; Law, Nicole [Law.Nicole@epa.gov]; Lopez, Mariela [Lopez.Mariela@epa.gov]; LOWE, DEBBIE [Lowe.Debbie@epa.gov]; Mays, Rory [Mays.Rory@epa.gov]; Pathak, Priyanka [Pathak.Priyanka@epa.gov]; Reyes, Deldi [Reyes.Deldi@epa.gov]; Stewart, Kathleen [Stewart.Kathleen@epa.gov]; Vallano, Dena [Vallano.Dena@epa.gov]; Zellinger, Andrew [Zellinger.Andrew@epa.gov]
Subject: West (and East) Oakland community a.q. monitoring study

Per this morning's AT/EJ Team meeting below are links to the EDF study and to the ES&T paper on the study. For yesterday's presentation at City Hall, led by EDF, we also had Josh Apte from UT/Austin, one of the principle authors of the paper and technical advisor for the study, tied in by phone.

Richard

https://www.edf.org/airqualitymaps

Link to ES&T paper:

http://pubs.acs.org/doi/pdf/10.1021/acs.est.7b00891

Broader info

https://www.edf.org/airqualitymaps/pollution-and-health-concerns-west-oakland

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 2/7/2018 3:50:01 PM
To: Margaret Gordon Personal Address / Ex. 6 ; Brian Beveridg Personal Address / Ex. 6
Subject: RE: Question: Truck Managament Plan - studies and scope

Excellent. But I'll still look to the City to do me the courtesy of responding to my query.

From: Margaret Gordon [mailto Personal Address / Ex. 6
Sent: Tuesday, February 06, 2018 7:14 PM
To: Grow, Richard <Grow.Richard@epa.gov>; Brian Beveridge Personal Address / Ex. 6
Subject: Re: Question: Truck Managament Plan - studies and scope

Richard,

I've update on the regarding the "Air Mapping Workshop", I had a conversation with Surlene, she in agreement that WOEIP, EDF and Berkeley hold a workshop on the update data to support giving information to the community before the "the proiorizing workshop" for the Truck Management Plan. No date or time has been set and stay tune.

Ms.M

On Tue, Feb 6, 2018 at 8:47 AM, Margaret Gordon Personal Address / Ex. 6 wrote:

Thanks Pat and Richard,

WOEIP met with EDF, agreed that a community workshop is need to be held to inform residents on the update data from the "Air Mapping Project with the Google" and to include any draft information that the consultant hired by City of Oakland for the Truck Management Plan. WOEIP see before any prioritizing, everyone involved must have all update data, research and information. We see having such a workshop in the next four weeks on a Saturday. WOEIP interested in developing the workshop with City of Oakland staff and Surlene to shape the program for the workshop. Please reply.

Ms.Margaret Gordon

On Tue, Feb 6, 2018 at 8:32 AM, Grow, Richard <Grow.Richard@epa.gov> wrote:

Greetings, Patricia

It's been a while since I heard from you on the suggestions in my December 4 email, below. Could you please get back to me regarding the status of these issues ?

Thank you

Richard Grow
US EPA
Region 9
(415) 947-4104

-----Original Message-----
From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, December 13, 2017 11:55 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin <DRanelletti@oaklandnet.com>
Subject: RE: Truck Managament Plan - studies and scope

Hello Richard,
Please excuse my delay in replying to your e-mail. As you may know, City staff was on strike from Dec. 5 - 11, so I was unable to reply during that period.

Thank you for your attendance at the Dec. 2 public meeting and your compliment that you found it to be an excellent public workshop. Your comments/suggestions about the scope of the West Oakland Truck Management Plan are under consideration by the City and Port team. I will be in touch again as the City/Port team work through these suggestions.

Best regards,
Patricia

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 |
Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

-----Original Message-----
From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Monday, December 04, 2017 11:50 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com
Subject: Truck Managament Plan - studies and scope

Patricia McGowan (cc William Gilchrist, Andrea Gardner, Surlene Grant)

This note is to follow up on the suggestion I put forward at the excellent community workshop on trucks in West Oakland which you hosted this past Saturday. In my remarks Saturday I made reference to a suggestion

previously put forward by Ms. Margaret Gordon of the WOEIP at the July 10 meeting at City Hall which you also hosted, and during which EDF presented the findings from its "Street View" project documenting on a fine scale (block by block) the levels and distribution of black carbon. At the July 10 meeting Ms. Gordon suggested that the 20 or so parties gathered around the table, representing perhaps a dozen organizations, agencies and interests, work collaboratively together to assess and address the implications of the studies findings with regard to mitigation of the effects revealed by the study.

My suggestion this past Saturday was that you, along with others carrying out this latest "truck management plan" exercise, incorporate into the current planning effort time to for participants in the planning effort to consider the EDF/Google study as well as a more recent UC Berkeley assisted "100 x 100" West Oakland black carbon monitoring study. As I mentioned Saturday, there may be no community in the country for which there is a richer availability of local scale air pollutant data. It seems here that it would be unfortunate to not make use of this information in coming up with a truck plan addressing the public health impacts of truck-related operations in West Oakland.

Regarding the scope of the TMP, I hope you will be open to the possibility that consideration of this additional information could have some effect on the scope of the plan itself. It was clear from the discussions Saturday that the issue of the scope of the TMP is itself an issue of quite some concern to many stakeholders. This also goes to the assurances I had previously received from both yourself and Claudia Cappio at the August 23 Air Quality Stakeholders meeting, assurances that the scope of the TMP had not already been set, but would rather be set by way of the interactive process which you would be convening this fall. I found this encouraging, as well as consistent with the language of mitigation measure 4.3-7, committing to a truck management plan and enumerating 8 potential "elements", while also including the caveat that the plan "is not limited to" that list of elements.

I understand that you have been assuming the viability of a "five step" planning process as laid out at the Saturday meeting, with the next (i.e. third) meeting to be focused on "prioritization" of measures proposed by City staff based on the first two meetings, and acknowledge that my suggestions might result in the TMP process taking a bit longer, but hope that you will consider whether they might also add to the quality of and support for the plan. There may be some logic in getting a common understanding of, and agreement on, the scope of the plan before moving on to prioritizing components of the plan.

Please feel free to call me directly to discuss this further, and thanks again for the very educational event this past weekend.

Richard Grow
US EPA
Region 9
(415) 947-4104

Ms. Margaret Gordon/Co-Director
West Oakland Environmental Indicators Project

349 Mandela Parkway
Oakland, CA 94607
510-257-5647 Direct line
www.woeip.org

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Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/11/2017 6:36:12 PM
To: Margaret Gordon Personal Address / Ex. 6
Subject: FW: Oakland Army Base & Port of Oakland
Attachments: Copy of FFA to Oakland CA Stakeholders.pdf

Ms. Margaret and Brian

This went out yesterday afternoon from Acting Regional Administrator Alexis Strauss to Ken Alex, Director of the Governor's Office of Planning and Research.

Richard Grow
US EPA
Region 9
(415) 947-4104

From: Strauss, Alexis
Sent: Monday, July 10, 2017 4:00 PM
To: 'Ken.Alex@gov.ca.gov' <Ken.Alex@gov.ca.gov>
Subject: Oakland Army Base & Port of Oakland

Dear Ken,

Thank you for our recent discussion of environmental and public health issues associated with development of the Port of Oakland and Oakland Army Base (OAB). As requested, following are our main concerns and a list of potential federal funding opportunities.

West Oakland, a largely minority community, experiences a disproportionate exposure to toxic air contaminants. While diesel particulate emissions have been significantly reduced in recent years, substantial progress is still needed and within reach. One key barrier is the lack of resolution of concerns raised by various environmental and public health agencies regarding inadequacies in the OAB mitigation plan, approved by the City in 2012. The shortcomings of the mitigation plan date to the City's expedited CEQA process in 2012 which bypassed the normal interagency and public discussion of whether the many "significant but unavoidable" impacts were in fact avoidable. Since then, there has been an ongoing reluctance to further develop or implement the measures in the plan, in particular those applicable to the operational phase of the project. This is at the heart of understanding why the past five years of discussions have not yielded progress.

This is the right time for the City, Port and developer to avail themselves of existing opportunities to adopt state-of-the-art low-or-zero emissions strategies, making use of many public and private funding opportunities. BAAQMD and CARB's technical advice has been invaluable to date. Now, other catalysts may be needed to bring about resolution of outstanding issues. As you know, the community has filed a complaint under Title VI of the Civil Rights Act, based on obligations which the City and Port incurred through receipt of federal funds.

As requested, here is a list of federal funding opportunities that may be relevant to the OAB and Port. Substantial federal funding has previously been provided to the City and Port as described on the attached spreadsheet. The list is incomplete, covering $153 million from DOT, EPA and Homeland Security for FY 2009 through FY 2014, but does not include the monetary value of the OAB transfer from the federal government to the City in 2001.

US EPA: Diesel Emission Reductions Act Grant program Funding - $34M available. Due date – July 5, 2017.https://www.epa.gov/cleandiesel/clean-diesel-national-grants#rfp

www.epa.gov

US DOT: https://www.transportation.gov/grants

www.transportation.gov

u.s. department of transportation. 1200 new jersey avenue, se. washington, dc 20590. 855-368-4200

FASTLANE funding: https://www.transportation.gov/buildamerica/FASTLANEgrants

www.transportation.gov

Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) Grants program

US DOE: Clean Cities Coalitions sometimes have funding: https://cleancities.energy.gov/funding-opportunities/

cleancities.energy.gov

Securing funding is critical to the success of efforts to cut petroleum use in transportation. Funding opportunities for Clean Cities projects are available from many ...

Volkswagen settlement information: https://www.epa.gov/vw. Note: Port cargo handling equipment, ferries/tugs, shorepower, rail, truck and bus eligibility in Appendix D of the partial CD: https://www.epa.gov/enforcement/third-partial-and-30l-second-partial-and-20l-partial-and-amended-consent-decree (see Appendix D-2 of 2.0L partial CD).

www.epa.gov

This is the third partial, 3.0 liter second partial consent decree, 2.0 liter partial and amended partial consent decree for the Volkswagen Clean Air Act Settlement ...

I hope this is helpful. I'm hopeful we can work together to bring about resolution of these issues.
Kind regards,
Alexis

Alexis Strauss
Acting Regional Administrator
E.P.A. Region 9
75 Hawthorne Street
San Francisco, CA 94105
415-972-3572

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 2/6/2018 4:32:41 PM
To: McGowan, Patricia [PMcGowan@oaklandnet.com]
CC: Gilchrist, William [WGilchrist@oaklandnet.com]; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin [DRanelletti@oaklandnet.com]; Brian Beveridge [brian.woeip@gmail.com]; Margaret Gordon [margaret.woeip@gmail.com]
Subject: Question: Truck Managament Plan - studies and scope

Greetings, Patricia

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Thank you

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Richard Grow
US EPA
Region 9
(415) 947-4104

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/11/2017 4:51:15 PM
To: LUEHE, DOUGLAS [luehe.douglas@epa.gov]
Subject: Info on Friday Port mtg: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Importance: High

Doug – Here's the info on the Friday 12-2 meeting being convened by BAAQMD and Councilwoman Kaplan. I won't be coming in that day but will be coming to the meeting from Berkeley. The office is very close to the Oakland City Center BART station.

Richard

From: Aloha de Guzman [mailto:adeguzman@baaqmd.gov]
Sent: Monday, July 10, 2017 4:03 PM
To: abockelman@mtc.ca.gov; Grow, Richard <Grow.Richard@epa.gov>; cynthia.marvin@arb.ca.gov; Karen Schkolnick <kschkolnick@baaqmd.gov>; muntu.davis@acgov.org; anna.lee@acgov.org; MDNichols@oaklandnet.com
Cc: Sheng Thao <sthao@oaklandnet.com>; dbreen@baaqmd.gov; Maricela Martinez <mmartinez@baaqmd.gov>; Vanessa Johnson <vjohnson@baaqmd.gov>; Beba Sanchez <BSanchez@mtc.ca.gov>
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting
Importance: High

Hello everyone,

Here is the address of the meeting location:
ACTC
1111 Broadway, Oakland, CA 94607 -- Room D

If you have any questions or concerns, please feel free to reach out to me or Ms. Kaplan's assistant Sheng Thao at sthao@oaklandnet.com or 510-238-7082.

Thank you!

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600
San Francisco, Ca 94105
Office: 415.749.4782| Cell: 415.745.5633
adeguzman@baaqmd.gov

From: Aloha Galimba
Sent: Wednesday, June 28, 2017 8:48 AM
To: 'abockelman@mtc.ca.gov' <abockelman@mtc.ca.gov>; 'grow.richard@epa.gov' <grow.richard@epa.gov>; 'cynthia.marvin@arb.ca.gov' <cynthia.marvin@arb.ca.gov>; Karen Schkolnick <kschkolnick@baaqmd.gov>; 'muntu.davis@acgov.org' <muntu.davis@acgov.org>; 'anna.lee@acgov.org' <anna.lee@acgov.org>
Cc: Sheng Thao <sthao@oaklandnet.com>

Subject: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hello,

The Bay Area Air Quality Management District is inviting you – or a representative from your organization - to attend a working meeting on solutions for reducing emissions and health impacts in the West Oakland Community from current operations at the Port of Oakland and future operations at the former Oakland Army Base.

This meeting will be hosted by Oakland Council Member at Large, Rebecca Kaplan, at the Alameda County Transportation Commission, which is located at 11th and Broadway in Downtown Oakland on **Friday July 14, 2017 between 12 pm – 2 pm**.

The goal of this meeting is to devise a workplan that harnesses and coordinates the resources of the participating entities.

Please confirm your participation with me with a CC to Ms. Kaplan' assistant Sheng Thao at Sthao@oaklandnet.com. If you have any questions or concerns, please feel free to reach out to me directly.

Thank you and have a great rest of the day!

Regards,

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782| Cell: Personal Address / Ex. 6
agalimba@baaqmd.gov| www.baaqmd.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/11/2017 3:02:30 PM
To: Israels, Ken [Israels.Ken@epa.gov]
Subject: FW: Oakland Army Base & Port of Oakland
Attachments: Copy of FFA to Oakland CA Stakeholders.pdf

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www.epa.gov

US DOT: https://www.transportation.gov/grants

www.transportation.gov

u.s. department of transportation. 1200 new jersey avenue, se. washington, dc 20590. 855-368-4200

FASTLANE funding: https://www.transportation.gov/buildamerica/FASTLANEgrants

www.transportation.gov

Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) Grants program

US DOE: Clean Cities Coalitions sometimes have funding: https://cleancities.energy.gov/funding-opportunities/

cleancities.energy.gov

Securing funding is critical to the success of efforts to cut petroleum use in transportation. Funding opportunities for Clean Cities projects are available from many ...

Volkswagen settlement information: https://www.epa.gov/vw. Note: Port cargo handling equipment, ferries/tugs, shorepower, rail, truck and bus eligibility in Appendix D of the partial CD: https://www.epa.gov/enforcement/third-partial-and-30l-second-partial-and-20l-partial-and-amended-consent-decree (see Appendix D-2 of 2.0L partial CD).

www.epa.gov

This is the third partial, 3.0 liter second partial consent decree, 2.0 liter partial and amended partial consent decree for the Volkswagen Clean Air Act Settlement ...

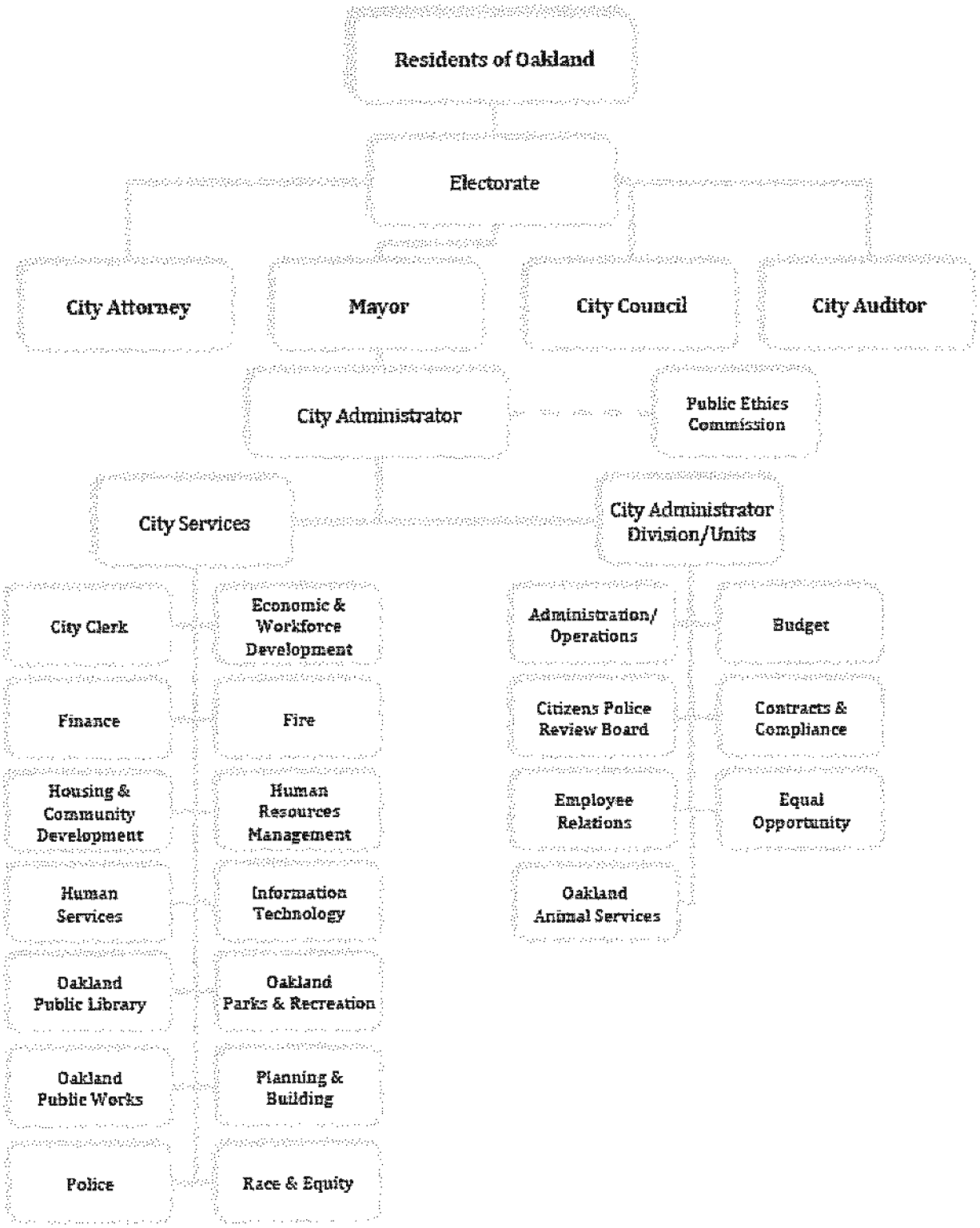
I hope this is helpful. I'm hopeful we can work together to bring about resolution of these issues.
Kind regards,
Alexis

Alexis Strauss
Acting Regional Administrator
E.P.A. Region 9
75 Hawthorne Street
San Francisco, CA 94105
415-972-3572

FEDERAL FINANCIAL ASSISTANCE TO OAKLAND OAB STAKEHOLDERS

Fed Agency	Recipient	Amount	Program	Project	Year	POP End Date
EPA	CALSTART	$85,473	DERA	Oakland Airport for DPFs on transit buses	FY2008	
EPA	BAAQMD	$2,000,000	DERA ARRA	Trucks at Port of Oaklnad	FY2009	
EPA	BAAQMD	$1,557,987	DERA	Trucks at Port of Oakland	FY2011	
EPA	BAAQMD	$898,933	DERA	Trucks at Port of Oakland	FY2012	
EPA	Port of Oakland	$277,885	DERA	Crane retrofits and repowers	FY2013	
Total EPA		**$4,820,278**				
DOT/FAA	Port of Oakland	$7,324,827	Airport Improvement Program		FY2016	
DOT/FAA	Port of Oakland	$11,395,060	Airport Improvement Program		FY2015	
DOT/FAA	Port of Oakland	$41,578,114	Airport Improvement Program		FY2014	
DOT/FAA	Port of Oakland	$18,245,770	Airport Improvement Program		FY2013	
DOT/MARAD	Port of Oakland	$15,000,000	National Infrastructure Investments (TIGER grant)		FY2013	
DOT/FHWA	CA DOT / Port of Oakland (Sub)	$312,263			FY2015	
DOT/FHWA	CA DOT / Port of Oakland (Sub)	$983,928			FY2013	
Total DOT		**$94,839,962**				
DHS	Port of Oakland	$7,620,950.00	Port Security Grant		FY2009	6/30/2013
DHS	Port of Oakland	$3,543,750.00	Port Security Grant		FY2012	3/31/2015
DHS	Port of Oakland	$2,204,000.00	Port Security Grant		FY2013	4/30/2017
DHS	City of Oakland	$144,679.00	Port Security Grant		FY2013	12/31/2015
DHS	City of Oakland	$25,000.00	Port Security Grant		FY2013	8/31/2015
DHS	Port of Oakland	$1,326,938.00	Port Security Grant		FY2014	8/31/2016
DHS	City of Oakland	$578,527.00	Port Security Grant		FY2014	8/31/2016
DHS	Marine Exchange of the San Francisco Bay Area / Port pf Oakland (Sub)	$1,392,557	Port Security Grant		FY2009	
DHS	Marine Exchange of the San Francisco Bay Area / City of Oakland (OES) (Sub)	$525,300	Port Security Grant		FY2009	
DHS	Marine Exchange of the San Francisco Bay Area / Port of Oakland (Sub)	$221,560	Port Security Grant		FY2010	
DHS	Marine Exchange of the San Francisco Bay Area / Port of Oakland (Sub)	$2,329,512	Port Security Grant		FY2010	
DHS	Marine Exchange of the San Francisco Bay Area / City of Oakland (OES) (Sub)	$682,694	Port Security Grant		FY2010	
DHS	Marine Exchange of the San Francisco Bay Area / City of Oakland (OES) (Sub)	$190,808	Port Security Grant		FY2011	
DHS	Marine Exchange of the San Francisco Bay Area / City of Oakland (OES) (Sub)	$210,000	Port Security Grant		FY2011	
DHS	City of Oakland	$1,001,910	National Urban Search and Rescue (US&R) Response System		FY2009	
DHS	City of Oakland	$1,045,500	National Urban Search and Rescue (US&R) Response System		FY2010	
DHS	City of Oakland	$13,671	National Urban Search and Rescue (US&R) Response System		FY2010	
DHS	City of Oakland	$921,734.33	Staffing for Adequate Fire & Emergency Response Grants (SAFER)		FY 2009	
DHS	City of Oakland	$300,000.00	Fire Grants		FY 2009	
DHS	City of Oakland	$307,223.90	Staffing for Adequate Fire & Emergency Response Grants (SAFER)		FY 2010	
DHS	City of Oakland	$272,000.00	Fire Grants		FY 2010	
DHS	City of Oakland	$1,167,078.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2011	
DHS	City of Oakland	$210,642.00	Fire Grants		FY 2011	
DHS	City of Oakland	$789,360.00	Fire Grants		FY 2011	
DHS	City of Oakland	$1,261,108.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2012	
DHS	City of Oakland	$7,782,240.00	Staffing for Adequate Fire & Emergency Response Grants (SAFER)		FY 2012	
DHS	City of Oakland	$11,928.00	Fire Grants		FY 2012	
DHS	Port of Oakland	$3,414,315.91	Port Security Grant Program		FY 2012	
DHS	City of Oakland	$1,167,154.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2013	
DHS	City of Oakland	$33,001.95	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2013	
DHS	City of Oakland	$246,514.00	Fire Grants		FY 2013	
DHS	Port of Oakland	$2,204,000.00	Port Security Grant Program		FY 2013	
DHS	City of Oakland	$144,678.00	Port Security Grant Program		FY 2013	
DHS	City of Oakland	$0.00	Port Security Grant Program		FY 2013	
DHS	City of Oakland	$1,258,131.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2014	
DHS	City of Oakland	$4,268,112.00	Staffing for Adequate Fire & Emergency Response Grants (SAFER)		FY 2014	
DHS	Port of Oakland	$1,326,938.00	Port Security Grant Program		FY 2014	
DHS	City of Oakland	$578,527.00	Port Security Grant Program		FY 2014	
DHS	City of Oakland	$1,229,582.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2015	
DHS	City of Oakland	$49,151.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2015	
DHS	City of Oakland	$1,269,582.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2016	
Total DHS		**$53,270,357**				
Grand total		**152,930,597**				

CITY OF OAKLAND ORGANIZATION CHART



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CITY OF OAKLAND

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OFFICE OF THE CITY CLERK
OAKLAND

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AGENDA REPORT

TO:	Sabrina B. Landreth City Administrator	**FROM:**	Darin Ranelletti Interim Director, PBD
SUBJECT:	Informational Report on Army Base Northeast Gateway Construction-Related Air Quality Plan	**DATE:**	November 14, 2016

City Administrator Approval Date: 11/21/16

RECOMMENDATION

Staff Recommends That The City Council Receive An Informational Report On The Construction-Related Air Quality Plan Prepared by Prologis And Approved By The City Administrator For The Northeast Gateway Site Of The Oakland Army Base Redevelopment Project.

EXECUTIVE SUMMARY

Prologis, one of the developers of the Oakland Army Base Redevelopment Project, has prepared an Air Quality Plan to reduce potential air quality impacts during construction of the proposed trade and logistics warehouse located in the Northeast Gateway. The City Administrator approved the Air Quality Plan on October 4, 2016. The mitigation measures for the project require an informational report be submitted to the City Council following the City Administrator's approval.

The City Administrator's approval is attached to this report and contains the approved Air Quality Plan, public comment letters, and additional background information.

BACKGROUND / LEGISLATIVE HISTORY

The Standard Conditions of Approval / Mitigation Monitoring and Reporting Program ("SCA/MMRP") approved on July 16, 2013, by the City Council for the Army Base project contains requirements for reducing the potential environmental impacts of the project, including requirements to reduce impacts related to air quality and trucking.

Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans) requires the City to conduct a public process in the development and review of the plans to comply with the above requirements and requires City Administrator approval of these plans.

Item: _____
CED Committee
December 6, 2016

On December 5, 2013, the City Administrator approved the plan to comply with construction-related air quality requirements for the horizontal infrastructure phase of the project (e.g., new streets and utilities).

As the Army Base project is developed over time, individual developers of the project's vertical elements (e.g., new buildings and permanent activities) will submit plans to meet these air quality requirements. The first vertical development being implemented is the trade and logistics warehouse project by Prologis at the Northeast Gateway.

ANALYSIS

The process to develop and approve the Construction-Related Air Quality Plan followed the requirements specified by the City Council in Mitigation Measure PO-1 and included a public outreach component, as further discussed below under the "Public Outreach / Interest" section of this report.

Public comments received on the draft Air Quality Plan ranged from detailed comments targeting a specific issue to larger, general comments about the overall project. Comments could be loosely grouped into the following three categories: Overall Army Base Project Implementation; Construction vs. Operational Phases; and Details Regarding Construction-Phase Compliance. These categories are further discussed below.

Overall Army Base Project Implementation

Some stakeholders sought clarity on how the different Air Quality Plans and environmental requirements are being implemented over the construction phases and operational phases of the different elements of the overall Army Base project being developed at different times by different parties. The attached City Administrator approval contains an exhibit prepared by staff to better identify the different Air Quality Plans associated with the project.

In order to better track the construction and operational phases of the overall Army Base project, and their corresponding Air Quality Plans, the Bay Area Air Quality Management District and the California Air Resources Board requested notification when construction of the subject Prologis building begins. The City Administrator included this requirement in the approval of the Plan.

Construction vs. Operational Phases

The air quality requirements for the Army Base project address both the construction phase and operational phase of the project. Prologis received approval of an Air Quality Plan for the construction phase of the first building; it will seek approval of an Air Quality Plan for the operational phase of the first building at a later date, prior to operation of the facility. Like the construction-phase Air Quality Plan, the operational-phase Air Quality Plan will also require public outreach, stakeholder review/comment and City Administrator review/comment/approval.

Many of the strategies recommended in the public comments to reduce air quality impacts relate to the operational phase of the development that are implemented when a tenant occupies the

building and property. According to Prologis a tenant has not yet been identified for the property. Prologis is proposing to construct a "cold shell," meaning improvements for the individual tenant (e.g., office-restroom buildouts, equipment, and electrical, plumbing, and mechanical systems) will be installed later depending upon the needs of the tenant. Many of the strategies to reduce air emissions, such as electrification of warehouse and transportation equipment, can be implemented with the future tenant improvements and are not being precluded by the current design and construction of the building. Prologis will have guidelines for tenant improvements ("TI Guidelines") in individual leases that specify environmental and other requirements that the tenant must meet. Along with the environmental requirements from the Army Base SCA/MMRP, the proposed building is also subject to the City's green building regulations requiring the building to meet Leadership in Energy and Environmental Design ("LEED") Gold standards. Operational-related SCA/MMRP and LEED requirements can be adequately fulfilled by individual future tenants through the TI Guidelines or other lease-related, functionally equivalent mechanism. It is important for the operational-phase Air Quality Plan, particularly the elements related to individual tenant operations, to be in place before tenant operations begin. Accordingly, the City Administrator's approval included a requirement that the operational-phase Air Quality Plan be approved before any leases for the project are executed or operational activities at the site commence

Details Regarding Construction-Phase Compliance

Some stakeholders raised questions on the initial draft Air Quality Plan regarding how specific construction-related air quality requirements will be met. In response, Prologis added more specificity to the Plan. Below are some examples of where the Plan has been enhanced.

- Dust Monitoring: To control fugitive dust from the site, exposed dirt surfaces will be watered regularly. A wind speed sensor will be installed on the site and monitored periodically. Watering will be adjusted based on wind speed with increased watering during high winds (over 15 mph) and activities suspended during excessive wind (over 20 mph). Watering will occur until adequate moisture is achieved when the earth becomes tacky.

- Off-Road Equipment: To reduce emissions associated with off-road equipment, all contractors will use late-model equipment with lower-emission Tier 4 engines if available. At a minimum, Tier 3 engines will be required if Tier 4 engines are not available. The Air Quality Plan provides additional details on equipment compliance and monitoring. For example, contractors can provide documentation from the California Air Resources Board's Diesel Off-Road Online Reporting System ("DOORS") indicating engine specifications for equipment brought on-site. To assist with monitoring project performance with this requirement, the City Administrator's approval requires Prologis to submit the list of equipment brought on-site and the corresponding engine tier upon request by the City.

- Electric Power: Portable equipment will be powered by electricity from the project site's grid instead of diesel-powered generators thereby reducing emissions.

- Compliance: The Air Quality Plan identifies a Compliance Manager that will monitor and facilitate implementation of construction-related environmental requirements. All

contractors will maintain daily logs that can be submitted to the Compliance Manager. The Compliance Manager will complete training courses offered by the California Air Resources Board for emissions evaluation. To further promote compliance, the City Administrator's approval requires Prologis to obligate its construction contractor to comply with the Air Quality Plan and the requirements of the SCA/MMRP through the construction contract, agreement, or other functionally equivalent and enforceable mechanism.

FISCAL IMPACT

There are no fiscal impacts of the City Council's action to receive this informational report; the City Administrator has already approved the Air Quality Plan. Furthermore, there are no fiscal impacts of implementing the Air Quality Plan since the Plan will be implemented and funded by Prologis.

PUBLIC OUTREACH / INTEREST

On March 3, 2016, Prologis presented an initial version of a plan to comply with air quality requirements during construction (referred to as the "Air Quality Plan") at a quarterly meeting attended by air quality stakeholders, including community-based organizations, community residents, and interested government agencies.

On April 25, 2016, Prologis formally submitted the first draft of the Air Quality Plan to the City. On May 13, 2016, the draft Air Quality Plan was released to stakeholders for a 17-day public review period as required by Mitigation Measure PO-1. The City received comments from the following organizations: West Oakland Environmental Indicators Project; Ditching Dirty Diesel; Alameda County Public Health Department; Bay Area Air Quality Management District; and California Air Resources Board.

City staff met with Prologis numerous times to discuss potential enhancements to the Air Quality Plan to address public comments and reduce potential air quality impacts. In addition, staff conducted a visit to the site with staff from the Port of Oakland and the California Air Resources Board on July 21, 2016, and had a follow-up conference call with Prologis, the project contractor, the Bay Area Air Quality Management District, and the California Air Resources Board on August 3, 2016. In response to feedback from City staff and stakeholders, Prologis submitted revisions to the Air Quality Plan on July 18, July 27, and August 30, 2016. The latest draft of the Air Quality Plan, dated August 30, 2016, includes a cover letter from Prologis that responds to the public comments on the previous version of the Plan.

COORDINATION

The preparation of this report and the approved Air Quality Plan involved coordination between the Planning and Building Department and Army Base project staff in the City Administrator's Office.

SUSTAINABLE OPPORTUNITIES

Economic: The Air Quality Plan will facilitate implementation of the Army Base project. In addition to the construction and operation jobs typically associated with new development, the Army Base project includes a Community Benefits Program with beneficial contracting and jobs requirements including funding for local jobs programs and construction wage and labor requirements.

Environmental: The Air Quality Plan will facilitate implementation of the Army Base project which the City Council determined to have beneficial environmental effects including the remediation of site contamination and increased access to open space. The Plan itself will reduce potential air quality and trucking impacts related to the construction at the Northeast Gateway. The project will also be subject to other environmentally-friendly construction and operation requirements, such as stormwater management requirements and green building requirements. The potential adverse environmental impacts of the project have also been analyzed under the California Environmental Quality Act ("CEQA") as discussed below.

Social Equity: The Air Quality Plan will facilitate implementation of the Army Base project which includes the Community Benefits Program and environmental benefits discussed above and the Air Quality Plan itself will reduce potential air quality and trucking impacts on nearby residents of West Oakland.

CEQA

An Environmental Impact Report was certified in 2002 when the Oakland Army Base Area Redevelopment Plan was adopted. An Initial Study/Addendum was prepared in 2012 when the City Council approved the master plan for the project and the Lease Disposition and Development Agreement with Prologis CCIG Oakland Global, LLC, the master developer of the site. The action of the City Administrator to approve the Air Quality Plan implements the environmental requirements previously imposed by the SCA/MMRP.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive an informational report on the construction-related Air Quality Plan prepared by Prologis and approved by the City Administrator for the Northeast Gateway site of the Oakland Army Base Redevelopment Project.

For questions regarding this report, please contact me at (510) 238-3663.

Respectfully submitted,

DARIN RANELLETTI
Interim Director, Planning and Building Department

Attachments (5):

A. *City Administrator's October 4, 2016, Approval of Construction-Related Air Quality Plan by Prologis for Northeast Gateway (without attachments, which are contained below)*
B. *Initial Draft Air Quality Plan for Construction Prepared by Prologis (titled "Northeast Gateway Construction Management Plan [Air Quality Elements]; dated April 25, 2016)*
C. *Public Comment Letters Received in Response to Draft Air Quality Plan dated April 25, 2016*
D. *Revised Air Quality Plan for Construction Prepared by Prologis (titled "Northeast Gateway A-D. Construction Management Plan" including related documents; dated August 30, 2016)*
E. *Air Quality Plan Implementation at Army Base – Tentative Timeline*

Attachment A

City Administrator's October 4, 2016, Approval of Construction-Related Air Quality Plan by Prologis for Northeast Gateway

CITY OF OAKLAND

INTER OFFICE MEMORANDUM

TO: Sabrina B. Landreth
City Administrator

FROM: Rachel Flynn

SUBJECT: Construction-Related Air Quality Plan by Prologis for Northeast Gateway at Army Base site

DATE: September 8, 2016

City Administrator Approval

Date 10/4/16

RECOMMENDATION

Approve the construction-related Air Quality Plan for the Prologis development site located in the Northeast Gateway area of the former Oakland Army Base subject to the following conditions:

1. Prologis shall inform the Bay Area Air Quality Management District and the California Air Resources Board when construction commences at the site and provide contact information for a project representative at the site.

2. No lease for the development shall be executed and no operational activities at the site shall commence until the City Administrator approves the Air Quality Plan for the operational phase of the site.

3. Prologis shall submit the list of off-road construction equipment brought on-site and the corresponding engine tier upon request by the City.

4. Prologis shall obligate its construction contractor to comply with the Air Quality Plan and the requirements of the Standard Conditions of Approval / Mitigation Monitoring and Reporting Program through the construction contract, agreement, or other functionally equivalent and enforceable mechanism.

EXECUTIVE SUMMARY

Prologis, one of the developers of the Oakland Army Base redevelopment project, has prepared an Air Quality Plan to reduce potential air quality impacts during construction of the proposed trade and logistics warehouse located in the Northeast Gateway. The mitigation measures for the project require City Administrator approval of the Air Quality Plan.

BACKGROUND

The Standard Conditions of Approval / Mitigation Monitoring and Reporting Program ("SCAMMRP") for the Army Base project contains requirements for reducing the potential environmental impacts of the project, including requirements for the following plans and strategies to reduce impacts related to air quality and trucking:

- Construction Management Plan (SCA AIR-1)
- Construction-Related Air Pollution Controls (SCA AIR-2)
- Truck Management Plan (Mitigation 4.3-7)
- Maritime and Rail-Related Emissions Reduction Plan (Mitigation 4.4-3b)
- Truck Diesel Emission Reduction Plan (Mitigation 4.4-4)
- Transportation Control Measures (Mitigation 4.4-5)
- Energy-Conserving Fixtures and Designs (Mitigation 4.4-6)
- Demonstration Projects (Mitigation 5.4-1)
- Parking and Transportation Demand Management (SCA TRANS-1)
- Construction Traffic and Parking (SCA TRANS-2)
- Traffic Control Plan – Hazardous Materials (Mitigation 4.3-13)

Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans) requires the City to conduct a public process in the development and review of the plans to comply with the above requirements and requires City Administrator approval of these plans.

On December 5, 2013, the City Administrator approved the plan to comply with construction-related air quality requirements for the horizontal infrastructure phase of the project (e.g., new streets and utilities).

As the Army Base project is developed over time, individual developers of the project's vertical elements (e.g., new buildings and permanent activities) will submit plans to meet these air quality requirements. The first vertical development being implemented is the trade and logistics warehouse project by Prologis at the Northeast Gateway.[1]

On March 3, 2016, Prologis presented an initial version of a plan to comply with air quality requirements during construction (referred to as the "Air Quality Plan") at a quarterly meeting attended by air quality stakeholders, including community-based organizations, community residents, and interested government agencies.

On April 25, 2016, Prologis submitted the first draft of the Air Quality Plan to the City (see ***Attachment A***). On May 13, 2016, the draft Air Quality Plan was released to stakeholders for a 17-day public review period as required by Mitigation Measure PO-1. The City received comments from the following organizations: West Oakland Environmental Indicators Project; Ditching Dirty Diesel; Alameda County Public Health Department; Bay Area Air Quality

[1] The "Northeast Gateway" is a term used by Prologis to refer to the northern portion of the East Gateway area.

Management District; and California Air Resources Board (see ***Attachment B***). The comments are summarized and discussed in the "Key Issues" section below.

City staff met with Prologis numerous times to discuss potential enhancements to the Air Quality Plan to address public comments and reduce potential air quality impacts. In addition, staff conducted a visit to the site with staff from the Port of Oakland and the California Air Resources Board on July 21, 2016, and had a follow-up conference call with Prologis, the project contractor, the Bay Area Air Quality Management District, and the California Air Resources Board on August 3, 2016. In response to feedback from City staff and stakeholders, Prologis submitted revisions to the Air Quality Plan on July 18, July 27, and August 30, 2016.[2] The latest draft of the Air Quality Plan, dated August 30, 2016, is attached along with a cover letter from Prologis that responds to the public comments on the previous version of the Plan (see ***Attachment C***).

KEY ISSUES

Public comments received on the draft Air Quality Plan ranged from detailed comments targeting a specific issue to larger, general comments about the overall project. Comments could be loosely grouped into the following three categories: Overall Army Base Project Implementation; Construction vs. Operational Phases; and Details Regarding Construction-Phase Compliance. These categories are further discussed below. Also, refer to the cover letter prepared by Prologis (in ***Attachment C***) that contains a detailed response to the public comments.

Overall Army Base Project Implementation

Some stakeholders sought clarity on how the different Air Quality Plans and environmental requirements are being implemented over the construction phases and operational phases of the different elements of the overall Army Base project being developed at different times by different parties. Staff has prepared an exhibit to better identify the different Air Quality Plans associated with the project (see ***Attachment D***).

In order to better track the construction and operational phases of the overall Army Base project, and their corresponding Air Quality Plans, the Bay Area Air Quality Management District and the California Air Resources Board have requested notification when construction of the subject Prologis building begins. Staff believes this request is appropriate and recommends a corresponding condition to this effect when the City Administrator approves the subject Air Quality Plan (see Condition #1 in "Recommendation" section above).

[2] The initial draft Air Quality Plan submitted on April 25, 2106, only pertained to compliance with air quality requirements as required by the project mitigation measures. However, due to stakeholder interest in construction issues related to other topics besides air quality, Prologis submitted its entire Construction Management Plan – which addresses other topics in addition to air quality – when it submitted revisions to the Air Quality Plan.

Construction vs. Operational Phases

The air quality requirements for the Army Base project address both the construction phase and operational phase of the project. Prologis is currently seeking approval of an Air Quality Plan for the construction phase of the first building; it will seek approval of an Air Quality Plan for the operational phase of the first building at a later date. Like the construction-phase Air Quality Plan, the operational-phase Air Quality Plan will also require stakeholder review and City Administrator approval.

Many of the strategies recommended in the public comments to reduce air quality impacts relate to the operational phase of the development that are implemented when a tenant occupies the building and property. According to Prologis a tenant has not yet been identified for the property. Prologis is proposing to construct a "cold shell," meaning improvements for the individual tenant (e.g., office-restroom buildouts, equipment, and electrical, plumbing, and mechanical systems) will be installed later depending upon the needs of the tenant. Many of the strategies to reduce air emissions, such as electrification of warehouse and transportation equipment, can be implemented with the future tenant improvements and are not being precluded by the current design and construction of the building. Prologis will have guidelines for tenant improvements ("TI Guidelines") in individual leases that specify environmental and other requirements that the tenant must meet. Along with the environmental requirements from the Army Base SCAMMRP, the proposed building is also subject to City green building regulations requiring the building to meet Leadership in Energy and Environmental Design ("LEED") Gold standards. Operational-related SCAMMRP and LEED requirements can be adequately fulfilled by individual future tenants through the TI Guidelines or other lease-related, functionally equivalent mechanism. It is important for the operational-phase Air Quality Plan, particularly the elements related to individual tenant operations, to be in place before tenant operations begin. Accordingly, staff recommends a condition be attached when the City Administrator approves the subject Air Quality Plan that requires City Administrator approval of the operational-phase Air Quality Plan before any leases for the project are executed or operational activities at the site commence (see Condition #2 in "Recommendation" section above).

Details Regarding Construction-Phase Compliance

Some stakeholders raised questions on the initial draft Air Quality Plan regarding how specific construction-related air quality requirements will be met. In response, Prologis added more specificity to the Plan. Below are some examples of where the Plan has been enhanced.

- Dust Monitoring: To control fugitive dust from the site, exposed dirt surfaces will be watered regularly. A wind speed sensor will be installed on the site and monitored periodically. Watering will be adjusted based on wind speed with increased watering during high winds (over 15 mph) and activities suspended during excessive wind (over 20 mph). Watering will occur until adequate moisture is achieved when the earth becomes tacky.

- Off-Road Equipment: To reduce emissions associated with off-road equipment, all contractors will use late-model equipment with lower-emission Tier 4 engines if available. At a minimum, Tier 3 engines will be required if Tier 4 engines are not available. The Air Quality Plan provides additional details on equipment compliance and monitoring. For example, contractors can provide documentation from the California Air Resources Board's Diesel Off-Road Online Reporting System ("DOORS") indicating engine specifications for equipment brought on-site. To assist with monitoring project performance with this requirement, staff recommends a condition be attached when the City Administrator approves the subject Air Quality Plan that requires Prologis to submit the list of equipment brought on-site and the corresponding engine tier upon request by the City (see Condition #3 in "Recommendation" section above).

- Electric Power: Portable equipment will be powered by electricity from the project site's grid instead of diesel-powered generators thereby reducing emissions.

- Compliance: The Air Quality Plan identifies a Compliance Manager that will monitor and facilitate implementation of construction-related environmental requirements. All contractors will maintain daily logs that can be submitted to the Compliance Manager. The Compliance Manager will complete training courses offered by the California Air Resources Board for emissions evaluation. To further promote compliance, staff recommends a condition be attached when the City Administrator approves the subject Air Quality Plan that requires Prologis to obligate its construction contractor to comply with the Air Quality Plan and the requirements of the SCAMMRP through the construction contract, agreement, or other functionally equivalent and enforceable mechanism (see Condition #4 in "Recommendation" section above).

CONCLUSION

The stakeholder review requirements for the proposed Air Quality Plan have been satisfied and the Air Quality Plan has been revised in response to comments received from the public. Staff believes the Air Quality Plan is adequate and recommends that the City Administrator approve the Plan.

Pursuant to Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans), following the City Administrator's approval of the Air Quality Plan staff will make an informational presentation on the Air Quality Plan to the City Council.

Please contact Darin Ranelletti, Deputy Director, at (510) 238-3663, if you have any questions.

RACHEL FLYNN
Director, Planning and Building Department

Prepared by:
Darin Ranelletti
Deputy Director, Planning and Building Department

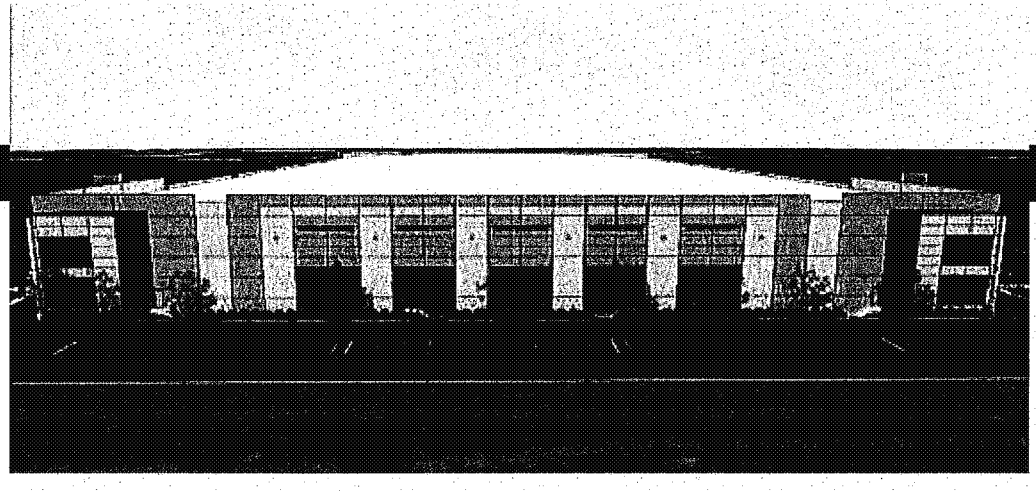
Attachments:

A. *Initial Draft Air Quality Plan for Construction Prepared by Prologis (titled "Northeast Gateway Construction Management Plan [Air Quality Elements]; dated April 25, 2016)*
B. *Public Comment Letters Received in Response to Draft Air Quality Plan dated April 25, 2016*
C. *Revised Air Quality Plan for Construction Prepared by Prologis (titled "Northeast Gateway Construction Management Plan" including related documents; dated August 30, 2016)*
D. *Air Quality Plan Implementation at Army Base – Tentative Timeline*

Attachment B

Initial Draft Air Quality Plan for Construction Prepared by Prologis (titled "Northeast Gateway Construction Management Plan [Air Quality Elements]; dated April 25, 2016)

NORTHEAST GATEWAY
CONSTRUCTION MANAGEMENT PLAN
(AIR QUALITY ELEMENTS)



Initial Submittal: April 25, 2016

PROLOGIS

WT
WHITING-TURNER

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2- Air Quality (SCA-AIR-2).....2-5

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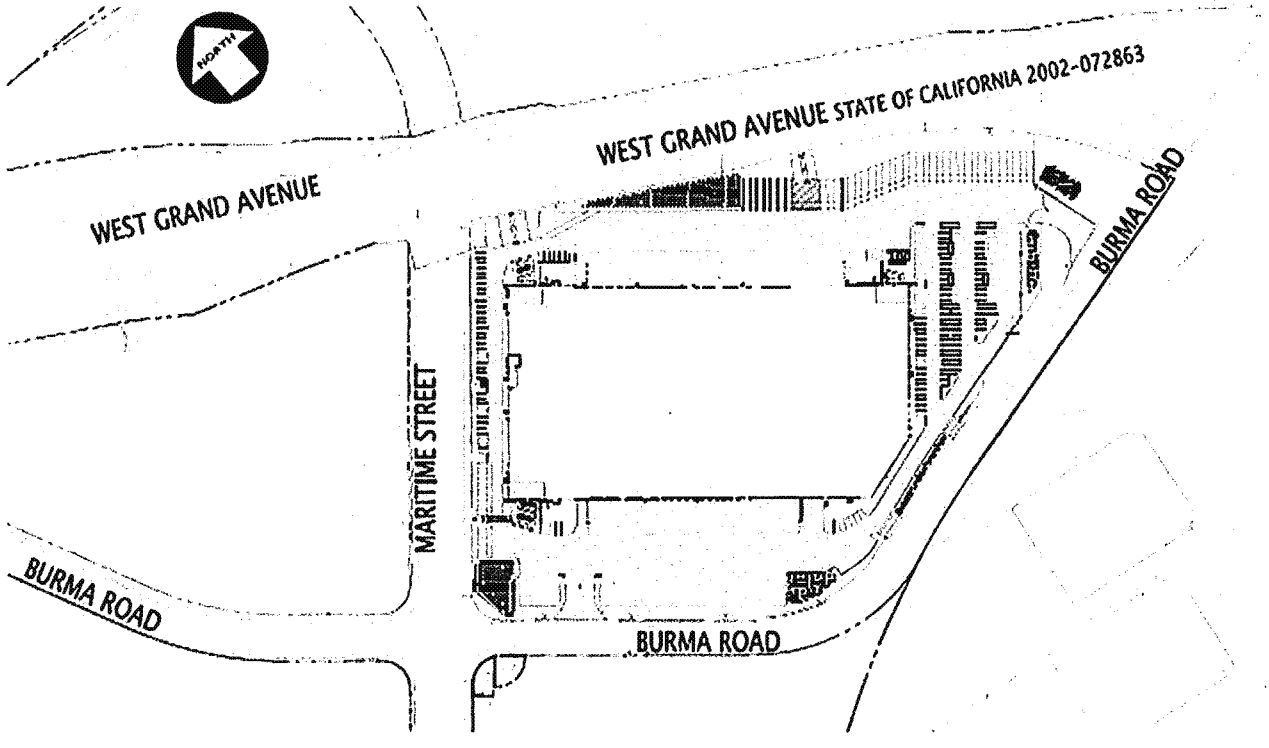
B. Erosion Control Plan.....
C. Project Schedule.....
D. Project Logistics Plan.....
E. Approved Traffic Control Plan-*TBD*...
F. Approved Truck Haul Route.....
G. Signage: Speed Limit.....
H. Sigange: Dust Reporting, Noise Complaints, and Construction Work Hours.....
I. Log: Dust and Noise Complaints..
J. Signage: Equipment Idle Time Restrictions.....
K. Sample Public Notice.....
L. Project Truck Log.....
M. Daily Site Inspection Log.....

PROLOGIS

WT



On the Northeast Gateway site Prologis will construct a new 256,000 sf warehouse on a site covering approximately 702,000sf bordered by Maritime Street, Burma Road and West Grand Ave. The project site improvements will include new underground utilities, landscaping, concrete and ac paving and bio-swales. The new warehouse building will include 55 truck docks, 78 trailer parking stalls, 171 auto parking stalls and two electric vehicle charging stations.

SCA-AIR-2 Construction Related Air Pollution Controls

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading and/or construction.

Requirements:

During Construction, the project applicant shall require the construction contractor to implement all of the following applicable measures recommended by the Bay Area Air Quality Management District (BAAQMD):

a. Water all exposed surfaces of active construction areas at least twice daily (using reclaimed water if possible). Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.

b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).

c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

d. Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.

e. Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).

f. Requirement: Limit vehicle speeds on unpaved roads to 15 miles per hour.

g. Idling times on all diesel-fueled commercial vehicles over 10,000 lbs. shall be minimized either by shutting equipment off when not is use or reducing the maximum idling time to five minutes (as required by Title 13, Section 2485, of the California Code of Regulations. Clear signage to this effect shall be provided for construction workers at all access points.

h. Idling times on all diesel-fueled off-road vehicles over 25 horsepower shall be shall be minimized either by shutting equipment off when not is use or reducing the maximum idling time to five minutes and fleet operators must develop a written idling policy (as required by Title 13, Section 2449 of the California Code of Regulations.)

i. All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.

j. Post a publicly visible sign that includes the contractor's name and telephone number to contact regarding dust complaints. When contacted, the contractor shall respond and take corrective action within 48 hours. The telephone numbers of contacts at the City and the BAAQMD shall also be visible. This information may be posted on other required on-site signage.

k. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.

l. All excavation, grading, and demolition activities shall be suspended when average wind speeds exceed 20 mph.

m. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

n. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for one month or more).

o. Designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress.

p. Install appropriate wind breaks (e.g., trees, fences) on the windward side(s) of actively disturbed areas of the construction site to minimize wind blown dust. Wind breaks must have a maximum 50 percent air porosity.

q. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.

r. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.

s. All trucks and equipment, including tires, shall be washed off prior to leaving the site.

t. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel.

u. All equipment to be used on the construction site and subject to the requirements of Title 13, Section 2449 of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations") must meet Emissions and Performance Requirements one year in advance of any fleet deadlines. The project applicant shall provide written documentation that the fleet requirements have been met.

v. Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., BAAQMD Regulation 8, Rule 3: Architectural Coatings).

Dust Control Mitigation Plan:

The Erosion Control Plan (Exhibit B) was submitted to the City as part of the 02/08/2016 Issue for Permit Drawings. In addition to the dust control measures included in The Erosion Control Plan the following items will be implemented to control dust -

a. Use water trucks to water exposed surfaces during construction activities at least twice daily or more frequently if winds exceed 15 mph. Suspend excavation, grading, and demolition activities when average wind speed exceeds 20 mph. Maintain minimum soil moisture of 12% as indicated by laboratory samples or a moisture meter. Use reclaimed water for dust mitigation whenever feasible.

b. Cover truck loads with tarpaulins or keep loads 2 feet below the sideboard of the truck bed to eliminate wind contact with soil or other loaded materials.

c. Require all operators tracking dirt/mud onto public roadways to have a wet power vacuum sweeper present daily during these activities and remove tracked dirt/mud at the end of each day or more frequently if needed.

d. Install construction area entrances at all ingress and egress sites to ensure dirt is kept off of public roads. Construction area entrances will be built using fabric and 3x5 rock to facilitate tire soil removal prior to leaving the site (or as defined by the guidelines in the Best Management Practice Handbook). Ingress/egress sites will also provide dry brushing of loose soil from tires and fenders.

e. As soon as practical and prior to rainy season, cover all access roads and/or permanent roads and building pads with aggregate or asphalt concrete to mitigate tracking of dirt and/or mud offsite.

f. Cover all inactive soil material stockpiles with plastic sheeting or non-toxic soil binders. Water all active stockpiles to maintain 12% moisture.

g. Install fencing with attached windscreen fabric on the windward side of the actively disturbed area of the construction site.

h. Replant vegetation in disturbed areas as quickly as possible.

i. Limit simultaneous occurrence of excavation, grading, and ground disturbance activities on the same area at any one time when feasible.

j. Draft and implement a Project SWPPP. The onsite QSP (Randy Knaus) will monitor runoff before, during, and after rain events. Deficiencies will be logged and corrected immediately. Inactive construction areas will be properly addressed with BMPs to eliminate erosion. Required BMPs will be outlined in the SWPPP and enforced with reporting and inspection.

k. Post signage and enforce 15 mph speed limit requirement for unpaved roads (Exhibit G).

l. Post signage and enforce dust complaint reporting requirement (Exhibit H). Take corrective action to remedy complaints within no more than 48 hours after receiving the complaint.

m. The Project Dust Compliance Manager (Randy Knaus) will monitor and facilitate the implementation of mitigation measures. The Contractor will maintain Daily Inspection Logs throughout the Project.

Emission Control Mitigation Plan:

To reduce emissions generated by equipment operating onsite the following protocols will be implemented –

a. Use late model heavy-duty diesel-powered equipment at the Project Site to the extent that it is readily available in the San Francisco Bay Area. Use low-emission diesel fuel for all heavy-duty diesel-powered equipment.

b. Utilize alternative fuel construction equipment (i.e., compressed natural gas, liquid petroleum gas, and

unleaded gasoline) to the extent that the equipment is readily available and cost effective in the San Francisco Bay Area.

c. Rely on the electricity infrastructure surrounding the construction sites rather than electrical generators powered by internal combustion engines to the extent feasible.

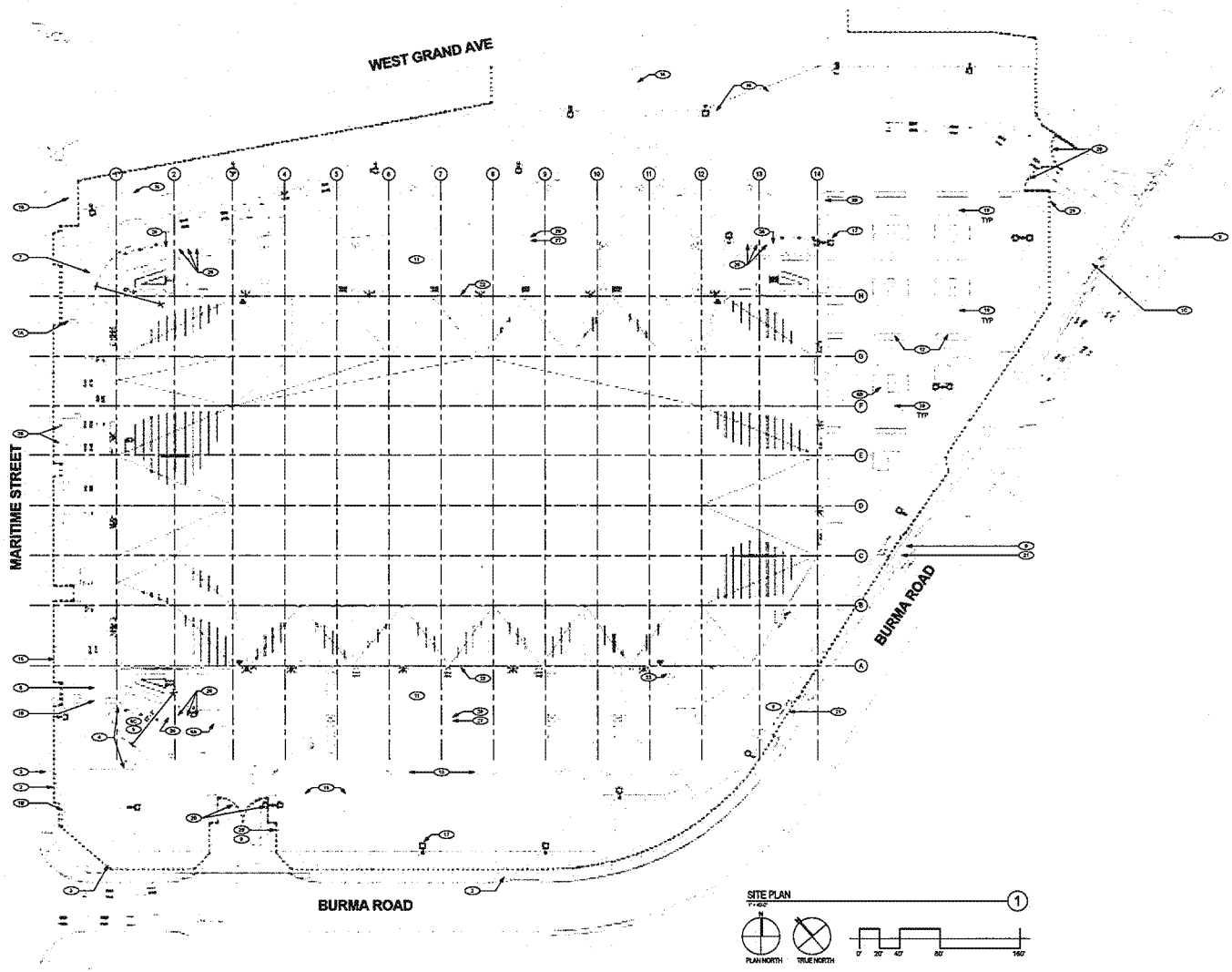
d. Keep all construction equipment properly tuned by a certified mechanic in accordance with the manufacturer's specifications. Operators will provide the Contractor with written documentation of equipment maintenance for all equipment to be used onsite.

e. Enforce requirements of CCR Title 13, Section 2449 (CARB OffRoadDiesel Regulations) and Title 13, Section 2485 with reporting and/or inspection and enforce construction equipment maintenance requirements.

f. The Project Compliance Manager (Randy Knaus) will to monitor and facilitate the implementation of mitigation measures. All contractors subject this provision will maintain Daily Inspection Logs throughout the Project.

g. Post signage limiting truck and equipment idling time to five minutes or less. (Exhibit J)

Exhibit A- Site Plan and Elevation



SITE STATISTICS

PARCEL NUMBER:	018 050701000
ZONING:	D-DI
HEIGHT - CENTRAL BUSINESS DISTRICT:	N/A
HEIGHT - COMMERCIAL CORRIDOR:	N/A
MAXIMUM BUILDING HEIGHT:	85'-0" (PER OAKLAND ZONING 17.101F.050)
MAXIMUM FLOOR AREA RATIO:	5 (PER OAKLAND ZONING 17.101F.050)
GENERAL PLAN:	BUSINESS MIX
CONDO CONVERSION IMPACT AREA:	NO
CITY COUNCIL DISTRICT:	CCD3
SDS SERVICE DISTRICT:	1
PORT OF OAKLAND JURISDICTION:	NO
LOCAL HISTORIC PROPERTY CATEGORY:	LOCAL REGISTER
LOCAL HISTORIC DISTRICT:	
OCHS RATING:	
CONSTRUCTION DATE:	
LOCAL LANDMARK:	NO
NATIONAL HISTORIC LANDMARK :	NO
HERITAGE PROPERTY:	NO
DESIGNATED HISTORIC DISTRICT:	NO
MILLS ACT	NO
WHIPSNAKE CRITICAL HABITAT:	NO
FLOOD ZONE:	NO
HAYWARD FAULT ZONE:	NO
LIQUEFACTION HAZARD ZONE:	YES, LIQUEFACTION SEVERITY 5
WILD FIRE ASSESSMENT DISTRICT:	NO
TOTAL SITE AREA =	702,071.2175 G.S.F. = 16.12 ACRES
TOTAL BLDG AREA =	256,536 G.S.F.
SITE COVERAGE =	36.48 %
TOTAL VEHICLE PARKING =	214 STALLS = .84 / 1000 S.F.
TOTAL TRAILER PARKING =	71 TRAILER STALLS (12' X 55')
PARKING STANDARDS (17.116.200):	
STANDARD PARKING STALLS	18' DEEP X 8.5' WIDE
COMPACT PARKING STALLS	15' DEEP X 7.5' WIDE (50% MAX)
PARALLEL PARKING STALLS	20.5' DEEP X 7.5' WIDE
DRIVE ISLE WIDTH (17.116.210) AT 90 DEGREE PARKING:	21 FEET MINIMUM
REQUIRED PARKING PER ZONING CODE:	
OFFICE (17.116.080 C. BUSINESS):	1 / 600 S.F.
INDUSTRIAL ACTIVITIES (17.116.090):	1 / 1500 S.F. OR 1 FOR EACH 3 EMPLOYEES (WHICHEVER IS GREATER)
REQUIRED PARKING BY USE:	
OFFICE = (8,368 S.F. @ 1/600 S.F.)	14 STALLS
WAREHOUSE = (247,767 S.F. @ 1/1,500 S.F.)	165 STALLS
TOTAL PARKING REQUIRED =	179 STALLS = .70 / 1000 S.F.
TOTAL PARKING PROVIDED =	179 STALLS = .70 / 1000 S.F.
BIORETENTION AREAS	12' X 14' GRADE LEVEL SECTIONAL ROLL UP DOOR
	9' X 10' DOCK LEVEL SECTIONAL ROLL UP DOOR

KEY NOTES

1A SITE SIGNAGE FOR REFERENCE ONLY - OVERALL DEVELOPMENT PROVIDED BY

1B SITE SIGNAGE FOR REFERENCE ONLY - BUILDING MONUMENT SIGN

1C SITE SIGNAGE FOR REFERENCE ONLY - DUAL-FACED DIRECTORY SIGNS (2 TOTAL)

2 PROPERTY LINES TO REMAIN

3 5'-0" WIDE MINIMUM SIDEWALK AT MARITIME AND BURMA RD

4 TYPICAL 6" TALL VERTICAL CONCRETE CURBS

5 TYPICAL 4" WIDE TRAFFIC STRIPING

6A TYPICAL PARKING - STANDARD STALLS 18' X 8.5' MIN, 9' X 18' SHOWN THROUGHOUT

6B TYPICAL PARKING - COMPACT STALLS 15' X 7.5' MIN, 15' X 9' SHOWN THROUGHOUT, (50%)

6C TYPICAL PARKING - ACCESSIBLE PARKING STALLS 9' X 18' WITH 7' PARKING OVERHANG WITH 5' DRIVE AISLE LOADING ZONE AS SHOWN

7 TYPICAL DRIVE ISLE, 25'-0" MIN ACTUAL DRIVE ISLE WIDTH

8 PARKING AND DRIVE ISLES TO BE ASPHALTIC CONCRETE

9 PROPOSED LOCATION OF NEW SITE ACCESS DRIVE CURB CUT AT BURMA RD

10 NEW CONC PEDESTRIAN WALKS TO BE 5' WIDE MIN, ADJACENT ALL SIDEWALKS TO BE ACCESSIBLE PATHOF TRAVEL, SLOPE NOT TO EXCEED 1:20 (5%) IN DIRECTION OF TRAVEL, CROSS SLOPE NOT TO EXCEED 1:48 (2%) WHERE PARKING OVERHANG OCCURS, INCREASE WIDTH OF SIDEWALK TO 6'-0" MIN

11 TRUCK DOCK

12 TYP LANDSCAPE PLANTER AREA

13 16M TRACTOR TRAILER TEMPLATE SHOWN FOR REFERENCE ONLY

14 OA NATE BILLBOARD LOCATION (2 TOTAL)

15 8' TALL PAINTED WROUGHT IRON FENCE, SEE SPECS

16 TYP 12' x 55' TRAILER PARKING STALL

17 SITE LIGHTING, POLE MOUNTED LIGHT FIXTURE

18 SEE CIVIL DRAWINGS FOR EASEMENT LOCATIONS AND INFORMATION

19 PLANNED FLEXIBLE STORAGE ZONES

20 SWINGING SECURITY GATES

21 ROLLING SECURITY GATE

22 PROPOSED BUILDING EXTERIOR WALLS TO BE BE CAST TILTED CONCRETE WALLS WITH REVEALS & TEXTURED ELASTOMERIC COATING AND A MILL FINISH OR EARTH TONE PAINT PALETTE. EXTERIOR WALLS ARE ACCENTED WITH GLAZING, STEEL, COMPOSITE ALUMINUM PANELS AND ARCHITECTURAL METAL PANELS. SEE EXTERIOR ELEVATIONS

23 LOCATION OF BICYCLE PARKING TO ACCOMMODATE A TOTAL OF 19 BICYCLES, PER CALGREEN REQUIREMENTS

24 AREA OF ASSISTED RESCUE

25 ELECTRIC VEHICLE CHARGING STATIONS TO FAIL, SERVICING 4 PARKING SPOTS. PROVIDE CHARGE STUDY / SIGNAGE.

26 3 HIGH EFFICIENCY VEHICLE STALLS (MIN. 9 TOTAL IN PROJECT, GREATER THAN THE REQUIREMENT 9% OF TOTAL)

27 PROVIDE BOLLARDS AT FOUR CORNERS OF PH. CONTRACTOR TO COORD BOLLARDS TO NOT CONFLICT WITH PH

28 PREMA DRAINS, TYP, SEE CIVIL DWGS

29 FIRE BANDS KNOX BOX INTEGRATED INTO FENCE

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LICENSED ARCHITECT
WILLIAM TAYLOR
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STATE OF CALIFORNIA

Seal:

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No.	Description	Date
	ISSUE FOR PERMIT	14.06.20

ISSUE: ISSUE FOR PERMIT FEB 06 2018

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1363 GATEWAY BLVD
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TELEPHONE: 510.659.1800

Date: Project No.:
DATE: 16024.00

Sheet Title:
SITE PLAN

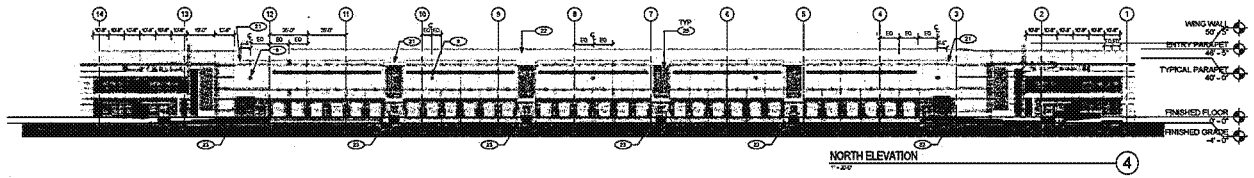
Sheet No.:
A1.0.1

Released for Construction
Not Released for Construction

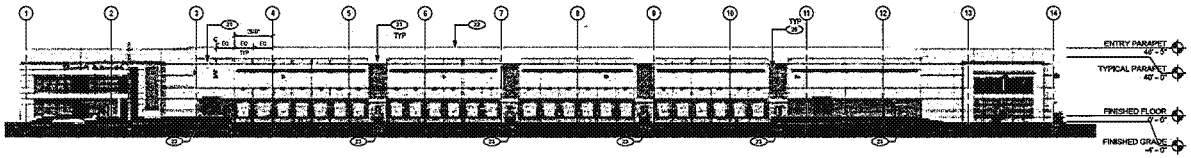
PROLOGIS

WT

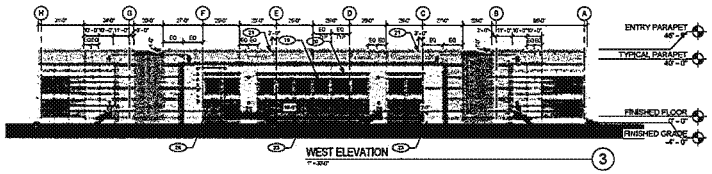
Exhibit A- Site Plan and Elevation



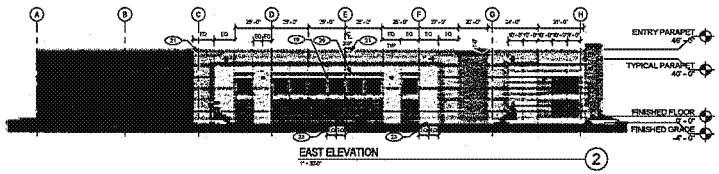
NORTH ELEVATION 4



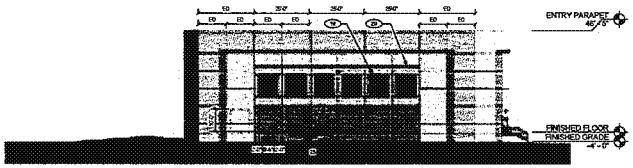
SOUTH ELEVATION 1



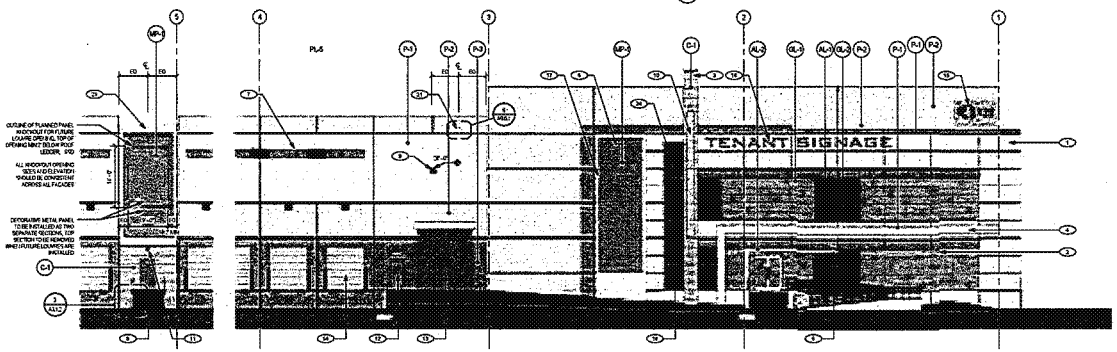
WEST ELEVATION 3



EAST ELEVATION 2



SOUTH EAST - OBLIQUE CORNER 6



PARTIAL NORTH ELEVATION 5

KEY NOTES

1. EXTERIOR WALLS CONSIST OF TILT-UP CONCRETE PANELS WITH REVEALS AND A TEXTURED COATING SYSTEM
2. DUAL PANE VISION GLAZING AND VINYL 2 PANE SPANDREL GLAZING IN ALUMINUM FRAMES, GL1 & GL2, FRAMES TO BE AL1
3. BACK TO BACK TILT-UP WING WALL PANEL WITH SIMULATED CAST IN PLACE FINISH, FINISH C1
4. 24" WIDE STEEL OVHANGS, OVERLENTERED OFF BUILDING FACE WITH TUBE STEEL TUBE CLAMP PIPE
5. 12" THICK CONCRETE CANOPY FINISHED TO AC
6. ARCHITECTURAL METAL PANELS OVER TILT-UP WALL, P3 BEHIND
7. 36" TALL X 10'-0" WIDE CLERESTORY WINDOWS, DUAL PANE GL1 GLAZING & AL1 FRAMES
8. STEEL STAIR, CLARIDE MIDHANDRAILS, PAINT P5
9. WALL PACK TYPE LIGHTING FIXTURE,
10. LINEAR LIGHT FIXTURE, SEE ELECTRICAL DWGS,
11. SURFACE MOUNTED EMERGENCY LIGHT FIXTURE,
12. STEEL FRAME AND MAN DOOR, PAINT TO MATCH ADJACENT BUILDING COLOR
13. 12'-0" WIDE SECTIONAL ROLLUP DOOR, PAINT TO MATCH ADJACENT BUILDING COLOR
14. 10'-0" WIDE SECTIONAL ROLLUP DOOR, PAINT TO MATCH ADJACENT BUILDING COLOR
15. 10'-0" TALL ADDRESS SIGNAGE AND 30" TALL OWNER LOGO, FOR REFERENCE ONLY
16. 24" TALL TENANT SIGNAGE - ONE AT EACH OF THREE PRIMARY ENTRIES MAXIMUM, FOR REFERENCE ONLY
17. FIRESTANDING TILT-UP PANEL 12" BEYOND FROM BUILDING FACE
18. VERTICAL WINDOW GL2 & AL2 SURFACE MOUNTED TO CONCRETE TILT-UP PANEL
19. 36" REVEALS TO SIMULATE WINDOW NULLEDYE WITH PAINTED FALSE WINDOW PATTERN, PAINTED TO MATCH GL2 OPAQUE COAT 2-1964 ATLANTIC WATERS
20. FOAM WINDING ABOVE EAST AND WEST SIDE CLERESTORY WINDOWS,
21. OVERFLOW SCUPPER
22. ROOF BEYOND
23. DAYLIGHTING RAIL
24. VERTICAL WINDOW GL2 & AL2 SURFACE MOUNTED TO CONCRETE TILT-UP PANEL
25. FUTURE WINDOW OPENINGS
26. AREA OF WINDOW FOR FALSE WINDOW, SEE SPEC P

EXTERIOR FINISH SCHEDULE

- P1: TO MATCH PROLOGIS STANDARD COLOR; PLD-9 Pure White
- P2: TO MATCH PROLOGIS STANDARD COLOR; PLD-8 Sable
- P3: TO MATCH PROLOGIS STANDARD COLOR; PLD-6 Jaguar
- P4: TO MATCH PROLOGIS STANDARD COLOR; PLD-3 New Dark Green
- P5: TO MATCH PROLOGIS STANDARD COLOR; PLD-11 Extra White
- GL1: GREEN VISION GLAZING 1 PPG ATLANTICA 1/4" DUAL PANE GLAZING
- GL2: GREEN SPANDREL GLAZING 2 PPG CLEAR FLOAT 1/4" SINGLE PANE WITH LCZ2 OPACS-COAT 2-1964 ATLANTIC WATERS
- AL1: ALUMINUM STOREFRONT FRAMES CLEAR ANODIZED ALUMINUM
- AL2: COMPOSITE ALUMINUM PANELS ALUCOBOND OR EQUAL SILVER METALLIC A3000 COILE
- MP1: ARCHITECTURAL METAL PANELS AEP SPAN HR 36 RIB COLOR: Cool Zinc Opaque II
- C1: CONCRETE TILT-UP PANEL WITH SIMULATED CAST-IN-PLACE APPEARANCE CONSISTING OF:
  1) A GRID OF 1/2" WIDE HORIZONTAL AND VERTICAL REVEALS,
  2) CAST IN PLACE, 34" I IDIMOTS SET 4' FROM GRID CORNERS AND
  3) A BARE FUNFINISHED CONCRETE FINISH

GENERAL NOTE: PROVIDE REVEALS @ ALL PAINT TRANSITIONS ON EXTERIOR WALL, PAINT INTO REVEAL AND TRANSITION @ INSIDE V, SEE: 11 A3.1.1

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Rev	Description	Date
	ISSUE FOR PERMIT	10.26.22

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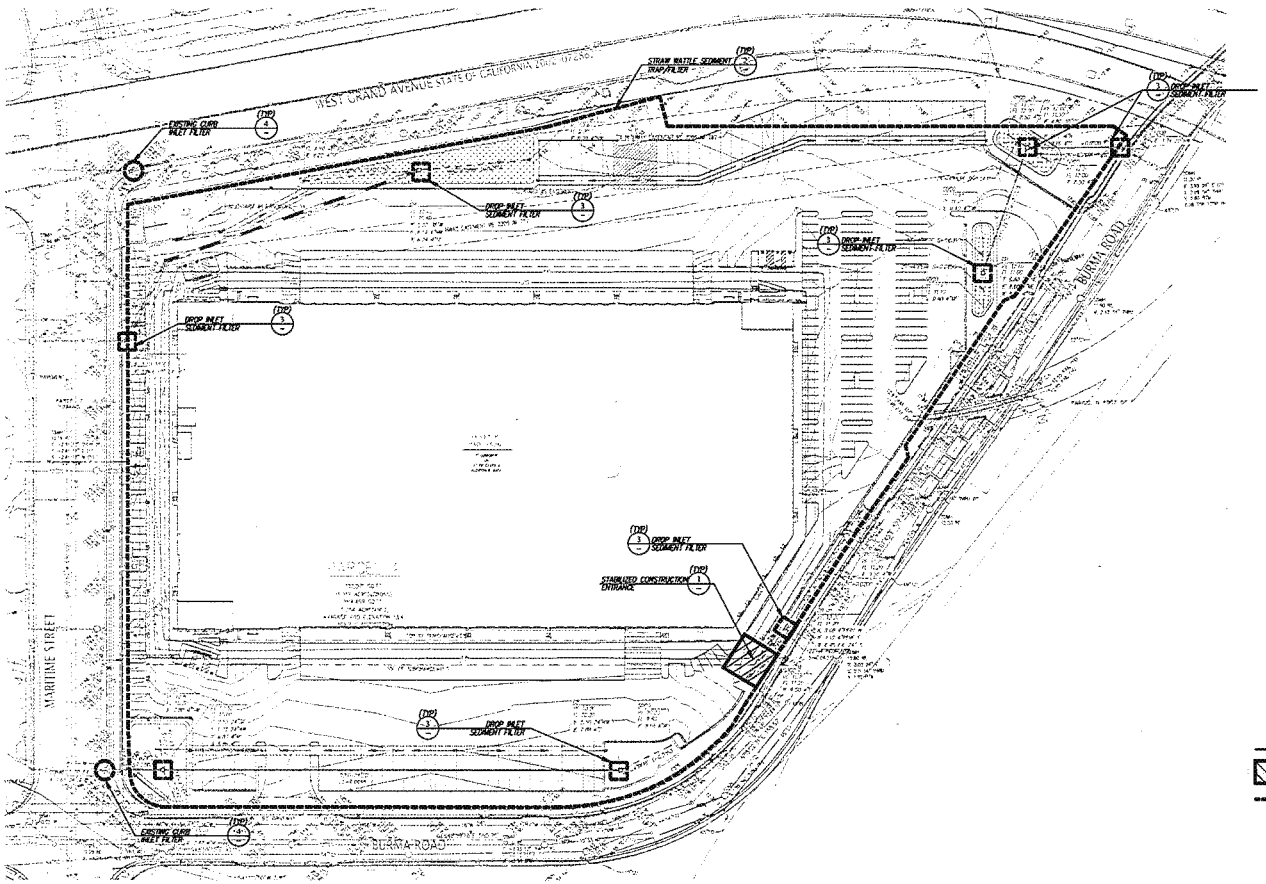
Date: DATE: Project No.: 19024.00

Sheet Title: EXTERIOR ELEVATIONS

Sheet No.: A3.1.1

☐ Released for Construction
☐ Not Released for Construction

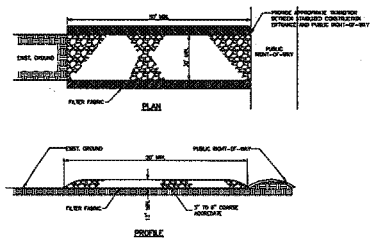
Exhibit B- Erosion Control Plan



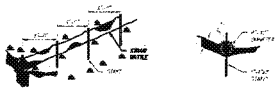
0 25 50 100 150
Scale 1" = 30 ft

LEGEND

- STABILIZED CONSTRUCTION ENTRANCE
- STRAW WATTLE SEDIMENT TRAP/FILTER
- DROP INLET SEDIMENT FILTER
- EXISTING CURB INLET FILTER



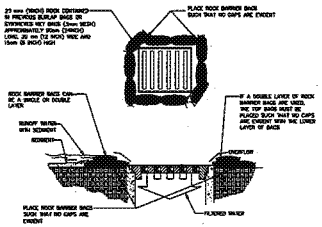
STABILIZED CONSTRUCTION ENTRANCE (1)
NOT TO SCALE



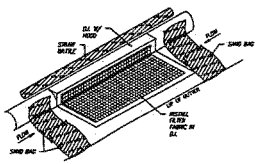
NOTE:
1. STRAW WATTLES ARE MADE FROM STRAW BOUND WIRE-ENTWINED NETTING. MAY BE APPROX. 6"-10" DIA AND 20-30 FT LONG.
2. STRAW WATTLES TRAP SEDIMENT AND REDUCE SHEET AND RILL EROSION BY REDUCING SLOPE GRADIENT, INCREASING INFILTRATION RATES AND BY PROVIDING A FAVORABLE ENVIRONMENT FOR PLANT ESTABLISHMENT.
3. STRAW WATTLE PRECIPITATION REQUIRES THE PLACEMENT AND SECURE STAKING OF THE WATTLE IN A TRENCH 2"-3" DEEP, DUG ON CONTOUR. RUNOFF MUST NOT BE ALLOWED TO RUN UNDER OR AROUND WATTLE.

STRAW WATTLE SEDIMENT TRAP/FILTER (2)
NOT TO SCALE

Z:\STANDARDS\DETAILS\ EROSION CONTROL\EC07.DWG



DROP INLET SEDIMENT FILTER UTILIZING ROCK BARRIER BAGS (3)
NOT TO SCALE



EXISTING CURB INLET FILTER DETAIL (4)
NOT TO SCALE

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
Phone (925) 245-6786
Fax (925) 245-6796

Description	Date
PERMIT SUBMITTAL	3-6-19

ISSUE: ISSUE FOR PERMIT FEB 19 2019

OAKLAND GLOBAL LOGISTICS CENTER
PHASE 1, NORTH EAST GATEWAY
OAKLAND, CALIFORNIA

PROLOGIS
3353 GATEWAY BLVD
FREMONT, CALIFORNIA 94538
TELEPHONE: 510.896.1800

Date: JAN. 2018
Project No.: A13633-1

Sheet Title: EROSION CONTROL PLAN

Sheet No.: C6

Released for Construction
Not Released for Construction

PROLOGIS
WT

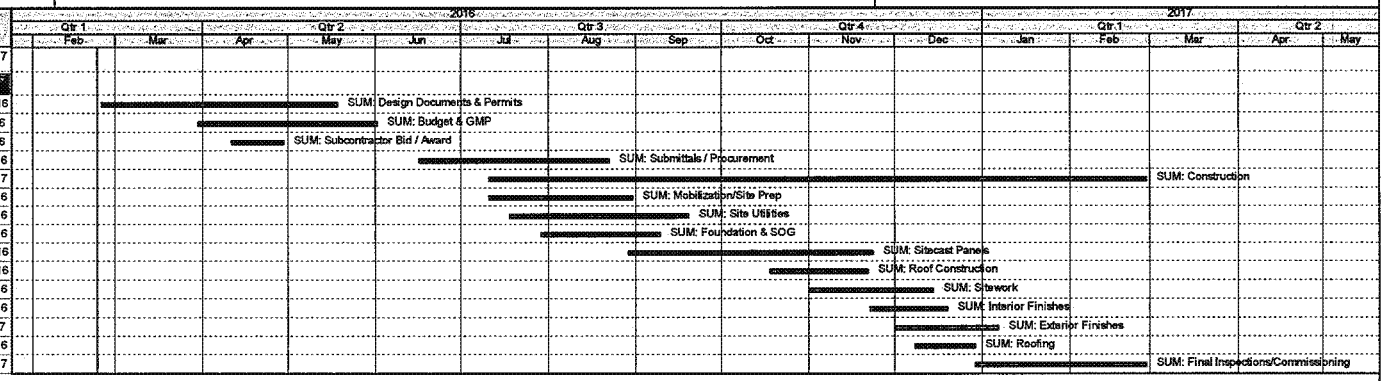
Exhibit C- Project Schedule

WHITING-TURNER

PROLOGIS - OAB NORTHEAST GATEWAY
PROJECT SUMMARY SCHEDULE: 31-Mar-16

PROLOGIS

#	Activity ID	Activity Name	OD	Start	Finish
1	**PROLOGIS PHASE 1**		256	25-Feb-16	27-Feb-17
2	PROJECT SUMMARY		256	25-Feb-16	27-Feb-17
3	SUM-1130	SUM: Design Documents & Permits	60	25-Feb-16	18-May-16
4	SUM-1120	SUM: Budget & GMP	46	30-Mar-16	01-Jun-16
5	SUM-1140	SUM: Subcontractor Bid / Award	15	11-Apr-16	29-Apr-16
6	SUM-1150	SUM: Submittals / Procurement	47	16-Jun-16	22-Aug-16
7	SUM-1110	SUM: Construction	160	11-Jul-16	27-Feb-17
8	SUM-1180	SUM: Mobilization/Site Prep	37	11-Jul-16	30-Aug-16
9	SUM-1160	SUM: Site Utilities	45	18-Jul-16	19-Sep-16
10	SUM-1190	SUM: Foundation & SOG	30	29-Jul-16	09-Sep-16
11	SUM-1170	SUM: Sitecast Panels	62	29-Aug-16	23-Nov-16
12	SUM-1200	SUM: Roof Construction	25	18-Oct-16	21-Nov-16
13	SUM-1230	SUM: Sitework	30	01-Nov-16	14-Dec-16
14	SUM-1220	SUM: Interior Finishes	18	22-Nov-16	19-Dec-16
15	SUM-1210	SUM: Exterior Finishes	25	01-Dec-16	06-Jan-17
16	SUM-1250	SUM: Roofing	15	08-Dec-16	29-Dec-16
17	SUM-1240	SUM: Final Inspections/Commissioning	41	29-Dec-16	27-Feb-17

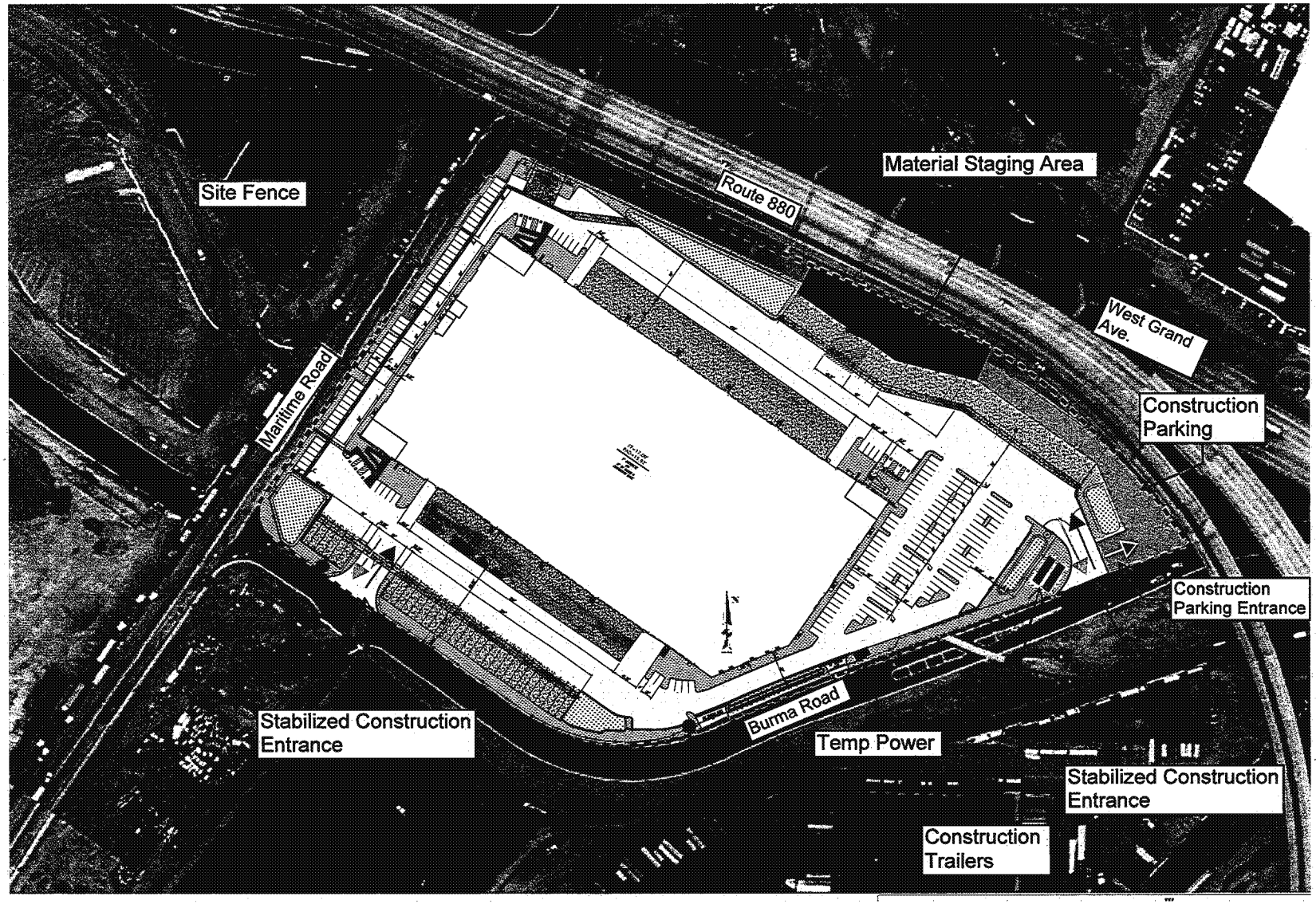


Project ID: PROLOGIS-P1, Project Name: PROLOGIS PHASE 1
Data Date: 24-Feb-16

Layout: WT Large Project Layout
Filter: TASK filter: Submittals.

PROLOGIS WT

Exhibit D- Project Logistics Plan



- Fire Hydrant
- Construction Signage
- Construction Fence

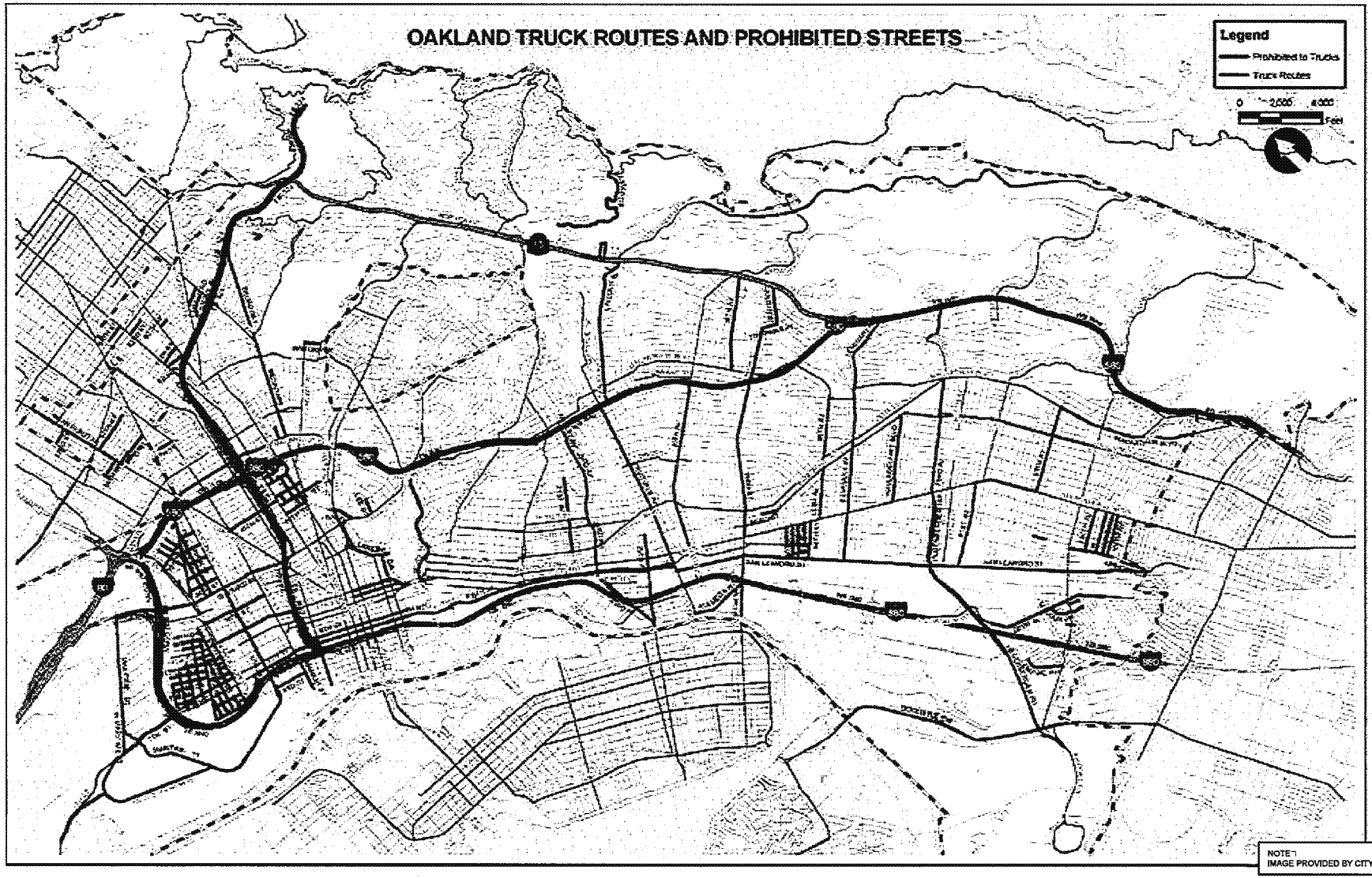
WT

2020-10-29

Exhibit E- Approved Traffic Control Plan

The Developer, its Contractor, or its consultant will prepare a Traffic Control Plan if encroachment into the public right-of-way is required. When required, a Traffic Control Plan will be submitted to EBMUD, the Port, and CalTrans for review and comment no less than 10 days prior to submittal to the City. Incorporate comments and revise plan as appropriate.

Exhibit F- Approved Truck Haul Route



NOTE:
IMAGE PROVIDED BY CITY OF OAKLAND

OAKLAND GLOBAL

ARCHITECTURAL DIMENSIONS

ARCHITECTURAL DIMENSIONS
JAMES HEILBRONNER
510-465-8300
300 FRANK H. OGAWA PLAZA, SUITE 375
OAKLAND, CA 94612

PROJECT INFO.

CITY OF OAKLAND TRUCK ROUTES AND PROHIBITED STREETS

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

CAT. NO	25945
INV. NO.	AD-0335.01

REV	DATE	COMMENT

JOB NO.	OAB02
SCALE:	1" = 100'
DATE:	8/23/2013
DRAWN BY:	J. ARMADA
CHECKED BY:	E. ROSSO

DRAWING NO.
TCP-2
SHEET 1 OF 1

G:\Cad Files\OAB\OAB02\ARCHITECTURAL DIMENSIONS\X-Dwgs\X-702.dwg

WT

Exhibit G- Signage: Speed Limit

PROLOGIS WT

ATTENTION

PERMITTED CONSTRUCTION HOURS:
Monday-Friday 7AM-7PM

There will be no work on site outside of permitted hours without written permission from City of Oakland.

FOR CONCERNS REGARDING DUST, CONSTRUCTION NOISE, EROSION OR ANY CONSTRUCTION ACTIVITY ON THIS PROJECT PLEASE CONTACT:

During Construction Hours – Randy Knaus (925)-271-6023
After Construction Hours – Steve Rodriguez (925-)-271-6590

CITY OF OAKLAND CODE COMPLIANCE:
(510) 238-3381

OAKLAND POLICE DEPARTMENT 24 HR LINE:
(510) 777-3333

BAY AREA AIR QUALITY MANAGEMENT DISTRICT:
(800) 334-6367

PROLOGIS WT

Project Name: Prologis Northeast Gateway

Complaint Log

Name and Address of Notifier	Telephone Number and/or Email	Date and Time of Call/Email	Nature of Complaint (Traffic/Noise/Dust/Etc.)
	Received By	Directed To	
	Received By	Directed To	
	Received By	Directed T	

date: June, 2016

PROLOGIS

WT

IDLING POLICY

IDLING TIMES ON ALL DIESEL-FUELED COMMERCIAL VEHICLES OVER 10,000 LBS AND DIESEL-FUELED OFF-ROAD VEHICLES OVER 25 HORSEPOWER SHALL BE MINIMIZED EITHER BY SHUTTING EQUIPMENT OFF WHEN NOT IN USE OR REDUCING THE MAXIMUM IDLING TIME TO FIVE MINUTES.
(CCR TITLE 13, SECTION 2485 & 2449)

VIOLATIONS SUBJECT TO MINIMUM FINE OF $300.

G.W.C. WHITING
(1883-1974)

WILLARD HACKERMAN
PRESIDENT AND CEO

FOUNDED 1909

THE WHITING-TURNER CONTRACTING COMPANY

(INCORPORATED)

ENGINEERS AND CONTRACTORS

4690 CHABOT DRIVE, SUITE 120
PLEASANTON, CALIFORNIA 94588
925-485-0800
FAX 925-485-0854
www.whiting-turner.com

CONSTRUCTION MANAGEMENT
GENERAL CONTRACTING
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SPECIALTY CONTRACTING
OFFICE/HEADQUARTERS
RETAIL/SHOPPING CENTERS
HEALTHCARE
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HIGH TECH/CLEANROOM

INSTITUTIONAL
DATA CENTERS
SPORTS AND ENTERTAINMENT
INDUSTRIAL
WAREHOUSE/DISTRIBUTION
MULTI-FAMILY RESIDENTIAL
ENVIRONMENTAL
BRIDGES, CONCRETE

WRITER'S DIRECT NUMBER IS
925-271-6606

Dear Neighbors,

I am writing to inform you of the upcoming work at the Prologis Northeast Gateway project located in the City of Oakland. The project site is located on the cross streets of Maritime and Burma Road.

Commencement of construction work is scheduled to begin on or around 7/15/2016. Your property address is within a 300' radius of the project site and this letter is providing notice that construction activities involved with construction may exceed the 90dBA level for a period of 10 working days between 7/28/2016 and 8/11/16.

Any construction work over 90dBA is considered an extreme noise generating activity. The City of Oakland requires all property owners within 300' of the project to be notified 30 days prior to any extreme noise activities taking place. Any work over 90dBA will be performed between the hours of 8:00 a.m. and 4:00 p.m. Monday thru Friday. Construction work that may exceed 90dBA will include:

1. The installation and erection of concrete panels.
2. Removal of construction debris into trucks via excavators and front loader equipment.
3. Construction equipment including, but not limited to, excavators, loaders, mobile crane, and dump trucks.

Whiting-Turner looks forward to working closely with our new neighbors and would like to create a solid relationship with them. If a complaint shall arise, please contact the undersigned below, and all complaints received will be noted in a Complaint Log. The log will include at a minimum the following information: The date of complaint, contact information for all complainant(s), reason for complaint, action taken, and resolution notes. Corrective measures will be immediately taken to address any and all complaints, should they occur. Copies of the Complaint Log will be submitted to Inspections Services monthly and, if so desired, upon request. These noise complaint procedures will be posted along the perimeter of the construction site prior to the commencement of construction. Should you have any noise complaints during construction please follow these procedures.

Most of the extreme noise generating activities will take place during the excavation work during the early stages of the project. We will send additional notices as required for additional upcoming work. If you would like to receive email notifications in lieu of or in addition to a hard copy please provide your email address to Steve.Rodriguez@whiting-turner.com.

Additional project information may be requested should you have any questions by contacting the undersigned.

Sincerely,

Steve Rodriguez
Whiting-Turner Contracting Company
925-271-6590
Steve.Rodriguez@whiting-turner.com

PROLOGIS WT

G.W.C. WHITING
(1883-1974)

WILLARD HACKERMAN
PRESIDENT AND CEO

FOUNDED 1909

THE WHITING-TURNER CONTRACTING COMPANY

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INDUSTRIAL
WAREHOUSE/DISTRIBUTION
MULTI-FAMILY RESIDENTIAL
ENVIRONMENTAL
BRIDGES, CONCRETE

WRITER'S DIRECT NUMBER IS
925-271-6606

Dear Neighbors,

Due to safety reasons, pedestrian traffic will be periodically shut down on Maritime Street between Tuesday 9/15/2016 and Friday 10/16/2016 while demolition and excavation activities are in progress. Pedestrian barricades will be set in place to re-route all pedestrian traffic to the detour per the approved Traffic Control Plan. Please reference the included closure plan exhibit from our Traffic Control Plan that shows the areas that will be closed. The shutdown dates will be posted on our website within 2 days prior to shut down.

If you should have any problems or questions we encourage you to call or stop by our construction trailer located on site.

Additional project information may be requested should you have any questions using the contact below.

Sincerely,
Steve Rodriguez
Whiting -Turner Contracting Company
925-271-6590
Steve.Rodriguez@whiting-turner.com

PROLOGIS WT

Exhibit L- Project Truck Log

Project: Prologis Northeast Gateway
Date:

Truck Information Form

Time In	Time Out	Vehicle Type	License Plate Number	Trucker's Name	Driver's Name	Material	Documentation [1]	Destination	Quantity

Documentation carried by the driver will include:

- Bills of lading or non-hazardous or hazardous waste manifests;
- Proof of insurance, valid registration, and current driver's license;
- Material profile information (reflecting chemical analysis results);
- Material weight records; and
- Complete copy of the Traffic Control Plan.

date: May 8, 2016

Project Name: Prologis Northeast Gateway

Construction Site Condition Log

Location:	Decription of Damage:	Date:	Inspected

Attachment C

Public Comment Letters Received in Response to Draft Air Quality Plan dated April 25, 2016

From: Margaret Gordon
To: Ranelletti, Darin; robbie.morris@arb.ca.gov; Marvin, Cynthia@ARB; dvintze@baaqmd.gov; Richard Grow; Lee, Anna, Public Health, CAPE
Subject: Comments Standard Conditions of Approval/Mitigation Measures for the Prologtis:
Date: Monday, May 23, 2016 11:52:06 AM

Comments Standard Conditions of Approval/Mitigation Measures for the Prologtis:

1. Nothing about Solar
2. Shuttle Services to not bring cars into West Oakland
3. No traffic study cars or trucks
4. There's not an emission reduction plan
5. EIR is over ten years old
6. No Zero emission plan or new technology
7. No Green Infrastructure
8. No use of electric truck for local freight transportation
9. No spraying of water from an enclosed fence during construction
10. No hours of operation
11. Nothing in the plan green house gases reduction
12. The item on the warehouse is not subject to Planning Commission
13. We don't if there will be indoor air filtration for workers.
14. There nothing about recycling and no waste added to the project

Thank you,

Ms. Margaret Gordon/Co-Director
West Oakland Environmental Indicators Project
349 Mandela Pkwy.
Oakland, Ca. 94607
510-257-5645
WWW.WOEIP.ORG

DITCHING DIRTY DIESEL

Robbie Morris
California Air Resources Board
Freight Transport Branch
Transportation and Toxics Division

May 25, 2016

Dear Robbie ,

Thank you for providing us the documents and opportunity to comment on the Pologis project in West Oakland . As you undoubtedly know, West Oakland has long been suffering cumulative impacts from the Freight Industry and as such was designated by BAAQMD as one of their CARE communities .

Given the existing conditions and forecasts for expanded freight operations (rail, maritime, air, and trucking), we ask that CARB take an extra critical look at this project and determine what measures can be implemented to eliminate or at least reduce impacts on this community from this company's operations.

Following are our comments and recommendations on the project:

* The AQ measures outlined in the documents to control dust seem adequate if they are actually implemented for the duration of the construction project. We have had examples of large scale projects (Bay View/Hunters Point) where the measures were initially implemented but later dropped. The affected residents had little recourse and suffered health hazards as a result.

* The designated person or persons assigned to monitor the dust control program and to order the increased watering to prevent transport of dust should be identified to the public along with their phone numbers. That their duties should include holidays and weekend periods

when construction work is not in progress demonstrates a more serious commitment to mitigation and is welcomed.

* The Construction Signage near the Construction Parking Entrance appears to be set back too far into property – one should not have to go behind the fence to be able to read it . The sign should be easily readable from the street.

* This document is primarily about outlining and regulating construction procedures. However, there are important considerations in the design of the building and development of the project that should be addressed. For example, will the building and finished property create yet another Heat Island that will raise energy demands, elevate emissions of air pollutants and Green House gases, and impair water quality? This is a very large project that has a significant footprint in the area and should be required to incorporate cool roofs, cool pavement, and vegetation to mitigate its impacts on the area.

* This Prologis project includes 55 Trucks, 78 trailer parking stalls, 171 parking stalls and only 2 electric charging stations (for passenger vehicles only we believe).

There is no mention of utility design , planning , and infrastructure for future Heavy Duty charging stations , forklifts, and cargo handling equipment. It would be very helpful to have ARB provide aggressive guidance here in accordance with its Sustainable Freight Policy. If this policy is to be "Transformative" as the governor has declared it must seriously weigh in on projects such as this in a comprehensive manner. If the current plans do not account for the future energy needs of zero emission HD trucks it will probably be prohibitively expensive to install these needed technologies later.

We have many concerns about this project and believe it needs more scrutiny and adaptations to be up to date with current thinking and compliance with reducing GHG and a Sustainable Freight Policy. Please consider the following :

1. The EIR for the Prologis project is over 10 years old. Freight in all sectors has risen dramatically during this time and is on track to continue; hence projects such as this. It is inappropriate to pretend that it is still accurate and valid.
2. This project has not used any Green Infrastructure. There is an opportunity here to follow the example the Port has shown works. One example being the solar panel carports .
3. West Oakland is a very busy hub of Freight activity yet there has not been a Traffic Study for cars and trucks for this project.
4. We would like Prologis to establish Shuttle Services for their employees in order to reduce the number of cars coming into West Oakland. This should not be an undue

burden as BART is nearby and measures to reduce VMT are an important part of the Region's and State's Freight Policies.

5. The hours of operation might be a problem and we have not been informed if there are any limits.
6. We are uncertain of the extent of the Planning Commission's rulings here.
7. We have no information about conditions for workers at this site. Will there be indoor air filtration?
8. An Emission Reduction Plan has not been presented or formulated as far as we know.
9. As previously stated, there is no plan presented for the future use of Zero emission vehicles and their associated infrastructure. We understand that Prologis is primarily in the Short Haul Freight business and would therefore be an ideal candidate for Zero emission Trucks or hybrids.
10. We have not seen how Prologis plans to handle recycling and not add waste to the project.

Before it's too late, we really need a pro-active push by ARB here to get our decision makers, planners, and developers to be "Transformative" with a Sustainable Freight System we are striving to achieve.

Sincerely,

Frank Gallo	Ms Margaret Gordon	Brian Beveridge
Ditching Dirty Diesel	WOEIP	WOEIP
CCFC	CCFC	

Sincerely,

Frank Gallo

Ditching Dirty Diesel

CCFC

From: Lee, Anna, Public Health, OOD
To: Ranelletti, Darin
Cc: Davis M.D., Muntu, Public Health, OOD; Galvez, Sandi, Public Health, OOD
Subject: RE: Notice of Availability of Northeast Gateway Air Quality Plan for Construction (Prologis)
Date: Tuesday, May 31, 2016 5:04:36 PM

Dear Darin:

My comments on the Air Quality Plan for Construction prepared by Prologis are below. I'm sorry if some of this is already addressed. I wasn't back from maternity leave when they gave their presentation, so I'm just going off of what I gathered from the written materials and checking in with Jen Lucky. I hope these comments are helpful to strengthening the measures to reduce air pollution at the Prologis site.

Please let me know if you have any questions.

Best,
Anna

Sustainable Attributes

- Given the proximity of the Prologis site to the Bay, I wonder if the developer is aware and has thought about site design features that could help thwart sea level rise and flooding. This is a reality we need to consider and it could be a preventative cost saving and safety measure.

Green Building

- Pleased to see the green building aspects of the plan and hope that if Prologis hasn't already, that they align this with the City's Green Building Checklist to ensure the plan promotes Oakland's vision and meets the requirements around Sustainability. Doing this exercise could also help showcase how the project measures against the goals of the City.

Dust

- Dust is a major concern especially because of the weather patterns and existing health inequities in West Oakland; the prevailing wind carries visible dust and air pollution into the West Oakland community.
- It is unclear if there will be demolition of any structures on the site. If so, ensure that watering measures are included in the dust mitigation plan.

Diesel emissions

- Diesel emissions are also a major concern given the existing health burdens in West Oakland.
- Question for the City: How does the Prologis plan align or support the development of the Standard Condition of Approval Mitigation 4.4-3b (West Gateway Rail and Maritime Emissions Reduction Program) and Mitigation 4.4-4 (City and Port truck diesel emission program)? I didn't see any mention of these programs in the Prologis Plan.
- The plan includes ensuring maintenance of the diesel equipment used during construction and operations. The plan does not explicitly say that the developer and sub-contractors must comply with the engine requirements from CARB. Please ensure that it does.
- Although the regulatory limit for idling is 5 minutes, it would be beneficial to reducing air pollution if the developer and sub-contractors minimized idling to 2 minutes when feasible.
- Another way to minimize idling, particularly for highly polluting refrigerated truck units (so

this might be an operations measure), is utilizing truck plug-in capability. If it is feasible, it would be great to include this into the Plan as a pollution reduction measure.

Truck Routes and Circulation

- Truck hauling routes should be designed to minimize exposure to community from emissions, fugitive dust, potential hazardous materials, vibrations and traffic safety issues.
- There is a West Oakland Truck Route that should be noted and included in the Plan.
- Concerning Exhibit F, Truck Haul Route, it should be noted that there is an updated East Oakland truck route that occurred in 2015 that includes 98th Avenue and a number of other revisions. They can contact the City's Transportation Services Division for these revisions.

Community Engagement

- Public Notice - Sending notification and giving opportunity to engage neighbors is important to ensuring immediate health and safety concerns from the development are addressed and gaining community confidence and support of the project. In West Oakland, there are a number of community organizations and institutions that would be great places to post information and engage, including sending the letter about the project and phone numbers for project managers and making regular presentations. The developer should contact local community leaders for a comprehensive list, but some places and groups to include are: West Oakland Senior Center, libraries, the West Oakland Youth Center and the Hoover Resident Action Council (I can help connect to the Council).
- Public Process - A question for the City: After City Administrator approval, will there be a public process for the Planning Commission and City Council to review and adopt the plan or is this an administrative process moving forward?

Anna Lee
Local Policy Coordinator
Place Matters, Office of the Director
Alameda County Public Health Department
1000 Broadway, Suite 500
Oakland, CA 94607
anna.lee@acgov.org | Phone: (510) 267-8019
Like us on Facebook | Visit our Website

Please consider the environment **before** printing this email.

From: Ranelletti, Darin [mailto:DRanelletti@oaklandnet.com]
Sent: Friday, May 20, 2016 12:37 PM
To: 'Jahmese Myres'; Cole, Doug; Cappio, Claudia; 'Mark McClure'; 'Megan Morodomi'; 'Joanne Park'; 'Jack Broadbent'; 'Hhilken@baaqmd.gov'; 'akirk@baaqmd.gov'; 'jroggenkamp@baaqmd.gov'; 'David Vintze'; 'jkitowski@arb.ca.gov'; 'Cynthia Marvin'; McElhaney, Lynette; Cook, Brigitte; Thao, Sheng; 'rebecca.flournoy@acgov.org'; 'Jared Blumenfeld'; 'Richard Grow'; 'stew.sonnerberg@dot.gov'; 'Richard Sinkoff'; 'Anne Whittington'; 'tleong@portoakland.com'; 'Brent Bucknum'; 'bill@oaklandmss.com'; 'brian.woeip@gmail.com'; 'Margaret Gordon'; 'Cory'; 'jmajor@prologis.com'; 'robbie.morris@arb.ca.gov'; 'sydney.vergis@arb.ca.gov'; Klein, Heather; 'Maile.smith@ngem.com'; 'James Heilbronner'; Kaplan, Rebecca; Lee, Anna, Public Health, OOD; 'Jess@sfbaysc.org'; Jones, Andre
Subject: RE: Notice of Availability of Northeast Gateway Air Quality Plan for Construction (Prologis)

Dear Army Base Air Quality Stakeholders:

In my previous email to you (see below), I stated that the deadline for comments on the Air Quality

Pan for Construction prepared by Prologis for the Northeast Gateway site is 5:00 pm on Monday, May 30, 2016, which is Memorial Day. Pursuant to the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program for the Oakland Army Base Project, if the deadline falls on a holiday, the deadline is extended to the next business day. Therefore, the deadline for comments is **5:00 pm on Tuesday, May 31, 2016**.

Please contact me at 510-238-3663 or dranelletti@oaklandnet.com if you have any questions.

Regards,

Darin Ranelletti

Darin Ranelletti, Deputy Director | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3663 | Fax: (510) 238-6538 | Email: dranelletti@oaklandnet.com | Website: www.oaklandnet.com/planning

---

From: Ranelletti, Darin
Sent: Friday, May 13, 2016 12:51 PM
To: 'Jahmese Myres'; Cole, Doug; Cappio, Claudia; 'Mark McClure'; 'Megan Morodomi'; 'Joanne Park'; 'Jack Broadbent'; 'Hhilken@baaqmd.gov'; 'akirk@baaqmd.gov'; 'jroggenkamp@baaqmd.gov'; 'David Vintze'; 'jkitowski@arb.ca.gov'; 'Cynthia Marvin'; McElhaney, Lynette; Cook, Brigitte; Thao, Sheng; 'rebecca.flournoy@acgov.org'; 'Jared Blumenfeld'; 'Richard Grow'; 'stew.sonnerberg@dot.gov'; 'Richard Sinkoff'; 'Anne Whittington'; 'tleong@portoakland.com'; 'Brent Bucknum'; 'bill@oaklandmss.com'; 'brian.woeip@gmail.com'; 'Margaret Gordon'; 'Cory'; 'jmajor@prologis.com'; 'robbie.morris@arb.ca.gov'; 'sydney.vergis@arb.ca.gov'; Klein, Heather; 'Maile.smith@ngem.com'; 'James Heilbronner'; Kaplan, Rebecca; 'Anna.lee@acgov.org'; 'Jess@sfbaysc.org'; Jones, Andre
Subject: Notice of Availability of Northeast Gateway Air Quality Plan for Construction (Prologis)

Dear Army Base Air Quality Stakeholders:

The City of Oakland has received a draft of the Air Quality Plan for Construction at the Northeast Gateway from the developer, Prologis. Prologis presented an overview of this Plan at the Quarterly Air Quality Stakeholder Meeting on March 3, 2016. Pursuant to the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program for the Oakland Army Base Project, the City is providing 17 calendar days for public review and comment on the draft Plan.

The draft Plan is available on the City's website:
http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak058692.pdf

Written comments must be received no later than **5:00pm on Monday, May 30, 2016**. Written comments should be sent via email, mail or fax to:

Darin Ranelletti, Deputy Director
City of Oakland, Planning and Building Department
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612
Email: dranelletti@oaklandnet.com
Fax: 510-238-6538

The Plan is subject to approval by the City Administrator. The City will review the written comments that are received and revise or supplement the draft Plan as appropriate prior to approval by the City Administrator. Within 90 days of the approval, there will be an informational presentation to the City Council concerning the Plan.

Please contact me at 510-238-3663 or dranelletti@oaklandnet.com if you have any questions.

Regards,

Darin Ranelletti

Darin Ranelletti, Deputy Director | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3663 | Fax: (510) 238-6538 | Email: dranelletti@oaklandnet.com | Website: www.oaklandnet.com/planning

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

June 3, 2016

Darin Ranelletti
City of Oakland
Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

ALAMEDA COUNTY
Tom Bates
Scott Haggerty
Rebecca Kaplan
Nate Miley

CONTRA COSTA COUNTY
John Gioia
David Hudson
(Secretary)
Karen Mitchoff
Mark Ross

MARIN COUNTY
Katie Rice

NAPA COUNTY
Brad Wagenknecht

SAN FRANCISCO COUNTY
John Avalos
Edwin M. Lee
Eric Mar
(Chair)

SAN MATEO COUNTY
David J. Canepa
Carole Groom
Warren Slocum

SANTA CLARA COUNTY
Cindy Chavez
Liz Kniss
(Vice-Chair)
Jan Pepper
Rod G. Sinks

SOLANO COUNTY
James Spering
Osby Davis

SONOMA COUNTY
Teresa Barrett
Shirlee Zane

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

Connect with the
Bay Area Air District:

Subject: Northeast Gateway Construction Management Plan

Dear Mr. Ranelletti,

Bay Area Air Quality Management District (Air District) staff appreciates the opportunity to review the Northeast Gateway Construction Management Plan (Plan) submitted to the City of Oakland (City) by Prologis for construction of a 256,000 square foot warehouse (Project) within a portion of the Oakland Army Base. As part of the former Oakland Army Base, the site and therefore this Project is subject to eight air quality mitigation measures described in the Oakland Army Base Project (OAB) 2002 Final Environmental Impact Report, the 2012 Initial Study/Addendum, the Mitigation Monitoring and Reporting Program, and the Lease Disposition and Development Agreement (LDDA). Air District staff understands that approval of the Plan by the City Administrator will allow construction to proceed without any further discretionary approvals from the City.

Air District staff is concerned that the Plan submitted by the developer, Prologis, only addresses air quality impacts associated with construction activity and does not address long term operational emissions associated with the Project. The Plan for this Project does not implement six of the eight air quality mitigation measures that future development is required to implement within the OAB. It should be noted that the eight air quality mitigation measures, which include the City's Standard Conditions of Approval, and which were approved by the Oakland City Council, were expected to be applied to future development within the OAB to lessen significant air quality impacts identified in the environmental documents for the OAB. Approval of the Northeast Gateway Construction Management Plan in its current form would preclude this Project from being required to implement legally binding mitigation measures promised to the surrounding community and approved by the Oakland City Council.

In the Attachment to this letter, Air District staff has provided specific comments on the proposed strategies in the Plan to ensure that construction related

emissions are reduced to the extent feasible. In addition, Air District staff is also recommending that the Plan be amended to include the other adopted air quality mitigation measures identified in the previous environmental documents to reduce the significant air quality impacts anticipated to occur in the West Oakland community, including impacts from Project operations. Air District staff believes that full implementation of all previously adopted mitigation measures is needed for the Project as proposed to assure that West Oakland air quality is not adversely affected. This was the promise of *A Bold Vision: Redeveloping the Former Oakland Army Base,* which was approved by the Oakland City Council.

Air District staff is available to assist the City in addressing these comments. If you have any questions, please contact Alison Kirk, Senior Environmental Planner at (415) 749-5169 or akirk@baaqmd.gov.

Sincerely,

Jean Roggenkamp
Deputy Executive Officer

Cc: Director Tom Bates
Director Scott Haggerty
Director Rebecca Kaplan
Director Nate Miley
Oakland Mayor Libby Schaaf
Heather Arias, California Air Resources Board

Attachment

Attachment

The comments provided below are in response to the Northeast Gateway Construction Management Plan (Plan) recently submitted to the City of Oakland by Prologis; and in relation to the California Environmental Quality Act (CEQA) mitigation requirements adopted by the City of Oakland to lessen the impacts from operational activities associated with development within the Oakland Army Base. As identified in the comments below, the Plan only addresses the CEQA mitigation requirements related to construction activity and does not address the mitigation requirements for operational activities at the Oakland Army Base.

SCA-AIR-1 and SCA-AIR-2

SCA-AIR-1 requires the project applicant to submit a construction management plan that "identifies the conditions of approval and mitigation measures to construction impacts of the project and explains how the project applicant will comply." SCA-AIR-2 provides the list of conditions of approval and mitigation measures that projects are required to implement to lessen significant air quality impacts related to construction and operation.

The Northeast Gateway Construction Management Plan submitted to comply with SCA-AIR-1 includes all the construction related mitigation measures listed in SCA-AIR-2, but does not provide the specificity needed to "explain how the project applicant will comply". There are a number of measures that provide an "option" for compliance; in these instances, Air District staff recommends that the applicant identify the criteria for choosing one option over another and identify the process for making that decision. For example, measure (a) requires the Project to increase dust control watering when wind speeds exceed 15 miles per hour; and measure (k) requires soil moisture to be maintained at a minimum of 12 percent; and measure (l) requires all excavation, grading, and demolition activities to be suspended when wind speeds exceed 20 miles per hour. The Plan should identify specifically how wind speeds and soil moisture will be monitored and who is required to maintain compliance logs.

Measure (u) requires all equipment used on the construction site and subject to Title 13, Section 2449 of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations") to meet emissions requirements one year in advance of any fleet deadlines. To comply, the proposed Plan indicates that "The project applicant shall provide written documentation that fleet requirements have been met." It is not clear who the written documentation will be submitted to and who will ensure that the appropriate equipment is used at the construction site. Air District staff recommends that this and all projects at the Oakland Army Base submit off-road registration documents approved by the Air Resources Board to determine a fleet's compliance with this requirement. In addition, Air District staff also recommends that only Tier 4 off-road engines be used at the OAB, and if Tier 4 off-road engines are not available for a particular use, then Tier 3 off-road engines be used.

Measure (v) requires the use of low VOC "coatings beyond local requirements (i.e., BAAQMD Regulation 8, Rule 3: Architectural Coatings)." Air District staff recommends that the Plan identify what the current regulations require and demonstrate how the Project will reduce VOC emissions beyond these requirements.

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SCA-AIR-3

SCA-AIR-3 is not currently proposed to be implemented by the Project. This measure addresses public exposure to toxic air contaminants (TACs) and requires measures be implemented by new development to reduce indoor and outdoor concentrations to TACs. The Air District recommends that the Plan be amended to include the requirements of SCA AIR-3.

Mitigation 4.4-3

Mitigation 4.4-3 3 is not currently proposed to be implemented by the Project. This measure requires the Port of Oakland to implement a criteria pollutant reduction program aimed at reducing or off-setting Port-related emissions in West Oakland from its maritime and rail operations to less than significant levels *prior to the start of operations*. Since this Project will facilitate operations at the Port of Oakland, the Air District recommends that the Project include measures within the Plan to comply with this requirement. These measures could include electrification of the 55 loading docks within the Project, and requiring the Port of Oakland to use only the lowest emitting off-road cargo handling equipment to load trucks using the Project site.

Mitigation 4.4-4

Mitigation 4.4-4 3 is not currently proposed to be implemented by the Project. This measure requires the City of Oakland and the Port of Oakland to jointly create, maintain, and fund on a fair share basis a truck diesel emission reduction program *prior to the start of operations*. The program shall be sufficiently funded to strive to "reduce redevelopment related contributions to local West Oakland diesel emissions to less than significant levels". This Project will have 55 truck loading docks and 78 trailer parking stalls. Diesel particulate matter emissions, a known toxic air contaminant, will substantially increase in the West Oakland community. The environmental documents identified significant air quality impacts from exactly this type of development. Air District staff recommends that the Plan be amended to include the development of an off-site mitigation program such that there is no net increase in emissions from this Project within the West Oakland community.

Mitigation 4.4-5

Mitigation 4.4-5 3 is not currently proposed to be implemented by this project. This measure requires major developers to fund feasible Transportation Control Measures (TCMs) for reducing vehicle emissions from commercial, institutional, and industrial operations. Air District staff recommends that the Plan be amended to include this mitigation measure and specifically identify this Project's share of funding for the TCMs listed below

- Provide incentives to encourage workers to carpool or use public transportation (TCM 4)
- Provide shuttles to and from the West Oakland BART station, and mid-day shuttles to food service establishments/commercial areas (TCM 5 and 8)
- Provide preferential parking for carpool and vanpool vehicles (TCM 9)
- Charge parking fees for single occupancy vehicle commuters (TCM 10)
- Install weather-protected bicycle parking for employees (TCM 11)
- Provide safe, direct access for bicycles to adjacent bicycle routes (TCM 12)

- Provide showers and lockers for employees bicycling or walking to work (TCM 13)
- Provide direct, safe, attractive pedestrian access from the project to transit stops and adjacent developments (TCM 14).

Mitigation 4.4-6

Mitigation 4.4-6 3 is not currently proposed to be implemented by this Project. This measure requires the City of Oakland and the Port of Oakland to implement sustainable development policies and strategies related to new development design and construction. Air District staff recommends that the Plan include this mitigation measure and explain how the construction practices at the Project are consistent with this measure. In addition, Air District staff recommends that the Plan include measures to address sustainable development, such as installation of on-site renewable energy generation, use of ground source space heating, and thermal hot water heating.

Mitigation 5.4-1

Mitigation 5.4.-1 3 is not currently proposed to be implemented by this project. This measure requires the City of Oakland and the Port of Oakland to encourage, lobby, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality. Air District staff recommends that the Project identify potential new technological advances that could be demonstrated at this Project.

Air Resources Board

Mary D. Nichols, Chair
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov

Matthew Rodriquez
Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

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JUN 03 2016

CITY OF OAKLAND
BUREAU OF PLANNING

May 31, 2016

Mr. Darin Ranelletti
City of Oakland
Planning and Building Department
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, California 94612

Dear Mr. Ranelletti:

Thank you for providing the Air Resources Board (ARB) the opportunity to comment on the Northeast Gateway Construction Management Plan (Air Quality Elements) (Plan). This Plan provides an opportunity to ensure the cleanest possible construction practices while constructing the Northeast Gateway site. Eliminating and minimizing air quality impacts from the construction of this project is vital to protecting the health of nearby communities.

Overall, we find that the Plan contains measures that will achieve reductions in emissions generated by onsite construction activity. Specifically, the Dust Control Mitigation Plan and the use of the electricity infrastructure surrounding the construction site over electrical generators powered by internal combustion are helpful in reducing emissions.

Documents like this Plan are important to the public as they can help to provide transparency and accountability while following through with commitments made during the environmental review period. It is important to develop specific actions to ensure that the public is well informed about the project and proposed solutions to the project's potential impacts. Although several measures in the Plan provide sufficient detail, others need further clarification in order to ensure proper implementation and enforcement of the measures included in the Plan as well as ensure meaningful public engagement. This further clarification will help ensure the project ultimately avoids or substantially lessens the significant and unavoidable impact to air quality identified in the 2002 Draft Environmental Impact Report and Final Environmental Impact Report, and achieves the less-than-significant impacts determination made in the 2012 Addendum, by implementing all feasible mitigation.

General Recommendations

For both this and subsequent Subject Plans, consider the following:

1) Coordinate and consult with the community on construction and operations related vehicle circulation, identify selected routes that divert traffic away from neighborhood streets and is least impactful to the surrounding communities. Include details of the agreed upon truck routes in the Plan. Meaningful coordination with the community takes time, and to ensure that project development stays on schedule, we recommend that this work be initiated as soon as possible if you have not already done so.

2) Specify the public review release date and expected content for each of the remaining Subject Plans for this project, subject to Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans). It is expected that the remaining Subject Plans will be released in a timeframe that will allow for meaningful public review and response by the City of Oakland and project developer prior to when they are scheduled according to the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program.

3) Include Plan requirements in the contractual agreement between Prologis and the construction management company in order to strengthen enforceability.

Construction Related Recommendations

To ensure that the Plan meets the goals of Mitigation Measure SCA Air-2, and to ensure that the project's construction-related impacts to air quality remain less than significant, ARB recommends clarifying several measures, strengthening enforceability, and including additional measures that ARB staff finds feasible and critical to reducing emissions and protecting public health. Details of these recommendations are below:

1) Define "late model" under Emission Control Mitigation Plan, protocol "a". We suggest requiring all medium-heavy and heavy-heavy duty trucks, including any alternative fuel vehicles, meet or exceed 2010 emission standards. In addition, consider clarifying the parameters of this measure by requiring all off-road vehicles and equipment meet Tier 4 engine standards. If Tier 4 is not available, the off-road equipment should meet Tier 3 engine standards. Also, consider requiring each contracted fleet to provide an ARB Certificate of Compliance to the onsite Project Compliance Manager prior to commencing operations.

2) Clarify the intention of "low-emission diesel fuel" in the Emission Control Mitigation Plan, protocol "a". This type of fuel is already standard in California; therefore, it is unclear what additional control this measure is offering. As written, this protocol also seems to limit equipment onsite to diesel power. Please consider editing to allow for the flexibility to use zero and near-zero emission equipment as well.

3) Define "alternative fuel construction equipment" under Emission Control Mitigation Plan protocol "b". Without specifying equipment type, it is difficult to determine if this protocol provides appropriate mitigation. We recommend requiring the use of electric construction tools or amending the Plan to identify a target for the minimum amount of electric power tools that will be used onsite, explaining how this measure will be enforced, and clarifying for the public how the target was derived. In addition, we suggest requiring all off-road vehicles and equipment meet Tier 4 engine standards. If Tier 4 is not available, the off-road equipment should meet Tier 3 engine standards.

4) In Emission Control Mitigation Plan measure "f", there are several areas where further clarification and strengthening of the provision is needed:

    a. In addition to monitoring and facilitating implementation of the mitigation measures, the Project Compliance Manager should also ensure compliance with mitigation measures and the Plan. Specify that the Project Compliance Manager will refer any non-compliant fleets to the Bay Area Air Quality Management District for investigation or potential penalties.
    b. Clarify which contractors are subject to this provision. It is our expectation that all contractors should be subject to oversight by the Project Compliance Manager.
    c. Specify what the Daily Inspection Logs will include and how often they will be reviewed by the Project Compliance Manager.

5) In the Emission Control Mitigation Plan, define the phrases "extent that it is readily available" under protocol "a", "extent that the equipment is readily available and cost effective" under protocol "b", and "extent feasible" under protocol "c". As currently written, it is unclear what criteria will be used, making it difficult to ensure implementation and enforcement of the protocols.

6) Consider requiring each equipment operator or sub-contractor to show proof of compliance for each on-road vehicle subject to ARB's Periodic Smoke Inspection Program prior to operating at the site. Additionally, any off-road equipment that

exhibits conditions outside of the manufacturer's specifications, or emits excessive visible smoke, should be prohibited from operating on-site. Please detail how these requirements will be enforced, in the Plan.

We understand that the Plan relates directly to construction activities at the project site. However, we want to take this opportunity to also support the incorporation of zero and near-zero emission technologies, especially for yard and on-road trucks, that are commercially available throughout operation of the facility. ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm. Additionally, please consider implementing, and planning accordingly for, the necessary infrastructure to support the zero emission and near-zero emission technology vehicles and equipment that will be operating at the Northeast Gateway in the future. There are several ways ARB could support implementing these recommendations, including technical assistance and funding programs. More information on ARB funding programs can be found at http://www.arb.ca.gov/ba/fininfo.htm.

Closing

ARB staff appreciates the opportunity to comment on the Plan. We are pleased to provide assistance for successful implementation and enforcement of this effort that serves the region's distribution and air quality needs, while protecting public health. If you would like to understand more about ARB's freight related work, please see our Sustainable Freight: Pathways to Zero and Near-Zero Emissions Discussion Document at http://www.arb.ca.gov/gmp/sfti/sfti.htm.

Please include ARB on the City of Oakland's Stakeholder List to receive information on the Subject Plans, pursuant to Mitigation Measure PO-1. If you have questions, please contact Ms. Robbie Morris, Air Pollution Specialist, Freight Transport Branch, at (916) 327-0006 or via email at Robbie.Morris@arb.ca.gov.

Sincerely,

Heather Arias, Chief
Freight Transport Branch
Transportation and Toxics Division

cc: See next page.

cc: Mr. Connell Dunning
Transportation Team Supervisor
U.S. Environmental Protection Agency,
Region 9
75 Hawthorne Street, ENF-4-2
San Francisco, California 94105

Ms. Margaret Gordon
Co-Director
West Oakland Environmental
Indicators Project
349 Mandela Parkway
Oakland, California 94607

Ms. Alison Kirk
Senior Environmental Planner
Bay Area Air Quality Management
District
939 Ellis Street
San Francisco, California 94109

Mr. Chuck McKetney
Community Assessment, Planning,
& Evaluation Director
Alameda County Public Health Department
1000 Broadway, Suite 500
Oakland, CA 94607

Ms. Robbie Morris
Air Pollution Specialist
Freight Transport Branch
Transportation and Toxics Division

Attachment D

Revised Air Quality Plan for Construction Prepared by Prologis (titled "Northeast Gateway A-D. Construction Management Plan" including related documents; dated August 30, 2016)

PROLOGIS.

August 30, 2016

Darin Ranelletti, Deputy Director
City of Oakland – Bureau of Planning
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612

Via Email

RE: DRX151553 - Oakland Global Logistics Center #1 – Response to Air Quality Stakeholder Comments to SCA-MMRP Public Outreach Element (Mitigation Measure PO-1)

Dear Darin:

We are in receipt of the Stakeholder comments to the construction related Air Quality Standard Conditions of Approval (SCA AIR-1 and SCA AIR-2), which you forwarded via email on June 7, 2016. Subsequent to the conference call we had with various stakeholders on 8/3/16, and for your use in staff recommendation that the public outreach process has been satisfied, we are pleased to present the following responses:

Global Responses:
We received comments from several different stakeholder groups relating to the same topic, which we address by providing the following clarifications:

1. EIR Date/Update – Several comments pertained to the EIR for the project being 10+ years old. We are working from the entitlements provided under the 2012 Development Agreement and SCA-MMRP as amended by City Council 7/16/2013, and includes the 2012 OARB Initial Study/EIR Addendum.
2. Sustainable Design/Attributes – Several groups commented on the lack of Green Building and/or sustainable design elements. The air quality plans submitted for review pertained primarily to the air quality measures during construction. There is a separate Mitigation Measure (MM4.4-6) that relates to energy conserving fixtures and design. To that end, this project will meet and exceed the minimum requirements for MM4.4-6, as well as acheive a LEED Gold certification. Some specific examples of sustainable project design include but not are limited to: building finish floor above the 50-year projected sea level rise, high reflectance "cool" TPO roof, low VOC paints, high recycled content building materials, water efficient irrigation and plantings, energy efficient LED lighting, and low E glazing.
3. Operational Issues – There were several comments pertaining to operational issues that will be addressed at a separate time. The purpose of this phase of public outreach was to get feedback regarding **construction related** air quality items only. The future Air Quality Operations Plan will be subject to the same stakeholder review and any operational comments will be addressed at that time.
4. Future Tenant Improvements - The Project currently under consideration is a "Cold Shell", meaning that no tenant improvements ("TI") are being constructed. The Cold Shell does not involve any interior improvements such as warehouse lighting, office/restroom buildouts, equipment, or racking. The space is unoccupiable until a TI permit is approved, for which the Landlord (Prologis) will have approval rights over. As part of the LEED process, Prologis will have an TI Guidelines exhibit to the Tenant lease, which will

3353 Gateway Blvd., Fremont, California 94538 United States Main +1 510.661.4000 Fax +1 510.565.4320

require the Tenant to implement certain sustainable elements into their design, for example – low flow toilets, or 240v+ plugs for truck refrigerated units. It is important to note that the Cold Shell building design will not preclude mitigations to emmissions during Operations phase.

5. Covered Elsewhere in SCA-MMRP – Several comments address items covered elsewhere in the SCA-MMRP, not specifically a part of Air Quality conditions.

Specific Responses:

1. West Oakland Environmental Indicators Project (WOEIP) Comments:

Comment 1: Nothing about solar
Response: Solar (rooftop or carport) is not a project requirement. We do note that the rooftop is solar-ready - if an energy off-taker is determined in the future, the roof structure has been designed to take an ancillary load of 3 to 5 psf and could be added on.

Comment 2: Shuttle Services do not bring cars into West Oakland
Response: See global response #3 - future Air Quality Operations Plan.

Comment 3: No traffic study cars or trucks
Response: See global response #1 – EIR Update.

Comment 4: There's not an emission reduction plan
Response: See global response #3 - future Air Quality Operations Plan.

Comment 5: EIR is over ten years old
Response: See global response #1 – EIR Update.

Comment 6: No zero emission plan or new technology
Response: See global response #3 - future Air Quality Operations Plan.

Comment 7: No Green Infrastructure
Response: See global response #2 – sustainable design.

Comment 8: No use of electric truck for local freight transportation
Response: See global response #3 - future Air Quality Operations Plan.

Comment 9: No spraying of water from an enclosed fence during construction.
Response: Water must be used during construction to keep dust down. All water used will be contained onsite, behind the fence.

Comment 10: No hours of operations
Response: See global response #4. Standard hours of operations are per SCA NOI-1, Mon – Sat, 7am to 7pm, other hours with prior approval by the City. See CMP, Section 7a.

Comment 11: Nothing in the plan about greenhouse gases reduction.
Response: See global response #4. Not a part of Air Quality. See SCA GCC-1, Greenhouse Gas Reduction. Timing is at Certificate of Occupancy, not prior to permits.

Comment 12: The item on the warehouse is not subject to Planning Commission.
Response: Confirmed, staff approves conformance with Project Design Guidelines.

Comment 13: We don't if there will be indoor air filtration for workers.

Response: Project will comply with mandatory LEED Indoor Environmental Quality Prerequisite #1 – Minimum IAQ performance.

Comment 14: There nothing about recycling and no waste added to the project.
Response: Not a part of Air Quality. See SCA UTL-2, CMP Section 10.

2. Ditching Dirty Diesel Asterick #5 – Charging Stations and Sustainable Freight Policy:

* **This Prologis project includes 55 Trucks, 78 trailer parking stalls, 171 parking stalls and only 2 electric charging stations (for passenger vehicles only we believe).**

There is no mention of utility design , planning , and infrastructure for future Heavy Duty charging stations , forklifts, and cargo handling equipment. It would be very helpful to have ARB provide aggressive guidance here in accordance with its Sustainable Freight Policy. If this policy is to be "Transformative" as the governor has declared it must seriously weigh in on projects such as this in a comprehensive manner. If the current plans do not account for the future energy needs of zero emission HD trucks it will probably be prohibitively expensive to install these needed technologies later.

Response: EV chargers are for passenger vehicle charging only and are provided voluntarily by Prologis. Forklift charging stations are typically provided with tenant improvements as their location is critical to a user's operations. As we understand it, the Sustainable Freight Action Plan is in the implementation phase, with proposed pilot projects already in motion. By virtue of geography, the Project is located within close proximity to intermodal, first-mile, last-mile,and transportation infrastructure of the freight supply chain, which are all goals of the Sustainable Freight Action Plan.

3. ACPH Diesel Emissions Bullet Point #5 – Truck Plug-in Capability

- Another way to minimize idling, particularly for highly polluting refrigerated truck units (so this might be an operations measure), is utilizing truck plug-in capability. If it is feasible, it would be great to include this into the Plan as a pollution reduction measure.

Response: If Prologis leases to a tenant that has refrigerated storage space, it is standard practice to install charging outlets at dock doors designated for cold deliveries. Tenant is not known at this time so this item is still to be determined, but it is commonly part of Tenant Improvements. As we develop the Air Quality Operations Plan, we will work with the City to incorporate appropriate operations requirements regarding charging outlets at dock doors, which would be enforced via TI Guidelines within the Tenant's lease.

4. BAAQMD Attachment re: SCA-AIR-1 – Dust Monitoring

The Northeast Gateway Construction Management Plan submitted to comply with SCA-AIR-1 includes all the construction related mitigation measures listed in SCA-AIR-2, but does not provide the specificity needed to "explain how the project applicant will comply". There are a number of measures that provide an "option" for compliance; in these instances, Air District staff recommends that the applicant identify the criteria for choosing one option over another and identify the process for making that decision. For example, measure (a) requires the Project to increase dust control watering when wind speeds exceed 15 miles per hour; and measure (k) requires soil moisture to be maintained at a minimum of 12 percent; and measure (l) requires all excavation, grading, and demolition activities to be suspended when wind speeds exceed 20 miles per hour. The Plan should identify specifically how wind speeds and soil moisture will be monitored and who is required to maintain compliance logs.

Response: The contractor monitoring process will include: 1) Checking weather reports daily prior to starting construction activity to prepare for wind speeds as necessary. 2) Monitoring weather and dust as day progresses by setting up an anemometer wind speed sensor and checking periodically. 3) Increasing dust control watering as wind speeds increase to maintain minimum 12% moisture content, or to a point at which the earth becomes tacky. See CMP, Section 2, Dust Mitigation Control Plan.

5. BAAQMD Attachment re: measure (u) – CARB verification

Measure (u) requires all equipment used on the construction site and subject to Title 13, Section 2449 of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations") to meet emissions requirements one year in advance of any fleet deadlines. To comply, the proposed Plan indicates that "The project applicant shall provide written documentation that fleet requirements have been met." It is not clear who the written documentation will be submitted to and who will ensure that the appropriate equipment is used at the construction site. Air District staff recommends that this and all projects at the Oakland Army Base submit off-road registration documents approved by the Air Resources Board to determine a fleet's compliance with this requirement. In addition, Air District staff also recommends that only Tier 4 off-road engines be used at the OAB, and if Tier 4 off-road engines are not available for a particular use, then Tier 3 off-road engines be used.

Response: See CMP Section 2, Emission Control Mitigation Plan, part e:
All contractors will be bound by contract to comply with the requirements of CCR Title 13, Section 2449. All written documentation that fleet requirements have been met will be submitted to the City of Oakland for record.
See CMP Section 2, Emission Control Mitigation Plan, part h:
All contractors will be encouraged to use Tier 4 off-road engines for all equipment brought to the site if available. At a minimum, required to use Tier 3 off-road engines for all equipment brought on-site. Contractors shall provide documentation from CARBS DOORS website with fleet summary. Compliance officer to use this documentation to verify equipment meets either Tier 4 orTier 3 requirement.

6. BAAQMD Attachment re: measure (v) – Low VOC Coatings

Measure (v) requires the use of low VOC "coatings beyond local requirements (i.e., BAAQMD Regulation 8, Rule 3: Architectural Coatings)." Air District staff recommends that the Plan identify what the current regulations require and demonstrate how the Project will reduce VOC emissions beyond these requirements.

Response: All coatings will meet VOC Content requirements specified in the attached Project Specification – See Attachment A. This specification meets or exceeds the limits per BAAQMD Regulation 8, Rule 3.

7. ARB Construction Related Recommendations ("CRR's") #1 – CARB verification

1) **Define "late model" under Emission Control Mitigation Plan, protocol "a". We suggest requiring all medium-heavy and heavy-heavy duty trucks, including any alternative fuel vehicles, meet or exceed 2010 emission standards. In addition, consider clarifying the parameters of this measure by requiring all off-road vehicles and equipment meet Tier 4 engine standards. If Tier 4 is not available, the off-road equipment should meet Tier 3 engine standards. Also, consider requiring each contracted fleet to provide an ARB Certificate of Compliance to the onsite Project Compliance Manager prior to commencing operations.**

Response: See CMP Section 2, Emission Control Mitigation Plan, part a & h:
All Contractors will be required to use minimum Tier 3 off-road engines for all equipment brought on-site. Contractors shall provide documentation from CARBS DOORS(Diesel Off-road Online Reporting System) website with their fleet summary. Compliance officer to use this documentation to verify equipment meets Tier 4 or Tier 3 requirement.

8. ARB CRR's #2 – Low Emmission Fuel

Clarify the intention of "low-emission diesel fuel" in the Emission Control Mitigation Plan, protocol "a". This type of fuel is already standard in California; therefore, it is unclear what additional control this measure is offering. As written, this protocol also seems to limit equipment onsite to diesel power. Please consider editing to allow for the flexibility to use zero and near-zero emission equipment as well.

Response: See CMP Section 2, Emission Control Mitigation Plan, part a - d:
Fuel being used will be compliant with California standards and consistent with regulatory requirements for ULSD (Ultra Low Sulfur Diesel). Contractors shall use late model (defined as Tier 4 or Tier 3 heavy-duty diesel-powered equipment, as well as zero and near-zero emission equipment to the extent that it is readily available in the San Francisco Bay Area. Electric boom lifts, scissors lifts, and small tools will be utilized to the extent feasible.

9. ARB CRR's #3 – Alternative Fuel Equipment

Define "alternative fuel construction equipment" under Emission Control Mitigation Plan protocol "b". Without specifying equipment type, it is difficult to determine if this protocol provides appropriate mitigation. We recommend requiring the use of electric construction tools or amending the Plan to identify a target for the minimum amount of electric power tools that will be used onsite, explaining how this measure will be enforced, and clarifying for the public how the target was derived. In addition, we suggest requiring all off-road vehicles and

Response: See CMP Section 2, Emission Control Mitigation Plan, part e:
Temporary electric service from existing infrastructure will be provided on the job-site for contractors to use for small tools and equipment.

10. ARB CRR's #4 – measure (f) response

In addition to monitoring and facilitating implementation of the mitigation measures, the Project Compliance Manager should also ensure compliance with mitigation measures and the Plan. Specify that the Project Compliance Manager will refer any non-compliant fleets to the Bay Area Air Quality Management District for investigation or potential penalties.

Response: See CMP Section 2, Emission Control Mitigation Plan, part f:
The Project Compliance Manager (Randy Knaus) will monitor and facilitate the implementation of mitigation measures. Any off-road equipment that exhibits conditions outside of the manufacturer's specifications, or emits excessive visible smoke, shall be prohibited from operating on-site. All contractors will be subject to this provision and will maintain Inspection Logs daily throughout the project. In addition,the Compliance Manager will complete ARB courses for Visible Emissions Evaluation to enhance ability to ensure equipment is in compliance.

Please note that not every comment was individually addressed in the specific comments section as the responses may have been redundant to other specific responses or covered by one of the global responses.

If you have any questions or comments regarding the responses to the stakeholder review comments, please do not hesitate to contact me.

Sincerely,

Cory Chung
Development Manager

Cc: John Monetta, City of Oakland
Bill Quesada, City of Oakland
Jeff Major, Prologis
Janet Frentzel, Prologis
Jakub Swander, Whiting-Turner
Adam Smith, Whiting-Turner
Steve Rodriguez, Whiting-Turner

Encl: Attachment A – Painting Specification for Low VOC Content Applications
Attachment B – Construction Management Plan, Rev. 3 – August 30, 2016

PROLOGIS®

SECTION 099123

INTERIOR PAINTING

SUMMARY

A. **Section Includes**: Surface preparation and the application of paint systems on interior substrates as scheduled at the end of the section.

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

A. Drawings and general provisions of the Contract, including General Conditions, and other Division 01 Sections, apply to this Section.

1.2 LEED REQUIREMENTS

A. VOC Content: For field applications that are inside the weatherproofing system, paints and coatings shall comply with VOC content limits of authorities having jurisdiction and the following VOC content limits:

1. Flat Paints and Coatings: 50 g/L.
2. Nonflat Paints and Coatings: 150 g/L.
3. Dry-Fog Coatings: 400 g/L.
4. Primers, Sealers, and Undercoaters: 200 g/L.
5. Anticorrosive and Antirust Paints Applied to Ferrous Metals: 250 g/L.
6. Zinc-Rich Industrial Maintenance Primers: 340 g/L.
7. Pretreatment Wash Primers: 420 g/L.
8. Shellacs, Clear: 730 g/L.
9. Shellacs, Pigmented: 550 g/L.

1.3 LEED SUBMITTALS

A. Product Data: For paints and coatings, indicating VOC content.

1.1 ACTION SUBMITTALS

A. Product Data: **For each type of product**. Include preparation requirements and application instructions.

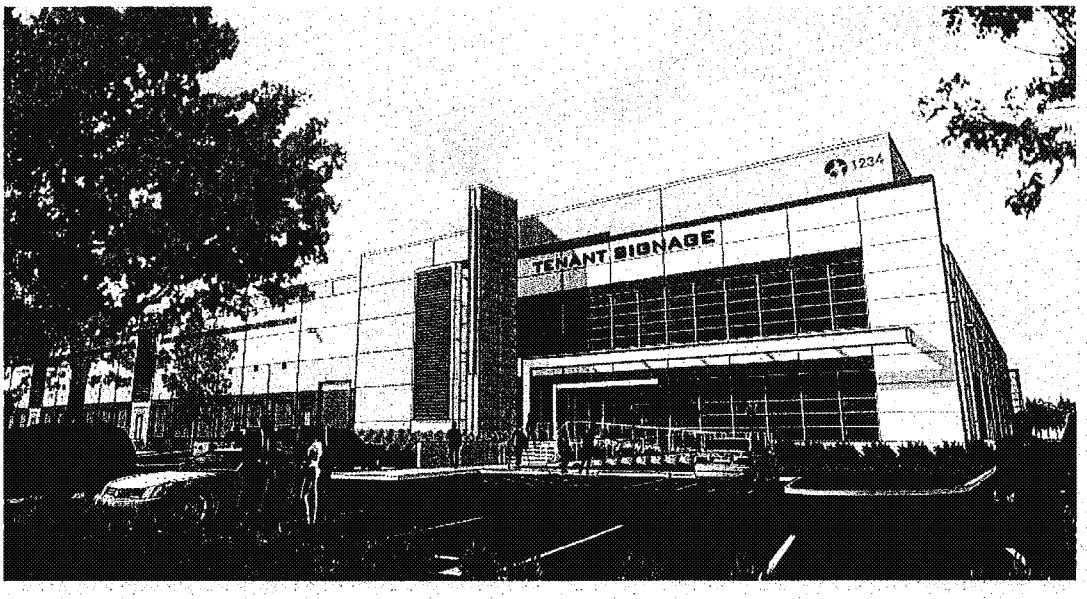
B. **Samples for Verification**: For each type of paint system and in each color and gloss of topcoat.

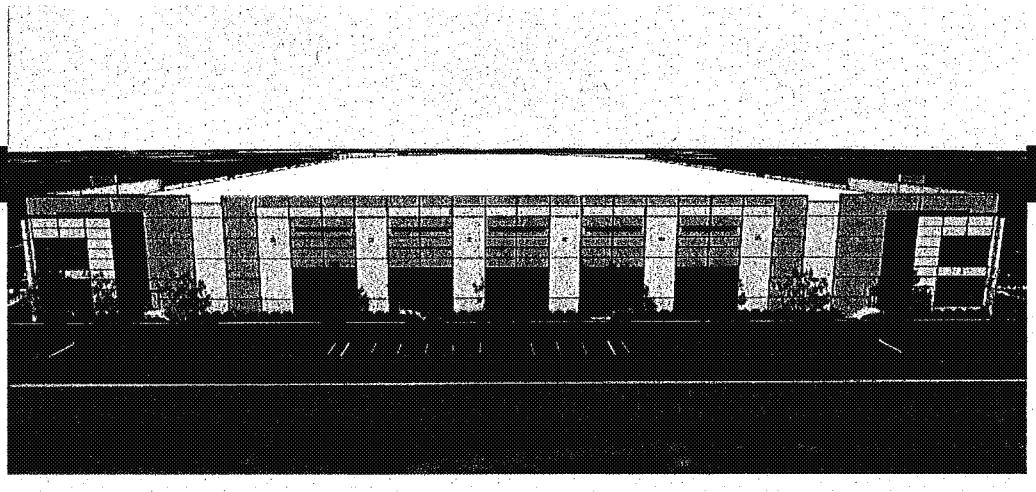
1. Submit Samples on rigid backing, 8 inches square.

C. **Product List**: Include color designations.

NORTHEAST GATEWAY
CONSTRUCTION MANAGEMENT PLAN

Original: April 15th, 2016
Rev #1: July 18th, 2016
Rev #2: July 27th, 2016
Rev #3: August 30th, 2016





THE WHITING-TURNER CONTRACTING COMPANY
4690 Chabot Drive, Suite 120
Pleasanton, California 94588

STEVE RODRIGUEZ
Assistant Project Manager
Office: 925-271-6020
Mobile: 925-351-4622

PROLOGIS

WHITING-TURNER

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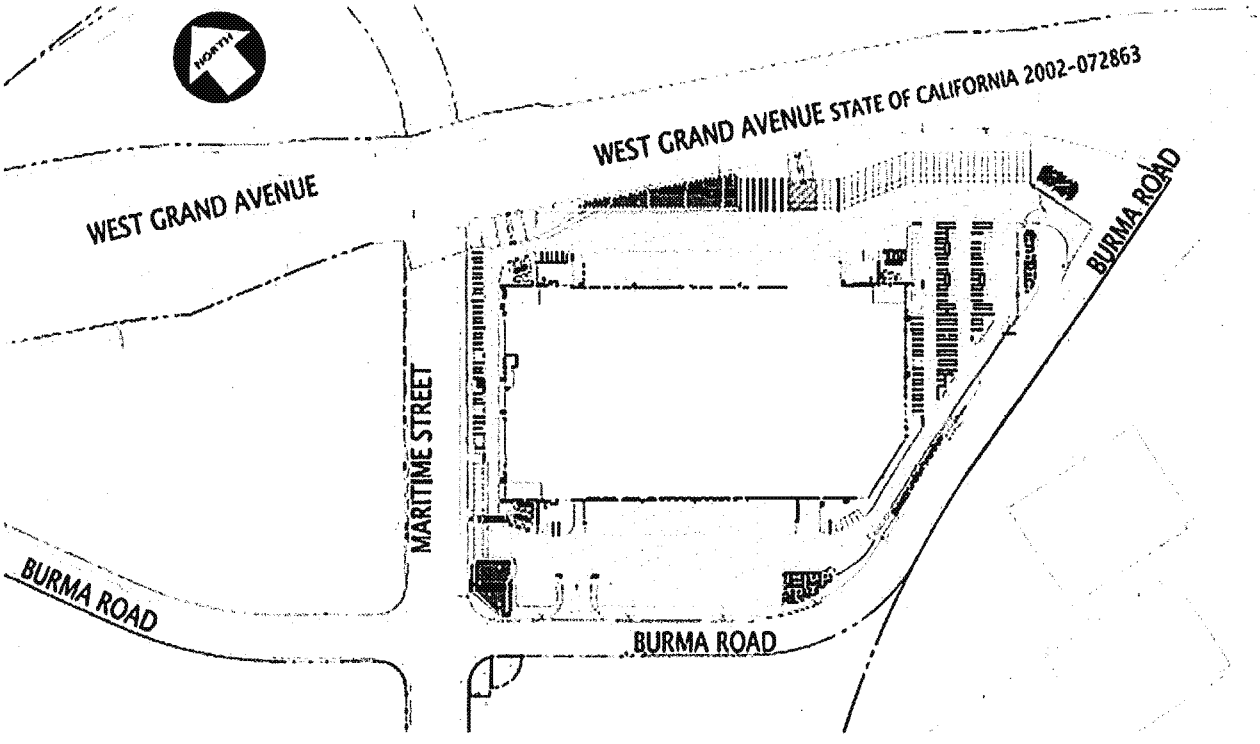
PROLOGIS WT Wathen Tanner

1. Project Overview and General Information



On the Northeast Gateway site Prologis will construct a new 256,000 sf warehouse on a site covering approximately 702,000sf bordered by Maritime Street, Burma Road and West Grand Ave. The project site improvements will include new underground utilities, landscaping, concrete and ac paving and bio-swales. The new warehouse building will include 55 truck docks, 78 trailer parking stalls, 171 auto parking stalls and two electric vehicle charging stations.

SCA-AIR-2 Construction Related Air Pollution Controls

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading and/or construction.

Requirements:

During Construction, the project applicant shall require the construction contractor to implement all of the following applicable measures recommended by the Bay Area Air Quality Management District (BAAQMD):

a. Water all exposed surfaces of active construction areas at least twice daily (using reclaimed water if possible). Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.

b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).

c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

d. Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.

e. Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).

f. Requirement: Limit vehicle speeds on unpaved roads to 15 miles per hour.

g. Idling times on all diesel-fueled commercial vehicles over 10,000 lbs. shall be minimized either by shutting equipment off when not is use or reducing the maximum idling time to five minutes (as required by Title 13, Section 2485, of the California Code of Regulations. Clear signage to this effect shall be provided for construction workers at all access points.

h. Idling times on all diesel-fueled off-road vehicles over 25 horsepower shall be shall be minimized either by shutting equipment off when not is use or reducing the maximum idling time to five minutes and fleet operators must develop a written idling policy (as required by Title 13, Section 2449 of the California Code of Regulations.)

i. All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.

j. Post a publicly visible sign that includes the contractor's name and telephone number to contact regarding dust complaints. When contacted, the contractor shall respond and take corrective action within 48 hours. The telephone numbers of contacts at the City and the BAAQMD shall also be visible. This information may be posted on other required on-site signage.

k. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.

l. All excavation, grading, and demolition activities shall be suspended when average wind speeds exceed 20 mph.

m. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

n. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for one month or more).

o. Designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress.

p. Install appropriate wind breaks (e.g., trees, fences) on the windward side(s) of actively disturbed areas of the construction site to minimize wind blown dust. Wind breaks must have a maximum 50 percent air porosity.

q. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.

r. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.

s. All trucks and equipment, including tires, shall be washed off prior to leaving the site. Tire washing station will be included at each construction entrance. Water will be contained on-site and reused where possible.

t. Site accesses to a distance of 50 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel over filter fabric.

u. All equipment to be used on the construction site and subject to the requirements of Title 13, Section 2449 of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations") must meet Emissions and Performance Requirements one year in advance of any fleet deadlines. The project applicant shall provide written documentation that the fleet requirements have been met.

v. Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., BAAQMD Regulation 8, Rule 3: Architectural Coatings).

Dust Control Mitigation Plan:

The Erosion Control Plan (Exhibit B) was submitted to the City as part of the 02/08/2016 Issue for Permit Drawings. In addition to the dust control measures included in The Erosion Control Plan the following items will be implemented to control dust -

a. Use water trucks to water exposed surfaces during construction activities at least twice daily or more frequently if winds exceed 15 mph. Suspend excavation, grading, and demolition activities when average wind speed exceeds 20 mph. Maintain minimum soil moisture of 12% as indicated by laboratory samples or a moisture meter. Use reclaimed water for dust mitigation whenever feasible. Monitoring process will include:

1) Checking weather reports daily prior to starting construction activity to prepare for wind speeds as necessary.
2) Monitoring weather and dust as day progresses by setting up an anemometer wind speed sensor and checking periodically.
3) Increasing dust control watering as wind speeds increase to maintain minimum 12% moisture content, or to a point at which the earth becomes tacky.

b. Cover truck loads with tarpaulins or keep loads 2 feet below the sideboard of the truck bed to eliminate wind contact with soil or other loaded materials.

c. Require all operators tracking dirt/mud onto public roadways to have a wet power vacuum sweeper present daily during these activities and remove tracked dirt/mud at the end of each day or more frequently if needed.

d. Install construction area entrances at all ingress and egress sites to ensure dirt is kept off of public roads. Construction area entrances will be built using fabric and 3x5 rock to facilitate tire soil removal prior to leaving the site (or as defined by the guidelines in the Best Management Practice Handbook). Ingress/egress sites will also provide dry brushing of loose soil from tires and fenders.

e. As soon as practical and prior to rainy season, cover all access roads and/or permanent roads and building pads with aggregate or asphalt concrete to mitigate tracking of dirt and/or mud offsite.

f. Cover all inactive soil material stockpiles with plastic sheeting or non-toxic soil binders. Water all active stockpiles to maintain 12% moisture.

g. Install fencing with attached windscreen fabric on the windward side of the actively disturbed area of the construction site.

h. Replant vegetation in disturbed areas as quickly as possible.

i. Limit simultaneous occurrence of excavation, grading, and ground disturbance activities on the same area at any one time when feasible.

j. Draft and implement a Project SWPPP. The onsite QSP (Randy Knaus) will monitor runoff before, during, and after rain events. Deficiencies will be logged and corrected immediately. Inactive construction areas will be properly addressed with BMPs to eliminate erosion. Required BMPs will be outlined in the SWPPP and enforced with reporting and inspection.

k. Post signage and enforce 15 mph speed limit requirement for unpaved roads (Exhibit G).

l. Post signage and enforce dust complaint reporting requirement (Exhibit H). Take corrective action to remedy complaints within no more than 48 hours after receiving the complaint.

m. The Project Dust Compliance Manager (Randy Knaus) will monitor and facilitate the implementation of mitigation measures. The Contractor will maintain Daily Inspection Logs throughout the Project.

n. Limit inactive construction areas (previously graded areas inactive for one month or more) by installing planting, finished hardscape, and paving as soon as possible.

o. Designate Randy Knaus (WT Superintendent) as the person to monitor the dust control program and to order increased watering, as necessary.

p. Install fencing with attached windscreen fabric on the windward side of the actively disturbed area of the construction site.

q. Replant vegetation in disturbed areas as quickly as possible.

r. Limit simultaneous occurrence of excavation, grading, and ground disturbance activities on the same area at any one time when feasible.

s. Tire washing station will be included at each construction entrance and all equipment, including tires will be washed off prior to leaving the site.

t. Install construction area entrances at all ingress and egress sites to ensure dirt is kept off of public roads. Construction area entrances will be built using fabric and 3x5 rock to facilitate tire soil removal prior to leaving the site (or as defined by the guidelines in the Best Management Practice Handbook). Ingress/ egress sites will also provide dry brushing of loose soil from tires and fenders

u. All contractors will be bound by contract to comply with the requirements of CCR Title 13, Section 2449. All written documentation that fleet requirements have been met will be submitted to the City of Oakland for record.

v. Install coatings meeting VOC content requirements specified in Project Specification.

Emission Control Mitigation Plan:

To reduce emissions generated by equipment operating onsite the following protocols will be implemented –

Equipment and Fuel Requirements

a. All contractors will be encouraged to use Tier 4 off-road engines for all equipment brought to the site, as available. At a minimum, contractors will be required to use Tier 3 off-road engines for all equipment brought on-site. All contractors will be encouraged to use post 2010 model water trucks, as available. Contractors shall provide Reporting and Labeling documentation required and enforced by CARB. In addition, each contractor shall submit specific list of equipment being proposed for this project site. Compliance officer to use this documentation to verify equipment meets requirement meets either Tier 4 or Tier 3 engine requirement.

b. Fuel being used will be compliant with California standards and consistent with regulatory requirements for Ultra Low Sulfur Diesel (USLD). Use late model (defined as Tier 4, manufactured post 2008, or Tier 3, manufactured post 2006) heavy-duty diesel-powered equipment, as well as zero and near-zero emission equipment at the Project Site to the extent that it is readily available in the San Francisco Bay Area.

c. Utilize alternative fuel construction equipment (i.e., compressed natural gas, liquid petroleum gas, and unleaded gasoline) to the extent that the equipment is readily available and cost effective in the San Francisco Bay Area.

d. Electric boom lifts, scissor lifts, and small tools will be utilized to the extent feasible. Use low-emission diesel fuel for all heavy-duty diesel-powered equipment.

e. Rely on the electricity infrastructure surrounding the construction sites rather than electrical generators powered by internal combustion engines to the extent feasible. Temporary electric service from existing infrastructure will be provided on the job-site for contractors to use for small tools and equipment.

f. Keep all construction equipment properly tuned by a certified mechanic in accordance with the manufacturer's specifications. Operators will provide the Contractor with written documentation of equipment maintenance for all equipment to be used onsite.

g. All contractors will be bound by contract to comply with the requirements of CCR Title 13, Section 2449 (CARB Off-Road Diesel Regulations). All written documentation that fleet requirements for equipment to be used onsite have been met will be submitted to the City of Oakland for record.

h. The CARB Off-Road Diesel Vehicle Regulations will be enforced on this project using the requirements currently in effect and enforced by CARB. All emission standards and related requirements set forth in the CARB Regulations apply on the schedules set forth in the Regulations.
https://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm

The requirements outlined below are currently in effect and being enforced by CARB:

Idling

Equipment operators must limit their unnecessary idling to 5 minutes. There are exceptions for vehicles that need to idle to perform work (such as a crane providing hydraulic power to the boom), vehicles being serviced, or in a queue waiting for work. See Exhibit J for signage describing the Project Idling Policy.

Disclosure, Reporting and Labeling

Sellers of any equipment to be used on the Project must provide disclosure of the Off-Road regulation (exact language provided in the regulation) on the bill of sale or invoice, and must keep records that the disclosure was provided for three years after the sale. The seller must also report the vehicle sale to CARB via DOORS within 30 days of the sale.

Reporting can be completed using DOORS (Diesel Off-road online Reporting System), which is CARB's free online reporting tool for the Off-Road regulation. Additionally, hard copy reporting forms may be submitted. All equipment providers must review and update their information by March 1 of each year that annual reporting is required. Large fleets (fleet size > 5,000 HP) must report annually from 2012 to 2023, medium fleets from 2016 to 2023, and small fleets (fleet size < 2,500 HP) from 2018 to 2028. For each annual reporting date, a fleet must report any changes to the fleet, hour meter readings (for low-use vehicles and vehicles used a majority of the time, but not solely, for agricultural operations), and also must submit the Responsible Official Affirmation of Reporting (ROAR) form. All of these items should be submitted using DOORS. In the event that a fleet cannot, or does not want to meet the fleet average emissions target in a given year, it may instead choose to comply with the BACT (Best Available Control Technology) requirements, which requires installation of VDECS (Verified Diesel Emission Control Strategies), ie. exhaust retrofits, on a certain percentage of their fleet.

All fleet equipment used onsite shall be properly labeled. After a fleet reports their vehicles to CARB, each vehicle is assigned a unique Equipment Identification Number (EIN). The fleet must label its vehicles within

30 days of receiving EINs. Labeling provisions of the Off-Road regulation were amended in December 2010 to require labels on both sides of each vehicle. Additionally, fleets reported as 'captive attainment area fleets' must have labels with a green background instead of red.

Restrictions on Adding Vehicles

The Off-Road regulation restricts fleets from adding vehicles with older tier engines. Contractors adding fleet equipment to be used on the Project shall comply with the following restrictions at a minimum of one year in advance of dates listed below.

Ban on adding Tier 0s – Effective January 1, 2014, a fleet may not add a vehicle with a Tier 0 engine to its fleet. (Note no Tier 0 engines will be permitted onsite).

Prohibition on adding Tier 1s – Also effective January 1, 2014, for large and medium fleets, and January 1 2016 for small fleets, a fleet may not add any vehicle with Tier 1 engine. The engine tier must be tier 2 or higher. (Note no Tier 1 engines will be permitted onsite).

Prohibition on adding Tier 2s – Beginning January 1, 2018, for large and medium fleets, and January 1, 2023, for small fleets, a fleet may not add a vehicle with a Tier 2 engine to its fleet. The engine tier must be Tier 3 or higher. (Note no Tier 2 engines will be permitted onsite).

Enforcement

i. Signage will be posted notifying Contractors that all equipment onsite is subject to the requirements of CCR Title 13, Section 2449 (CARB Off-Road Diesel Regulations) and must meet Emissions and Performance Requirements one year in advance of any fleet deadlines and enforced with inspection and reporting.

j. The Project Compliance Manager (Randy Knaus) will monitor and facilitate the implementation of mitigation measures. Any off-road equipment that exhibits conditions outside of the manufacturer's specifications, or emits excessive visible smoke, shall be prohibited from operating on-site. All contractors will be subject to this provision and will maintain Inspection Logs daily throughout the project. Compliance Manager will complete online ARB courses for Visible Emissions Evaluation to enhance ability to ensure fleets are in compliance with CARB Regulations.

k. Post signage limiting truck and equipment idling time to five minutes or less, in accordance with CCR Title 13, Section 2485 & 2449. (Exhibit J)

l. A program to enforce and monitor vehicle compliance will be developed to ensure that vehicles associated with the Project comply with applicable local, regional, state, and federal air quality requirements. The program will include a gate check component to control vehicle access to and from the Project site and may include a voluntary decal program (i.e., "sticker program") whereby vehicles determined to be in compliance with Project requirements will be issued an exterior decal to assist in identifying compliant vehicles.

SCA-CULT-1: Archaeological Resources

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading and/or construction.

Requirements:

Pursuant to CEQA Guidelines section 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted.

Archaeological Resource Discovery Plan:

a. Halt all activities within a 50-foot radius of discovery of prehistoric or historic subsurface cultural resources, contact a qualified archaeologist or paleontologist to review discovery, and immediately notify the City.

b. Determine avoidance measures and/or further actions in consultation with City and a qualified archaeologist or paleontologist.

SCA-CULT-3: Paleontological Resources

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading and/or construction.

Requirements:

Pursuant to Section 15064.5 of the CEQA Guidelines in the event of an unanticipated discovery of a paleontological resource during ground disturbing activities the following provisions shall be instituted:

Paleontological Resource Discovery Plan:

a. Halt all activities within a 50-foot radius of discovery of prehistoric or historic subsurface cultural resources, to review discovery, and immediately notify the City.

b. Determine avoidance measures and/or further actions in consultation with City and a qualified archaeologist or paleontologist. Basin Research Associates, Inc. Ph: 510-430-8441

SCA-CULT-2: Human Remains

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading and/or construction.

Requirements:

Pursuant to Section 15064.5 of the CEQA Guidelines in the event of an unanticipated discovery of human skeletal remains during ground disturbing activities the following provisions shall be instituted:

Human Remains Discovery Plan:

a. Halt all activities upon discovery of human skeletal remains, contact the Alameda County Coroner to review discovery, and immediately notify the City.

b. Cease all activities within a 50-foot radius of discovery if the Alameda County Coroner determines that the remains are Native American, until appropriate arrangements are made.

SCA-GEO-1: Erosion & Sedimentation Plan

Prior to issuance of a demolition, grading, or building permit; and ongoing throughout demolition, grading, and/or construction:

Requirements:

The project applicant shall obtain a grading permit if required by the Oakland Grading Regulations pursuant to Section 15.04.660 of the Oakland Municipal Code. The grading permit application shall include an erosion and sedimentation control plan for review and approval by the Building Services Division. The erosion and sedimentation control plan shall include all necessary measures to be taken to prevent excessive storm water runoff or carrying by storm water runoff of solid materials on to lands of adjacent property owners, public streets, or to creeks as a result of conditions created by grading operations. The plan shall include, but not be limited to, such measures as short-term erosion control planting, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, devices to trap, store and filter out sediment, and storm water retention basins. Off-site work by the project applicant may be necessary. The project applicant shall obtain permission or easements necessary for off-site work. There shall be a clear notation that the plan is subject to changes as changing conditions occur. Calculations of anticipated storm water runoff and sediment volumes shall be included, if required by the Director of Development or designee. The plan shall specify that, after construction is complete, the project applicant shall ensure that the storm drain system shall be inspected and that the project applicant shall clear the system of any debris or sediment.

Erosion and Sediment Control Action:

An Erosion Control Plan (Exhibit B) was submitted to the Oakland Building Services Department as required for a grading permit pursuant to Section 15.04.660 of the Oakland Municipal Code. As required by code the Erosion Control Plan provides for the following:

a. Prevents excessive storm water runoff

b. Utilizes appropriate short-term erosion control methods, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, storm water retention basins, and devices to trap, store, and filter sediment.

c. The storm drain system shall be inspected to verify that the onsite system is cleared of debris and/or sediment. A copy of the survey shall be submitted to the City for review and approval.

d. Grading will be prohibited between October 15 and April 15 unless written authorization is obtained from the City Building Services Division.

SCA-HAZ-1: Best Management Practices for Soil and Groundwater Hazards

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading, and/or construction activities.

Requirements:
The project applicant shall implement all of the following Best Management Practices (BMPs) regarding potential soil and groundwater hazards:

a. Soil generated by construction activities shall be stockpiled onsite in a secure and safe manner or if designated for off-site disposal at a permitted facility, the soil shall be loaded, transported and disposed of in a safe and secure manner. All contaminated soils determined to be hazardous or non-hazardous waste must be adequately profiled (sampled) prior to acceptable reuse or disposal at an appropriate off-site facility. Specific sampling and handling and transport procedures for reuse or disposal shall be in accordance with applicable local, state and federal agencies laws, in particular, the Regional Water Quality Control Board (RWQCB) and/ or the Alameda County Department of Environmental Health (ACDEH) and policies of the City of Oakland. The excavation, on-site management, and off-site disposal of soil from Project areas within the OARB shall follow the DTSC-approved RAP/RMP.

b. Groundwater pumped from the subsurface shall be contained onsite in a secure and safe manner, prior to treatment and disposal, to ensure environmental and health issues are resolved pursuant to applicable laws and policies of the City of Oakland, the RWQCB and/or the ACDEH. The on-site management and off-site disposal of groundwater extracted from Project areas within the OARB shall follow the DTSC-approved RAP/RMP for Project areas within the OARB. Engineering controls shall be utilized, which include impermeable barriers to prohibit groundwater and vapor intrusion into the building (pursuant to the Standard Condition of Approval regarding Radon or Vapor Intrusion from Soil and Groundwater Sources.

c. Prior to issuance of any demolition, grading, or building permit, the applicant shall submit for review and approval by the City of Oakland, written verification that the appropriate federal, state or county oversight authorities, including but not limited to the RWQCB and/or the ACDEH, have granted all required clearances and confirmed that the all applicable standards, regulations and conditions for all previous contamination at the site. The applicant also shall provide evidence from the City's Fire Department, Office of Emergency Services, indicating compliance with the Standard Condition of Approval requiring a Site Review by the Fire Services Division pursuant to City Ordinance No. 12323, and compliance with the Standard Condition of Approval requiring a Phase I and/or Phase II Reports.

Hazards and Hazardous Material Mitigation Plan:

See Exhibit O for closure reports related to RMP/RAP. See Exhibit N for Fire Safety Phasing Plan.

All subcontractors shall be required by to comply with the RAP/RMP and Soils Management Plan which includes provisions for the following:

a. All soil stockpiles shall be consolidated in a safe and secure manner.

b. Soil shall be profiled prior to off-haul and disposal.

c. All soils determined to be unsuitable for reuse onsite shall be loaded, transported and disposed of in a secure and safe manner and in accordance with applicable local, state, and federal laws, regulations, and/or policies.

d. Groundwater pumped onsite shall be contained in a safe and secure manner and will only be disposed of at permitted facilities.

SCA-HAZ-2: Hazards Best Management Practices

See Exhibit O for closure reports related to RMP/RAP
Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading, and/or construction activities.

Requirements:

The project applicant and construction contractor shall ensure Best Management Practices (BMPs) are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:

a. Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction.

b. Avoid overtopping construction equipment fuel gas tanks.

c. During routine maintenance of construction equipment, properly contain and remove grease and oils.

d. Properly dispose of discarded containers of fuels and other chemicals.

e. Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all USTs, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building.

f. If soil, groundwater or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notification of regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval (and DTSC-approved RAP/RMP for Project area within the OARB), as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.

Hazards Best Management Practices Mitigation Plan:

a. During construction comply with the RAP/RMP and Soils Management Plan.

b. Prepare a Project Storm Water Pollution Prevention Plan (SWPPP) that includes site hazardous materials and waste management BMPs, proper procedures for storing and handling construction materials onsite, and cleanup measures for accidental releases.

c. Collect environmental samples if suspected contamination, abandoned drums, USTs, elevator shafts, clarifiers, or subsurface hydraulic lifts are encountered during construction, and immediately notify Mark Arniola at (510) 238-7371.

d. Prepare task-specific Health and Safety Plan for construction activities in areas with known or suspected contamination.

e. Follow recommendations provided by a qualified environmental consultant for the profiling, handling, treating, transportation, and/or disposal of any other materials classified as potentially hazardous waste.) (Farallon Consulting, LLC Ph: 510-879-6800)

SCA-HYD-1: Storm Water Pollution Prevention Plan (SWPPP)

Mitigation Implementation/Monitoring: Prior to and ongoing throughout demolition, grading, and/or construction activities.

Requirements:

The project applicant must obtain coverage under the General Construction Activity Storm Water Permit (General Construction Permit) issued by the State Water Resources Control Board (SWRCB). The project applicant must file a notice of intent (NOI) with the SWRCB. The project applicant will be required to prepare a storm water pollution prevention plan (SWPPP) and submit the plan for review and approval by the Building Services Division. At a minimum, the SWPPP shall include a description of construction materials, practices, and equipment storage and maintenance; a list of pollutants likely to contact storm water; site-specific erosion and sedimentation control practices; a list of provisions to eliminate or reduce discharge of materials to storm water; Best Management Practices (BMPs), and an inspection and monitoring program. Prior to the issuance of any construction-related permits, the project applicant shall submit to the Building Services Division a copy of the SWPPP and evidence of submittal of the NOI to the SWRCB. Implementation of the SWPPP shall start with the commencement of construction and continue through the completion of the project. After construction is completed, the project applicant shall submit a notice of termination to the SWRCB.

Storm Water Pollution Prevention Action Items:

a. Prepare a construction SWPPP signed by a Qualified SWPPP Developer (QSD).

b. File a NOI with the SWRCB.

c. Submit SWPPP to the Water Board and City for review and approval.

d. File a NOT with the SWRCB at the completion of construction.

e. On behalf of the Developer and/or its Contractor, a QSP will perform periodic inspections to confirm compliance.

SCA-NOI-1: Days/Hours of Construction Operation

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading, and/or construction activities. The project applicant shall require construction contractors to limit standard construction activities as follows:

Requirements:

The project applicant shall require construction contractors to limit standard construction activities as follows:

a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Saturday, except that barging and unloading of soil shall be allowed 24 hours per day, 7 days per week for about 15 months.

b. Any construction activity proposed to occur outside of the standard hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division. The project applicant shall also submit an air quality report prepared by a qualified professional evaluating the air quality impacts of the special activities, if the duration of each activity exceeds 6 months.

c. No construction activity shall take place on Sundays or Federal holidays, except as noted above.

d. Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

e. Applicant shall use temporary power poles instead of generators where feasible.

f. All requests to Building Services to work outside normal work days & hours require a Neighborhood Survey (Exhibit P) to be circulated at least 10-days in advance of proposed work to nearby residents and businesses within 300 feet of the job site. A draft of the Neighborhood Survey needs to be approved by Building Services prior to circulating it for community input. Results of the survey are forwarded to Building Services 2 days in advance of scheduled work, to be considered prior to granting written authorization.

Construction Work Hours Plan:

Developer and/or its Contractor will specify in the Project Plans, install signage, and perform periodic inspections, including gate checks, to confirm the following actions:

a. Construction activities will be conducted Monday through Saturday from 7:00am to 7:00 pm. (Exhibit H)

b. Sunday and holiday hours will be from 7:00 am to 4:00 pm with prior City approval.

c. Utilize temporary power poles instead of generators when feasible.

SCA-NOI-2: Noise Control & SCA-NOI-5: Operational Noise – General

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading, and/or construction activities. Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the Planning and Zoning Division and Building Services. To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to the Planning and Zoning Division and the Building Services Division review and approval, which includes the following measures:

Requirements:

Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the Planning and Zoning Division and Building Services.

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to the Planning and Zoning Division and the Building Services Division review and approval, which includes the following measures:

a. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).

b. Except as provided herein, Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.

c. Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.

d. The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

Noise Control Mitigation Plans:

Developer and/or its Contractor will specify in the Project Plans, install signage (Exhibit H), and perform periodic inspections to confirm the following actions:

a. Use BACTs for noise control on construction equipment and trucks.

b. Use hydraulically or electrically powered impact tools.

c. Use exhaust mufflers when pneumatically powered tools are imperative.

d. Locate stationary noise sources as far from receptors as possible.

e. Limit the noisiest phases of construction to periods of no more than 10 consecutive days.

f. Comply with decibel levels and other aspects of the City of Oakland Noise Ordinance.

SCA-NOI-3: Noise Complaint Procedures

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading, and/or construction activities. Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the Building Services Division a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

Requirements:

Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the Building Services Division a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

a. A procedure and phone numbers for notifying the Building Services Division staff and Oakland Police Department; (during regular construction hours and off-hours);

b. A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);

c. The designation of an on-site construction complaint and enforcement manager for the project;

d. Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities about the estimated duration of the activity; and

e. A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

Noise Complaint Mitigation Plan:

Developer and/or its Contractor will perform periodic inspections to confirm the following actions:

a. The project team will hold a pre-construction meeting with the Building Services Division staff to discuss noise control measures and to provide an opportunity for inspection and verification of noise control measures.

b. The project team will post signage with construction hours of operation and contact information for the Building Services Department, Oakland Police Department and the Contractor's noise enforcement representatives. Randy Knaus and Steve Rodriguez are the Contractor's noise enforcement representatives for this project. Randy and Steve are responsible for documenting complaints in the Noise Complaint Log and remedying complaints within 48 hours after receiving the complaint.

c. The project team will notify neighbors and occupants within 300 feet of the project site at least 30 days in advance of extreme noise generating activities.

d. All noise complaints received will be documented in the Noise Complaint Log (Exhibit I). At a minimum the following information will be documented in the log: date of complaint, contact information for person providing a noise complaint, reason for the complaint, action taken and/or resolution. Additionally, an email will be notified within 48 hours with an explanation of the corrective measures taken, if applicable. Complaint Logs (Exhibit I) will be maintained up to date and shall be submitted to the Building Services Division monthly and upon request.

SCA-NOI-6: Pile Driving and Other Extreme Noise Generators

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading, and/or construction activities.

Requirements:

To further reduce potential pier drilling, pile driving and/or other extreme noise generating construction impacts greater than 90dBA, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the Planning and Zoning Division and the Building Services Division to ensure that maximum feasible noise attenuation will be achieved. This plan shall be based on the final design of the project. A third-party peer review, paid for by the project applicant, may be required to assist the City in evaluating the feasibility and effectiveness of the noise reduction plan submitted by the project applicant. The criterion for approving the plan shall be a determination that maximum feasible noise attenuation will be achieved. A special inspection deposit is required to ensure compliance with the noise reduction plan. The amount of the deposit shall be determined by the Building Official, and the deposit shall be submitted by the project applicant concurrent with submittal of the noise reduction plan. The noise reduction plan shall include, but not be limited to, an evaluation of implementing the following measures. These attenuation measures shall include as many of the following control strategies as applicable to the site and construction activity:

a. Erect temporary plywood noise barriers around the construction site, particularly along on sites adjacent to residential buildings.

b. Implement "quiet" pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions.

c. Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site.

d. Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example and implement such measure if such measures are feasible and would noticeably reduce noise impacts.

e. Monitor the effectiveness of noise attenuation measures by taking noise measurements.

Extreme Noise Generator Mitigation Plan:

Developer, its Contractor, and/or its consultant will:

a. In the event of a noise complaint, will contract with a qualified acoustical engineer to access construction noise levels at City approved monitoring locations, in order to verify compliance with Oakland Noise Regulations related to construction. The consultant will produce a site-specific noise reduction plan with recommended noise control measures for review and approval by Building Services, and the project sponsors will apply all prescribed noise reduction measures in this plan.

b. Developer and/or its Contractor will perform periodic inspections to confirm compliance.

c. Hire qualified noise consultant for initial noise assessment and provide written letter with findings. See Exhibit R – Noise Consultant Review Letter.

SCA-PSU-2: Fire Safety Phasing Plan – Mitigation 4.9-3

Mitigation Implementation/Monitoring: Prior to issuance of a demolition, grading, and/or construction and concurrent with any p-job submittal permit.

Requirments:

The Port and City shall require developers within their respective jurisdictions to notify OES of their plans in advance of construction or remediation activities. Each developer proposing construction in the redevelopment project area would be required to notify OES prior to initiation of construction, so that OES may plan emergency access and egress taking into consideration possible conflicts or interference during the construction phase. The developer would also be required to notify OES once construction is complete.

Fire Safety Phasing Plan:

The Developer or its Contractor will:

a. Notify California Emergency Management Agency (CalEMA, formerly OES) prior to and at the completion of construction.

b. Submit a separate fire safety phasing plan (Exhibit N) to the Planning and Zoning Division and Fire Services Division for their review and approval. The fire safety plan shall include all of the fire safety features incorporated into the project and the schedule for implementation of the features.

SCA-TRANS-2: Construction Traffic and Parking

Mitigation Implementation/Monitoring: Prior to the issuance of a demolition, grading or building permit; and on-going throughout demolition, grading, and/or construction.

Requirement:

The project sponsor and construction contractor shall meet with appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project (see also SCA TRANS-1, especially "h") and other nearby projects that could be simultaneously under construction. The project sponsor shall develop a construction management plan. The plan shall be submitted to EBMUD, the Port, and Caltrans for their review and comment ten (10) business days before submittal to the City. The project sponsor shall consider in good faith such comments and revise the plan as appropriate. The revised plan shall be submitted for review and approval by the City's Planning and Zoning Division, the Building Services Division, and the Transportation Services Division. The plan shall include at least the following items and requirements:

a. A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.

b. Notification procedures for adjacent project sponsors and public safety personnel regarding when major deliveries, detours, and lane closures will occur.

c. Location of construction staging areas for materials, equipment, and vehicles at an approved location.

d. A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services.

e. Provision for accommodation of pedestrian flow.

f. Provision for parking management and spaces for all construction workers to ensure that construction workers do not park in on-street spaces (see also SCA TRANS-1, especially "h").

g. Any damage to the street caused by heavy equipment, or as a result of this construction, shall be repaired, at the applicant's expense, within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to issuance of a final inspection of the building permit. All damage that is a threat to public health or safety shall be repaired immediately. The street shall be restored to its condition prior to the new construction as established by the City Building Inspector and/or photo documentation, at the applicant's expense, before the issuance of a Certificate of Occupancy.

h. Any heavy equipment brought to the construction site shall be transported by truck, where feasible.

i. No materials or equipment shall be stored on the traveled roadway at any time.

j. Prior to construction, a portable toilet facility and a debris box shall be installed on the site, and properly maintained through project completion.

k. All equipment shall be equipped with mufflers.

l. Prior to the end of each work day during construction, the contractor or contractors shall pick up and properly dispose of all litter resulting from or related to the project, whether located on the property, within the public rights-of-way, or properties of adjacent or nearby neighbors. Specifically, to further implement SCA TRANS-2,

m. A traffic construction management analysis was performed which recommended certain improvements to the Adeline/5th and Adeline/3rd Street and Adeline Street intersection, which is discussed under construction impacts of the Traffic and Transportation section of the 2012 OARB Initial Study/Addendum. The requirement for these improvements is not applicable to Prologis's vertical project.

Construction Traffic and Parking Mitigation Plan:

The Developer, its Contractor, or its consultant will prepare a Traffic Control Plan if encroachment into the public right-of-way is required. When required, a Traffic Control Plan will be submitted to EBMUD, the Port, and CalTrans for review and comment no less than 10 days prior to submittal to the City. Incorporate comments and revise plan as appropriate.

a. Submit the Traffic Control Plan to the City for review and approval prior to undertaking any project construction that affects pedestrian or vehicular circulation in the public right-of-way.

b. Schedule major truck trips and deliveries to avoid peak traffic hours.

c. Designate construction access routes, construction staging areas, remediation staging areas, construction and visitor parking areas, and pedestrian walkways. Delineate these areas on Project plans. (Exhibit D & F) All truck traffic involving vehicles over 2 tons are restricted to pre-approved truck route. This will be a contractual requirement. In addition, this requirement will be communicated at the each subcontractor preconstruction meeting and weekly subcontractor meetings

d. Notify adjacent property owners and occupants and public safety personnel and erect electronic message boards in advance of major deliveries, detours, and/or lane closures. (Exhibit K)

e. Survey and document existing conditions prior to construction. Repair damage to streets caused by construction equipment within one week of occurrence unless damage is anticipated to continue. Immediately repair damage that is a threat to public health or safety.

f. Transport heavy equipment to the site by truck/trailer.

g. Require all operators tracking dirt/mud onto public roadways to have a wet power vacuum sweeper present daily during these activities and remove tracked dirt/mud at the end of each day or more frequently if needed. (See Dust Control Mitigation Plan)

h. Install construction area entrances at all ingress and egress sites to ensure dirt is kept off of public roads. (See Exhibit B and Dust Control Mitigation Plan)

i. Draft and implement a Project SWPPP. Required BMPs will be outlined in the SWPPP and enforced with reporting and inspection.

j. Inspect construction area and vicinity daily, and collect and properly dispose of construction-related litter, whether located on the property, within the public rights-of-way, or adjacent properties.

k. Post signage and enforce traffic control measures with reporting and/or inspection.

l. Develop a process for receiving, responding to, and tracking complaints. (See Exhibit I)

m. The Project Compliance Manager Randy Knaus will monitor and facilitate the implementation of mitigation measures. The Compliance Manager will maintain Daily Inspection Logs throughout the Project. (See exhibit M)

n. All equipment will be equipped with mufflers to reduce pollutants and noise. Developer, its Contractor, and/ or its consultant will perform periodic inspections to confirm compliance.

o. An updated Project Truck Log (Exhibit L) will be submitted to Building Services monthly and upon request. The log will summarize all deliveries and off-hauls involving weights (truck + haul load) of 2 to 5 tons, and > 5 tons.

p. Project Truck Log (Exhibit L) and pre-and post-construction videos (Exhibit Q) will be taken to assess potential wear and tear solely due to traffic directly and specifically attributable to construction of the North East Gateway.

SCA-UTL-2: Waste Reduction and Recycling

Mitigation Implementation/Monitoring: Prior to the issuance of a demolition, grading or building permit.

Requirements:

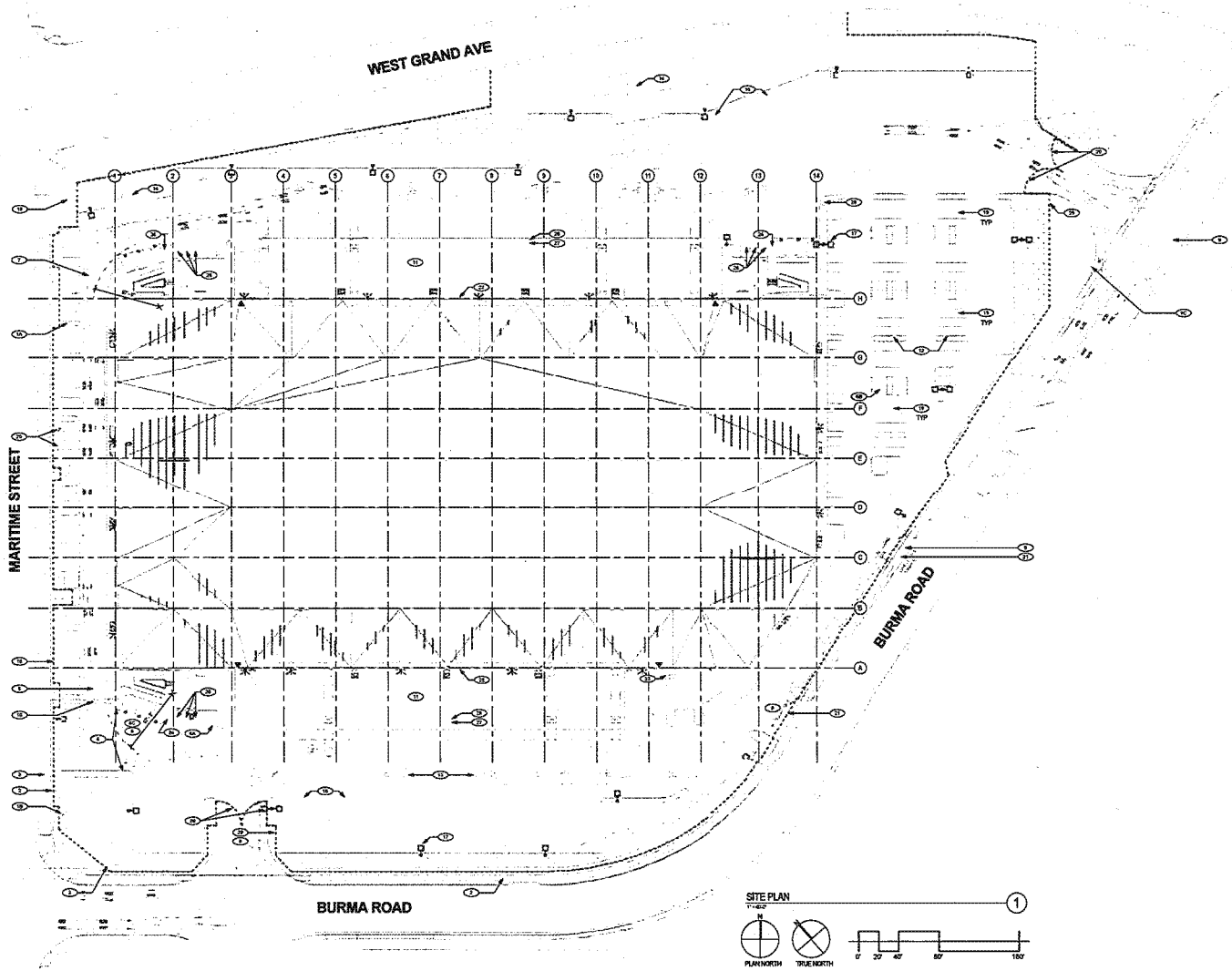
The project applicant will submit a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency. Chapter 15.34 of the Oakland Municipal Code outlines requirements for reducing waste and optimizing construction and demolition (C&D) recycling. Affected projects include all new construction, renovations/alterations/modifications with construction values of $50,000 or more (except R-3), and all demolition (including soft demo). The WRRP must specify the methods by which the development will divert C&D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at *http://www2.oaklandnet.com/Government/o/PWA/o/FE/s/GAR/OAK024368* or in the Green Building Resource Center. After approval of the plan, the project applicant shall implement the plan.

Waste Reduction and Recycling Action:

The Developer, its Contractor, or its consultant will:

a. Prepare a Waste Reduction and Recycling Plan. Submit the plan to the City for review and approval.

b. Identify and track all waste for applicability of reuse or diversion.



SITE STATISTICS

PARCEL NUMBER:	018 050701000
ZONING:	D-CE
HEIGHT - CENTRAL BUSINESS DISTRICT:	N/A
HEIGHT - COMMERCIAL CORRIDOR:	N/A
MAXIMUM BUILDING HEIGHT:	65'-0" (PER OAKLAND ZONING 17.101F.050)
MAXIMUM FLOOR AREA RATIO:	5 (PER OAKLAND ZONING 17.101F.050)
GENERAL PLAN:	BUSINESS MIX
CONDO CONVERSION IMPACT AREA:	NO
CITY COUNCIL DISTRICT:	CCD3
S26 SERVICE DISTRICT:	1
PORT OF OAKLAND JURISDICTION:	NO
LOCAL HISTORIC PROPERTY CATEGORY:	LOCAL REGISTER
LOCAL HISTORIC DISTRICT:	
OCHS RATING:	
CONSTRUCTION DATE:	
LOCAL LANDMARK:	NO
NATIONAL HISTORIC LANDMARK :	NO
HERITAGE PROPERTY:	NO
DESIGNATED HISTORIC DISTRICT:	NO
MILLS ACT	NO
WHIPSNAKE CRITICAL HABITAT:	NO
FLOOD ZONE:	NO
HAYWARD FAULT ZONE:	NO
LIQUEFACTION HAZARD ZONE:	YES, LIQUEFACTION SEVERITY 5
WILD FIRE ASSESSMENT DISTRICT:	NO
TOTAL SITE AREA =	702,071.2175 G.S.F. = 16.12 ACRES
TOTAL BLDG AREA =	258,136 G.S.F.
SITE COVERAGE =	36.76 %
TOTAL VEHICLE PARKING =	234 STALLS = .84 / 1000 S.F.
TOTAL TRAILER PARKING =	73 TRAILER STALLS (12' X 50')
PARKING STANDARDS (17.116.290)	
STANDARD PARKING STALLS	18' DEEP X 8.5' WIDE
COMPACT PARKING STALLS	15' DEEP X 7.5' WIDE (50% MAX)
PARALLEL PARKING STALLS	26.5' DEEP X 7.5' WIDE
DRIVE ISLE WIDTH (17.116.210) AT 90 DEGREE PARKING:	21 FEET MINIMUM
REQUIRED PARKING PER ZONING CODE:	
OFFICE (17.116.060 C. BUSINESS):	1 / 600 S.F.
INDUSTRIAL ACTIVITIES (17.116.090)	1 / 1500 S.F. OR 1 FOR EACH 3 EMPLOYEES (WHICHEVER IS GREATER)
REQUIRED PARKING BY USE:	
OFFICE = (8,348 S.F. @ 1/600 S.F.)	14 STALLS
WAREHOUSE = (247,787 S.F. @ 1/1500 S.F.)	165 STALLS
TOTAL PARKING REQUIRED =	179 STALLS = .70 / 1000 S.F.
TOTAL PARKING PROVIDED =	178 STALLS = .70 / 1000 S.F.

BIORETENTION AREAS

12' X 14' GRADE LEVEL SECTIONAL ROLL UP DOOR

8' X 10' DOCK LEVEL SECTIONAL ROLL UP DOOR

KEY NOTES

1A SITE SIGNAGE FOR REFERENCE ONLY - OVERALL DEVELOPMENT PYLON SIGN

1B SITE SIGNAGE FOR REFERENCE ONLY - BUILDING MONUMENT SIGN

1C SITE SIGNAGE FOR REFERENCE ONLY - CUSTOMER DIRECTORY SIGNS (2 TOTAL)

2 PROPERTY LINES TO REMAIN

3 50' WIDE MAIN BLVD (BOOMAL) AT MARITIME AND BURMA RD

4 TYPICAL 6" TALL 12" WIDE CONCRETE CURBS

5 TYPICAL 4" WIDE TRAFFIC STRIPING

6A TYPICAL PARKING - STANDARD STALLS 18'-0" DEEP MIN. 9' X 18' SHOWN THROUGHOUT

6B TYPICAL PARKING - COMPACT STALLS 15'X 7.5' MIN. (15'X 7.5' SHOWN THROUGHOUT, 50%)

6C TYPICAL PARKING - ACCESSIBLE PARKING STALLS 9'X 18' WITH 7' PARKING OVERHANG WITH 8' DRIVE AISLE AND 2' ZONE AS SHOWN

7 TYPICAL DRIVE ISLE, 25'-0" MIN. ACTUAL DIMENSIONS VERIFIED

8 PARKING AND DRIVE ISLES TO BE ASPHALTIC CONCRETE

9 PROPOSED LOCATION OF NEW SITE ACCESS DRIVE CURB CUT AT BURMA RD

10 NEW CONCRETE PEDESTRIAN WALKS 10'-0" WIDE MIN. ADA REQUIRED ALL SIDEWALKS TO BE ACCESSIBLE PATHS OF TRAVEL, SLOPE NOT EXCEED 1:20 (5%), INCREASING OF TRAVEL GRADE SLOPE NOT TO EXCEED 1:15 (2%) WHERE PARKING OVERHANG OCCURS, INCREASE WIDTH OF SIDEWALK TO 8'-0" MIN.

11 TRUCK DOCK

12 TYP LANDSCAPE PLANTER AREA

13 53M TRACTOR TRAILER TEMPLATE SHOWN FOR REFERENCE ONLY

14 DI SITE BILLBOARD LOCATION (2 TOTAL)

15 8' TALL PAINTED WROUGHT IRON FENCE, SEE SPECS

16 TYP 12' X 50' TRAILER PARKING STALL

17 SITE LIGHTING, POLE MOUNTED LIGHT FIXTURE

18 SEE CIVIL DRAWINGS FOR EASEMENT LOCATIONS AND DIMENSIONS

19 PLANNED FLEXIBLE STORAGE ZONES

20 SWINGING SECURITY GATES

21 SLIDING SECURITY GATE

22 PROPOSED BUILDING EXTERIOR WALLS TO BE SITE CAST TILT UP CONCRETE WALLS WITH REVEALS & TEXTURED SLIP STAMPING COATING AND A MULTI COLOR CONTRASTING PAINT PALETTE. EXTERIOR WALLS ARE ACCENTED WITH GLAZING, STEEL, COMPOSITE ALUMINUM PANELS AND ARCHITECTURAL METAL PANELS. SEE EXTERIOR ELEVATIONS

23 LOCATION OF BICYCLE PARKING TO ACCOMMODATE A TOTAL OF 18 BICYCLES, PER CALGREEN REQUIREMENTS

24 AREA OF ASSISTED RESCUE

25 ELECTRIC VEHICLE CHARGING STATIONS (2 TOTAL, SERVICING 4 PARKING SPOTS). PROVIDE CHARGE & STATION SIGNAGE

26 2 HIGH EFFICIENCY VEHICLE STALLS (NEW) - 8 TOTAL 8 (PROJECT GREATER THAN THE REQUIREMENT 10% OF TOTAL)

27 PROVIDE SOLUNDEAT FOUR CORNERS OF PA, CONTRACTOR TO COORD BOLLARDS TO NOT CONFLICT WITH PA

28 PARKING GARAGE, TYP, SEE CIVIL DWGS

29 PERIMETER NOISE BARRIER INTEGRATED INTO FENCE

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Stamp :

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#	Description	Date
	ISSUE FOR PERMIT	10.29.20

ISSUE : ISSUE FOR PERMIT FEB 05 2019

OAKLAND GLOBAL LOGISTICS CENTER

PHASE 1, NORTH EAST GATEWAY
OAKLAND, CALIFORNIA

PROLOGIS

3353 GATEWAY BLVD
FREMONT, CALIFORNIA
94539

TELEPHONE: 510.494.1000

Date Project No.:
DATE: 18024.00

Sheet Title:
SITE PLAN

Sheet No. :
A1.0.1

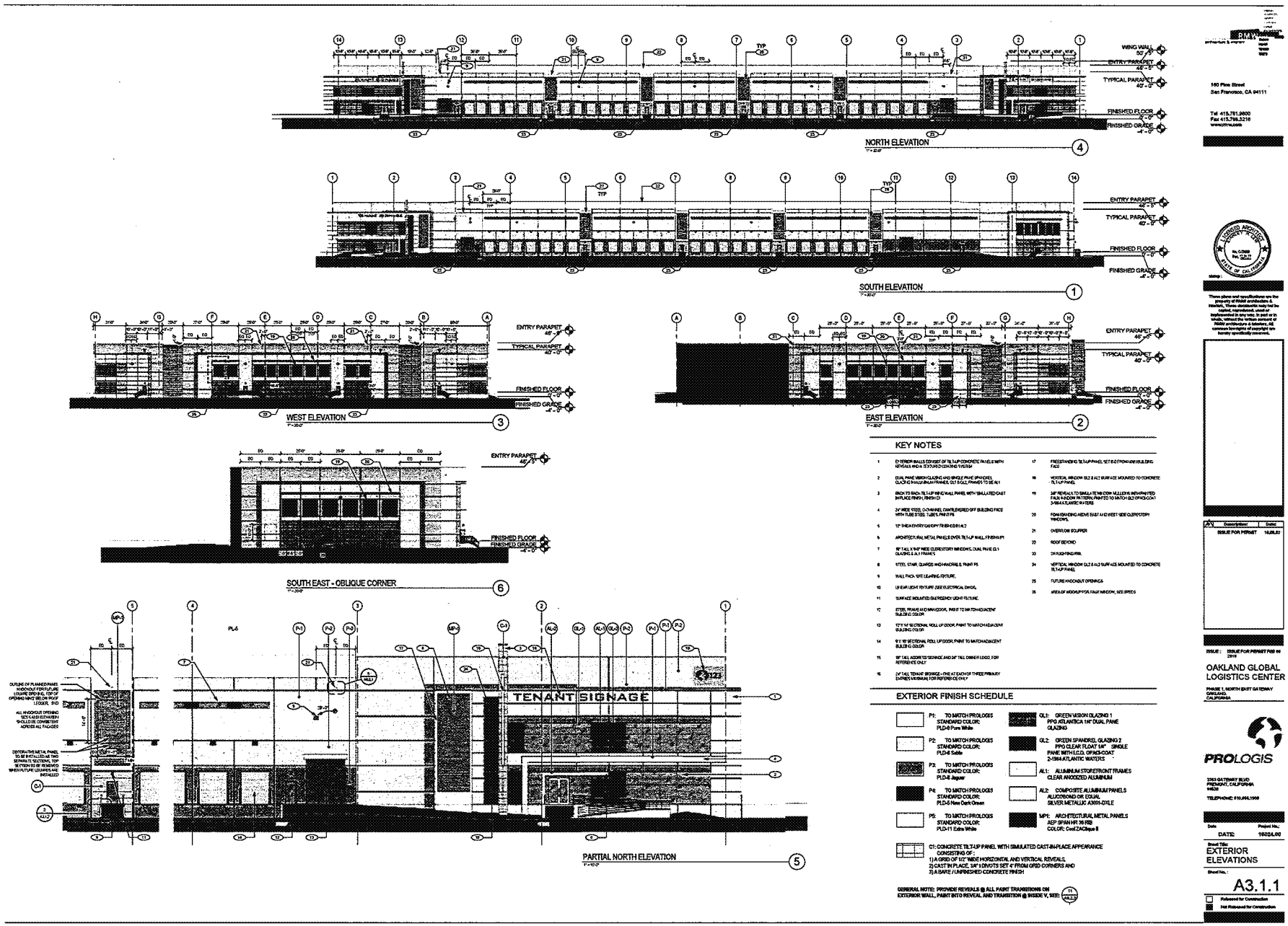
☐ Released for Construction
☑ Not Released for Construction

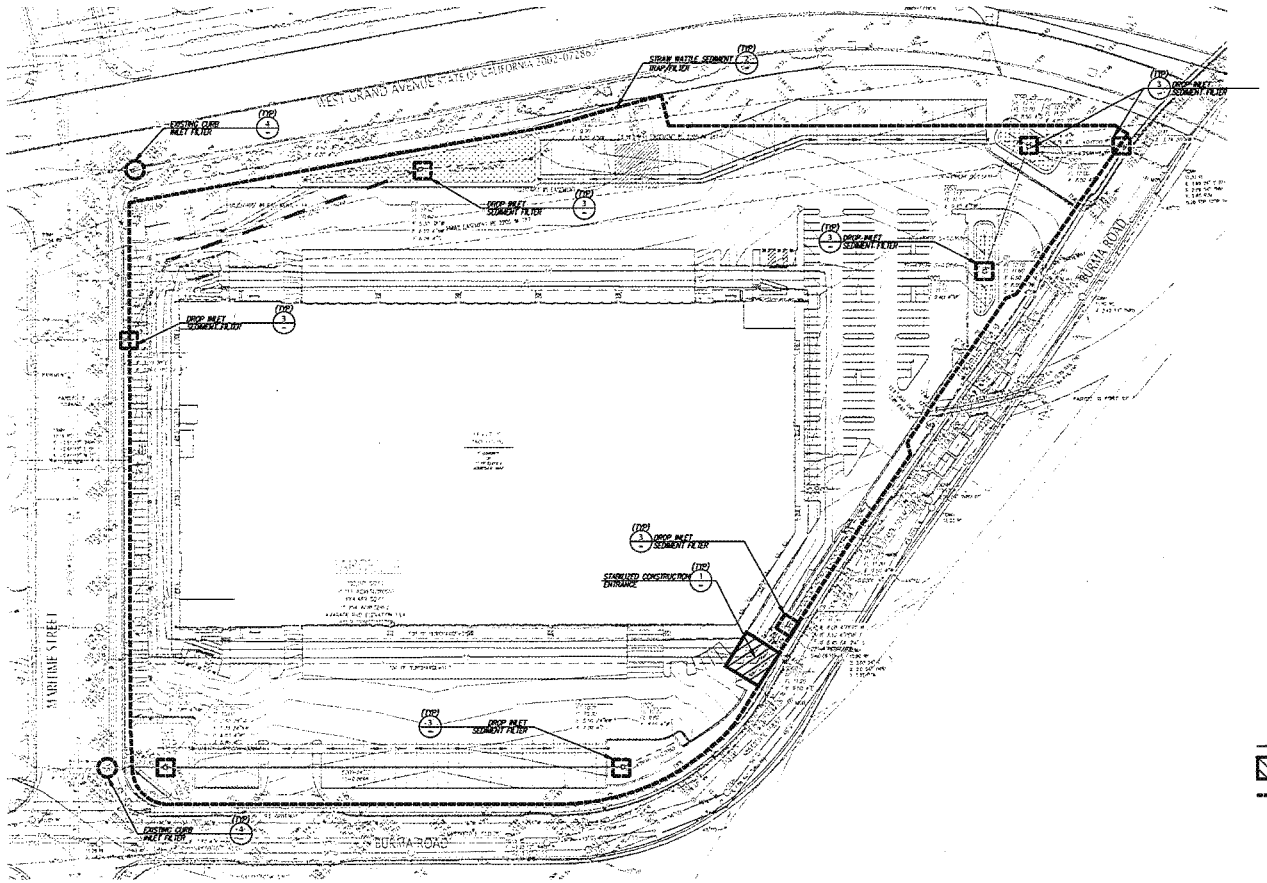
002089 2020-10-29

PROLOGIS

WT Working Turner

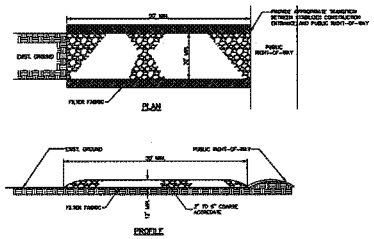
Exhibit A- Site Plan and Elevation



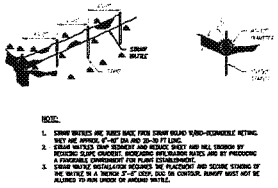


LEGEND

- STABILIZED CONSTRUCTION ENTRANCE
- STRAW WATTLE SEDIMENT TRAP/FILTER
- DROP INLET SEDIMENT FILTER
- EXISTING CURB INLET FILTER

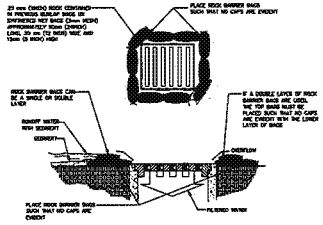


STABILIZED CONSTRUCTION ENTRANCE (1)
NOT TO SCALE

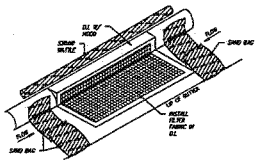


NOTE:
1. STRAW WATTLES ARE MADE FROM STRAW BOUND WIRE-BIODEGRADABLE NETTING. THEY ARE APPROX. 8"-10" DIA AND 20-30 FT LONG.
2. STRAW WATTLES SHOW SEDIMENT AND RUNOFF WHERE AND WILL DIVERGE BY REDUCING SLOPE GRADIENT, INCREASING INFILTRATION RATES AND BY PRODUCING SHALLOW PONDS WHICH ALLOW SOME SETTLEMENT.
3. STRAW WATTLE EFFECTIVENESS DEPENDS ON PLACEMENT AND SECURE STAKING OF THE WATTLE IN A TRENCH 3"-4" DEEP, DUG ON CONTOUR. RUNOFF MUST NOT BE ALLOWED TO RUN UNDER OR AROUND WATTLE.

STRAW WATTLE SEDIMENT TRAP/FILTER (2)
NOT TO SCALE



DROP INLET SEDIMENT FILTER UTILIZING ROCK BARRIER BAGS (3)
NOT TO SCALE



EXISTING CURB INLET FILTER DETAIL (4)
NOT TO SCALE

Z:\STANDARDS\DETAILS\ EROSION CONTROL\ECO7.DWG

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
Phone (925) 245-6788
Fax (925) 245-9796

Scale 1" = 50 ft

#	Description	Date
	PERMIT SUBMITTAL	3-3-16

ISSUE: ISSUE FOR PERMIT FEB 26 2016

OAKLAND GLOBAL LOGISTICS CENTER
PHASE 1, NORTH EAST GATEWAY
OAKLAND, CALIFORNIA

PROLOGIS
3353 GATEWAY BLVD
FREMONT, CALIFORNIA 94538
TELEPHONE: 510.864.1000

Date: JAN. 2016
Project No.: A13533-1

Sheet Title: EROSION CONTROL PLAN

Sheet No.: C6

☐ Released for Construction
■ Not Released for Construction

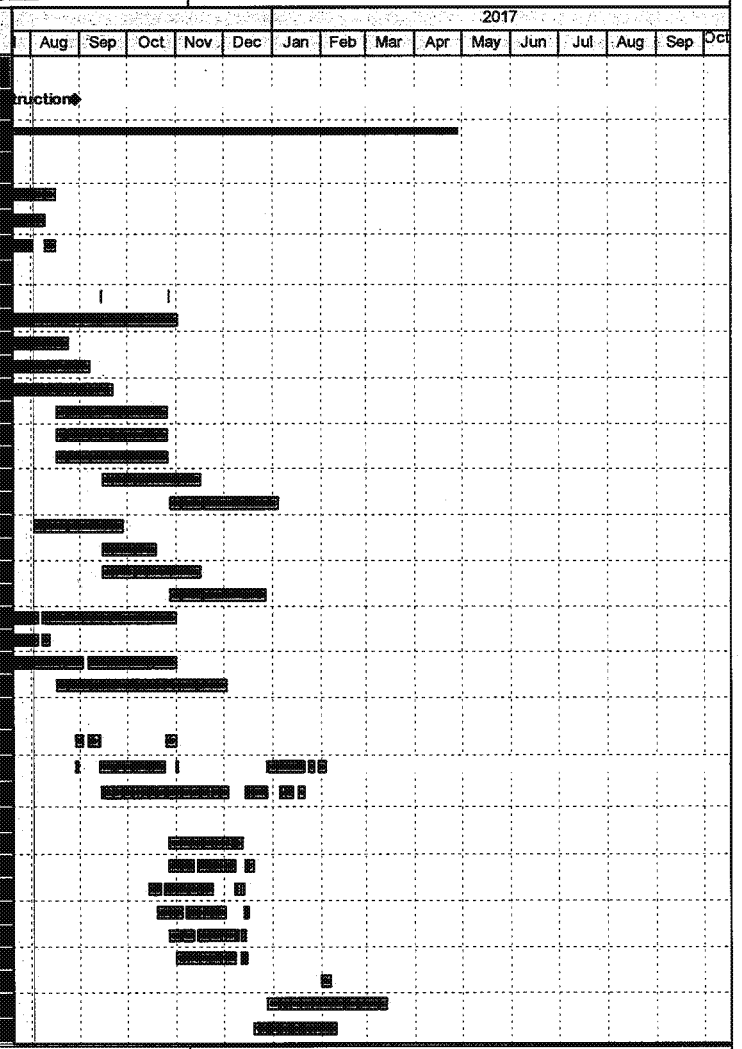
PROLOGIS
WT Wattles Turner
002091 2020-10-29

WHITING-TURNER CONTRACTING COMPANY
Page: 1 of 2

PROLOGIS - OAB NORTHEAST GATEWAY
PROJECT SCHEDULE

Prologis

Activity ID	Activity Name	OD	Start	Finish
	PROLOGIS PHASE 1 - Aug 4, 2016 Working	230	24-Feb-16 A	19-May-17
	PROJECT MILESTONES	199	25-Feb-16 A	28-Apr-17
	PROJECT SUMMARY	199	24-Feb-16 A	28-Apr-17
	PRECONSTRUCTION / CONTRACT / DESIGN	174	24-Feb-16 A	04-Jan-17
	BUDGET & GMP	65	24-Feb-16 A	16-Aug-16
	DESIGN DOCUMENTS & PERMITTING	35	24-Feb-16 A	10-Aug-16
	SUBCONTRACTOR BID / AWARD	31	09-May-16 A	16-Aug-16
	PROCUREMENT	174	22-Jun-16 A	04-Jan-17
	INCREMENTAL SUBMITTALS	61	18-Jul-16 A	27-Oct-16
	UNDERGROUND UTILITIES - EBMUD	80	12-Jul-16 A	01-Nov-16
	UNDERGROUND UTILITIES - WATER/SEWER/STORM	32	12-Jul-16 A	24-Aug-16
	UNDERGROUND UTILITIES- FIRE WATER	36	05-Jul-16 A	07-Sep-16
	CONCRETE	53	08-Jul-16 A	21-Sep-16
	BRBF'S	50	17-Aug-16	26-Oct-16
	COLUMNS & LEDGERS	50	17-Aug-16	26-Oct-16
	METAL STAIRS	50	17-Aug-16	26-Oct-16
	STOREFRONT	45	15-Sep-16	16-Nov-16
	METAL WALL PANELS	45	28-Oct-16	04-Jan-17
	HOLLOW METAL DOORS	40	03-Aug-16	28-Sep-16
	GLAZING SYSTEM	25	15-Sep-16	19-Oct-16
	OVERHEAD DOORS	45	15-Sep-16	16-Nov-16
	SITE PERIMETER FENCE	40	28-Oct-16	27-Dec-16
	FIRE PUMP	63	05-Jul-16 A	31-Oct-16
	FIRE SPRINKLER SYSTEM	39	22-Jun-16 A	12-Aug-16
	PANELIZED ROOF SYSTEM	63	18-Jul-16 A	31-Oct-16
	ELECTRICAL	75	17-Aug-16	02-Dec-16
	CONSTRUCTION	183	29-Aug-16	19-May-17
	MOBILIZATION/DEMO/SITE PREP	45	29-Aug-16	31-Oct-16
	SITE UTILITIES	168	29-Aug-16	28-Apr-17
	FOUNDATIONS & SOG	88	14-Sep-16	20-Jan-17
	SITECAST PANELS	77	14-Oct-16	06-Feb-17
	SITECAST FABRICATION - QUAD 1	31	27-Oct-16	12-Dec-16
	SITECAST FABRICATION - QUAD 2	36	27-Oct-16	19-Dec-16
	SITECAST FABRICATION - QUAD 3	41	14-Oct-16	13-Dec-16
	SITECAST FABRICATION - QUAD 4	40	20-Oct-16	16-Dec-16
	SITECAST FABRICATION - QUAD 5	33	27-Oct-16	14-Dec-16
	SITECAST FABRICATION - QUAD 6	31	01-Nov-16	15-Dec-16
	SITECAST ERECTION	4	01-Feb-17	06-Feb-17
	ROOF CONSTRUCTION & MEP EQUIPMENT	51	28-Dec-16	13-Mar-17
	EXTERIOR FINISHES	35	20-Dec-16	09-Feb-17



Date Date:03-Aug-16
Print Date: 18-Aug-16

Exhibit E - 8.4.16

TASK filter: All Activities
© Oracle Corporation

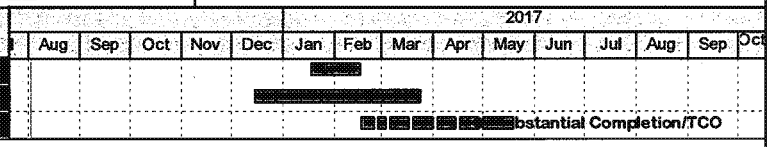
PROLOGIS WT Whiting-Turner

WHITING-TURNER CONTRACTING COMPANY
Page: 2 of 2

PROLOGIS - OAB NORTHEAST GATEWAY
PROJECT SCHEDULE

Prologis

Activity ID	Activity Name	OD	Start	Finish
	INTERIOR ROUGH-IN	22	18-Jan-17	16-Feb-17
	SITEWORK	68	15-Dec-16	24-Mar-17
	FINAL INSPECTIONS / PROJECT COMPLETION	65	17-Feb-17	19-May-17

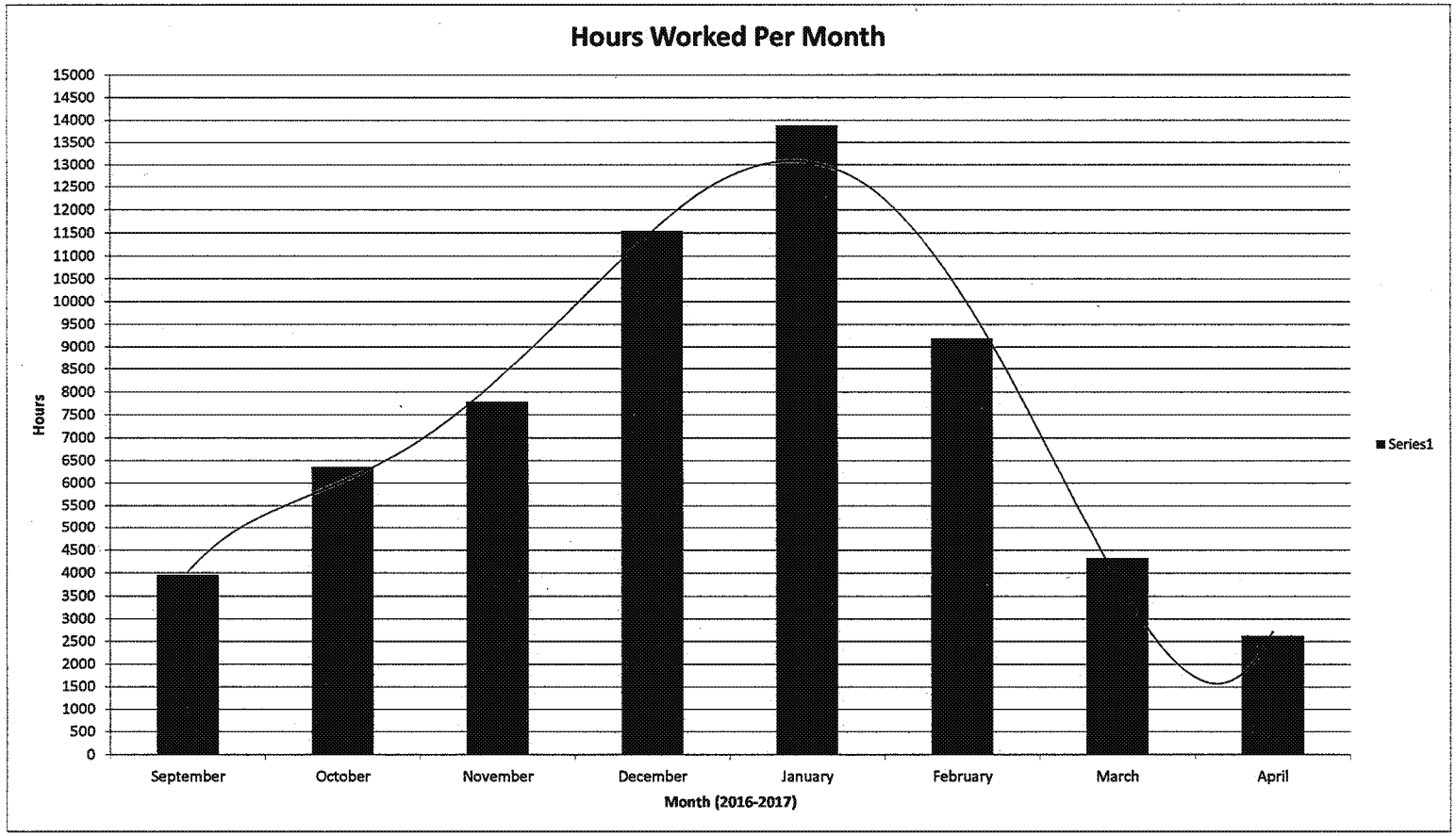


Date Date:03-Aug-16
Print Date: 18-Aug-16

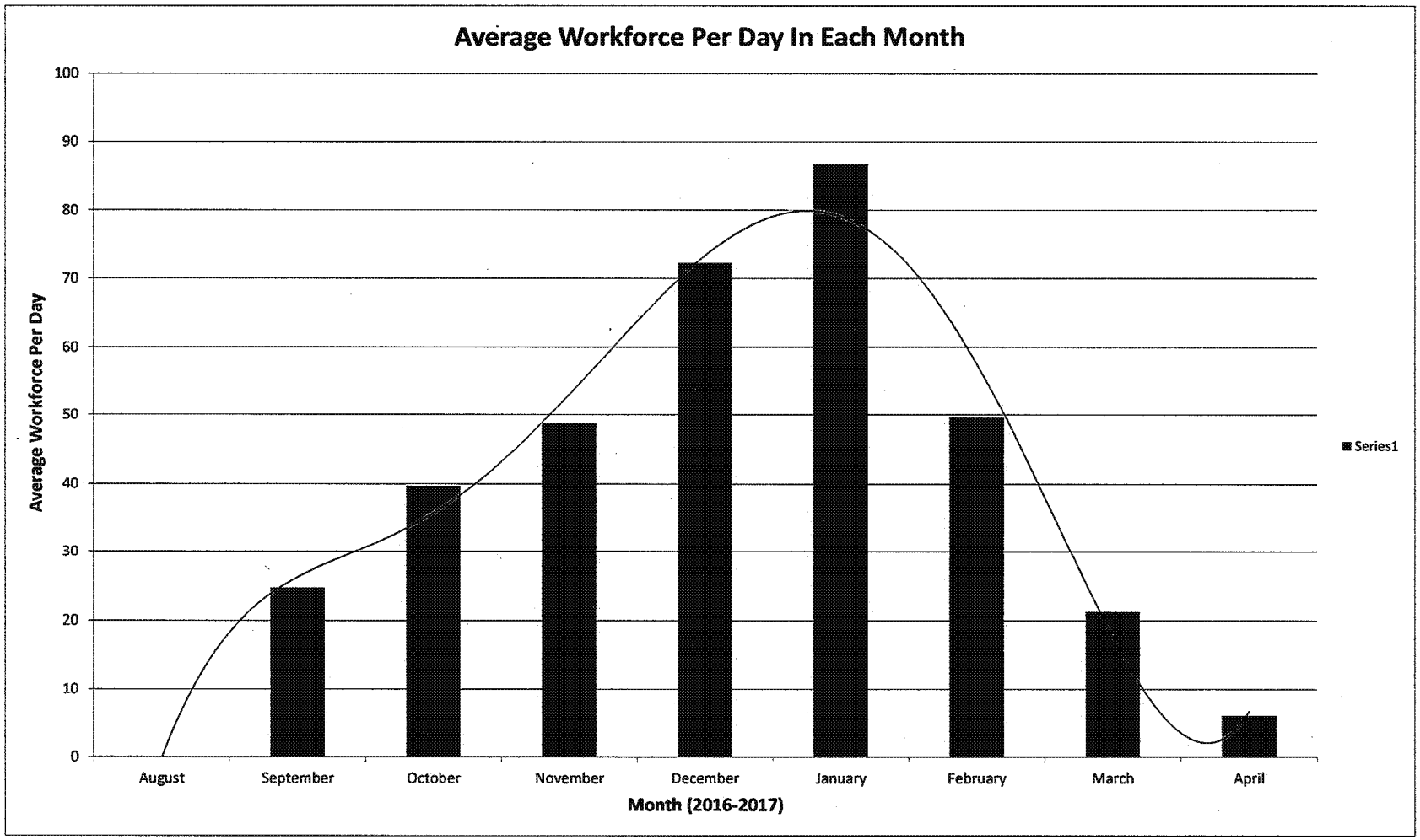
Exhibit E - 8.4.16

TASK filter: All Activities
© Oracle Corporation

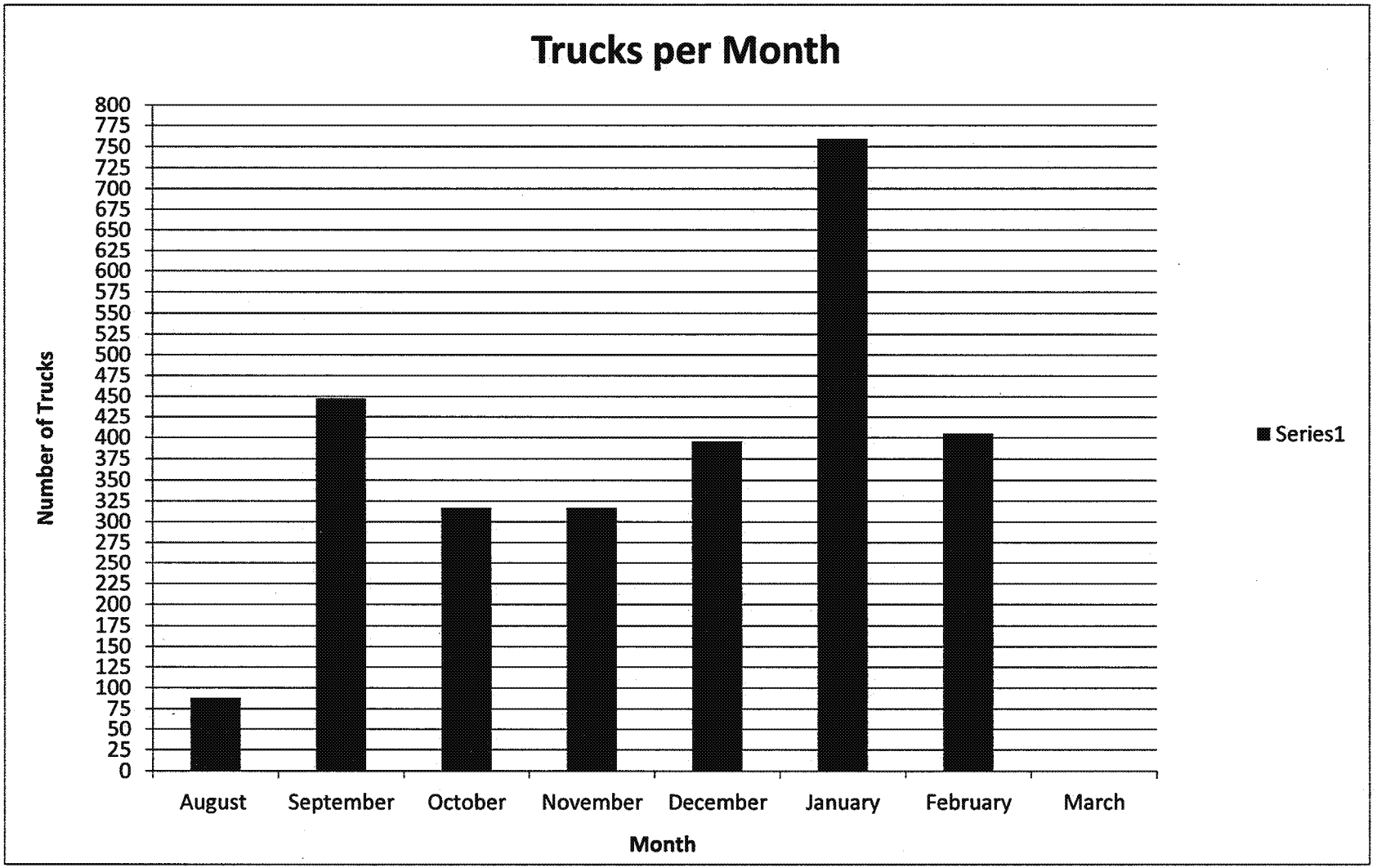
002093-2020-10-29



0000000 2020-10-29

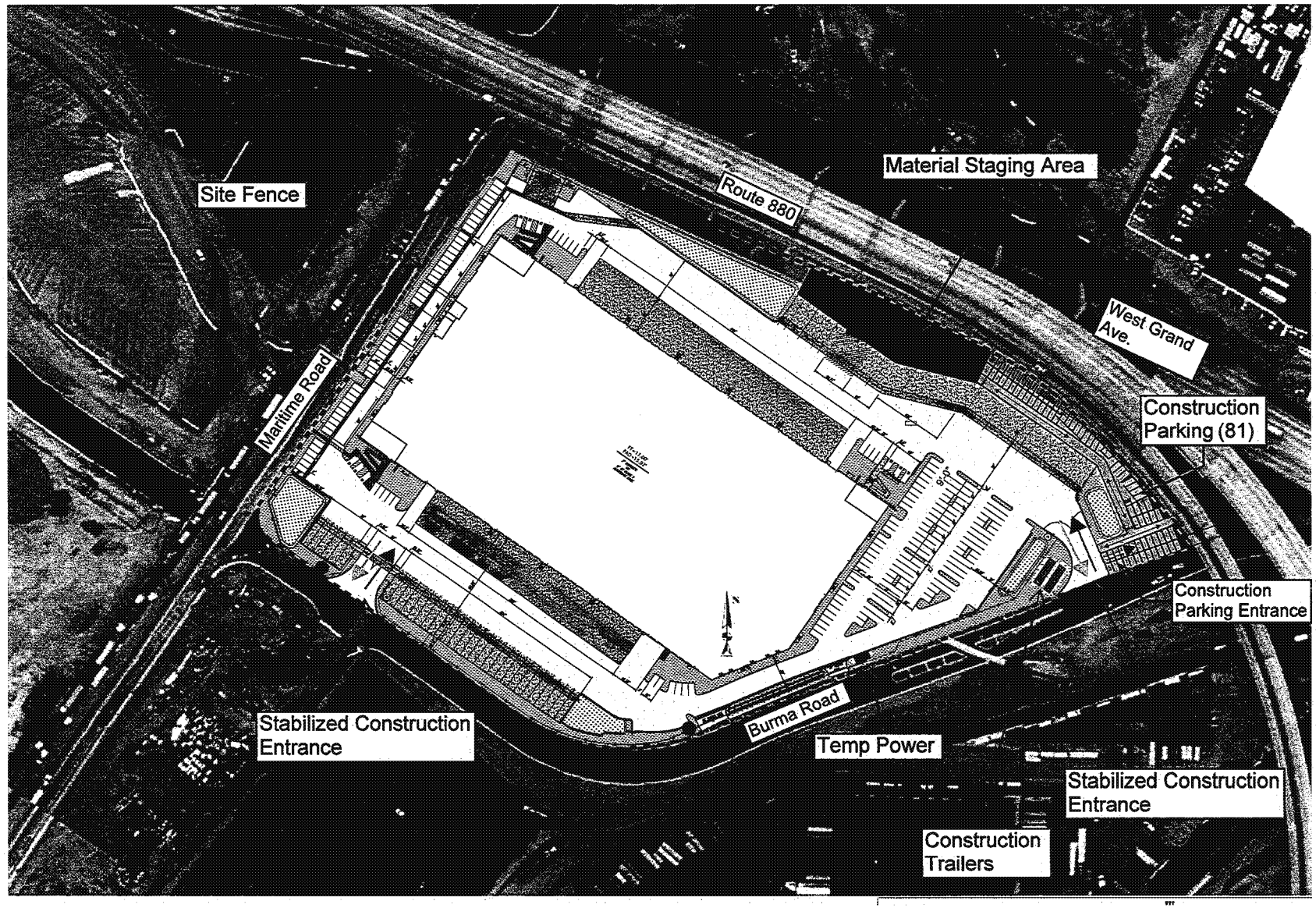


PROLOGIS
WT
002095 2020-10-29



002098 2020-10-29

Exhibit D- Project Logistics Plan



● Fire Hydrant
⊙ Construction Signage
- - - Construction Fence

*All truck queuing will be accommodated on-site. No queuing on public streets will be necessary.

The Developer, its Contractor, or its consultant will prepare a Traffic Control Plan if encroachment into the public right-of-way is required. When required, a Traffic Control Plan will be submitted to EBMUD, the Port, and CalTrans for review and comment no less than 10 days prior to submittal to the City. Incorporate comments and revise plan as appropriate.

Exhibit F- Approved Truck Haul Route

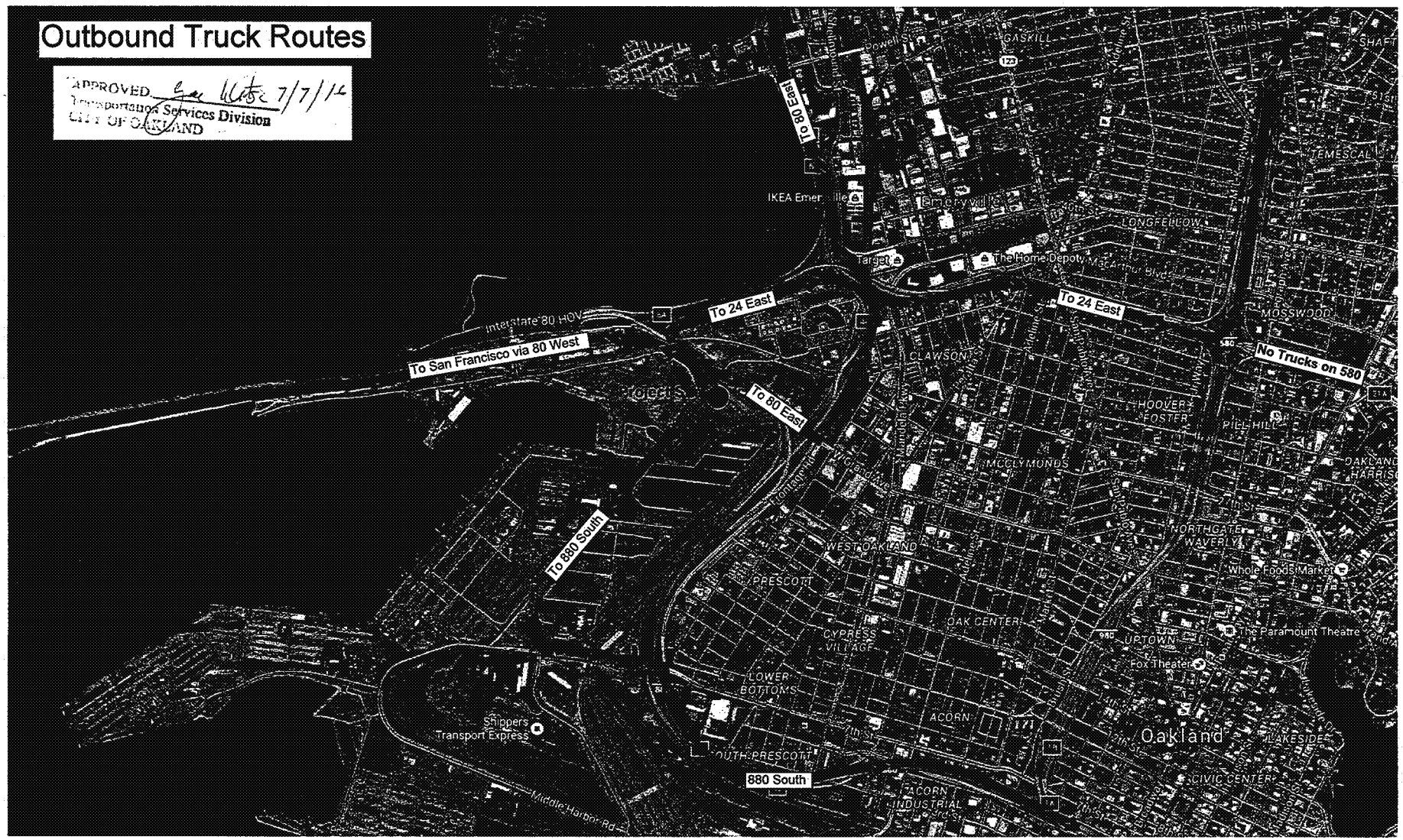


Exhibit F- Approved Truck Haul Route

SPEED
LIMIT
15 MPH
ON UNPAVED ROADS

ATTENTION

PERMITTED CONSTRUCTION HOURS:
Monday-Friday 7AM-7PM

There will be no work on site outside of permitted hours without written permission from City of Oakland.

FOR CONCERNS REGARDING DUST, CONSTRUCTION NOISE, EROSION OR ANY CONSTRUCTION ACTIVITY ON THIS PROJECT PLEASE CONTACT:

During Construction Hours – Randy Knaus (925)-271-6023
After Construction Hours – Steve Rodriguez (925-)-271-6590

CITY OF OAKLAND CODE COMPLIANCE:
(510) 238-3381

OAKLAND POLICE DEPARTMENT 24 HR LINE:
(510) 777-3333

BAY AREA AIR QUALITY MANAGEMENT DISTRICT:
(800) 334-6367

Project Name: Prologis Northeast Gateway

Complaint Log

Name and Address of Notifier	Telephone Number and/or Email	Date and Time of Call/Email	Nature of Complaint (Traffic/Noise/Dust/Etc.)
	Received By	Directed To	
	Received By	Directed To	
	Received By	Directed T	

0020036 2020-10-29

IDLING POLICY

IDLING TIMES ON ALL DIESEL-FUELED COMMERCIAL VEHICLES OVER 10,000 LBS AND DIESEL-FUELED OFF-ROAD VEHICLES OVER 25 HORSEPOWER SHALL BE MINIMIZED EITHER BY SHUTTING EQUIPMENT OFF WHEN NOT IN USE OR REDUCING THE MAXIMUM IDLING TIME TO FIVE MINUTES.
(CCR TITLE 13, SECTION 2485 & 2449)

VIOLATIONS SUBJECT TO MINIMUM FINE OF $300.

G.W.C. WHITING
(1883-1974)

WILLARD HACKERMAN
PRESIDENT AND CEO

FOUNDED 1909

THE WHITING-TURNER CONTRACTING COMPANY

(INCORPORATED)

ENGINEERS AND CONTRACTORS

4690 CHABOT DRIVE, SUITE 120
PLEASANTON, CALIFORNIA 94588
925-485-0800
FAX 925-485-0854
www.whiting-turner.com

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SPORTS AND ENTERTAINMENT
INDUSTRIAL
WAREHOUSE/DISTRIBUTION
MULTI-FAMILY RESIDENTIAL
ENVIRONMENTAL
BRIDGES, CONCRETE

WRITER'S DIRECT NUMBER IS
925-271-6606

Dear Neighbors,

I am writing to inform you of the upcoming work at the Prologis Northeast Gateway project located in the City of Oakland. The project site is located on the cross streets of Maritime and Burma Road.

Commencement of construction work is scheduled to begin on or around 7/15/2016. Your property address is within a 300' radius of the project site and this letter is providing notice that construction activities involved with construction may exceed the 90dBA level for a period of 10 working days between 7/28/2016 and 8/11/16.

Any construction work over 90dBA is considered an extreme noise generating activity. The City of Oakland requires all property owners within 300' of the project to be notified 30 days prior to any extreme noise activities taking place. Any work over 90dBA will be performed between the hours of 8:00 a.m. and 4:00 p.m. Monday thru Friday. Construction work that may exceed 90dBA will include:

1. The installation and erection of concrete panels.
2. Removal of construction debris into trucks via excavators and front loader equipment.
3. Construction equipment including, but not limited to, excavators, loaders, mobile crane, and dump trucks.

Whiting-Turner looks forward to working closely with our new neighbors and would like to create a solid relationship with them. If a complaint shall arise, please contact the undersigned below, and all complaints received will be noted in a Complaint Log. The log will include at a minimum the following information: The date of complaint, contact information for all complainant(s), reason for complaint, action taken, and resolution notes. Corrective measures will be immediately taken to address any and all complaints, should they occur. Copies of the Complaint Log will be submitted to Inspections Services monthly and, if so desired, upon request. These noise complaint procedures will be posted along the perimeter of the construction site prior to the commencement of construction. Should you have any noise complaints during construction please follow these procedures.

Most of the extreme noise generating activities will take place during the excavation work during the early stages of the project. We will send additional notices as required for additional upcoming work. If you would like to receive email notifications in lieu of or in addition to a hard copy please provide your email address to Steve.Rodriguez@whiting-turner.com.

Additional project information may be requested should you have any questions by contacting the undersigned.

Sincerely,

Steve Rodriguez
Whiting-Turner Contracting Company
925-271-6590
Steve.Rodriguez@whiting-turner.com

G.W.C. WHITING
(1883-1974)

WILLARD HACKERMAN
PRESIDENT AND CEO

FOUNDED 1909

THE WHITING-TURNER CONTRACTING COMPANY

(INCORPORATED)

ENGINEERS AND CONTRACTORS

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MULTI-FAMILY RESIDENTIAL
ENVIRONMENTAL
BRIDGES, CONCRETE

WRITER'S DIRECT NUMBER IS
925-271-6606

Dear Neighbors,

Due to safety reasons, pedestrian traffic will be periodically shut down on Maritime Street between Tuesday 9/15/2016 and Friday 10/16/2016 while demolition and excavation activities are in progress. Pedestrian barricades will be set in place to re-route all pedestrian traffic to the detour per the approved Traffic Control Plan. Please reference the included closure plan exhibit from our Traffic Control Plan that shows the areas that will be closed. The shutdown dates will be posted on our website within 2 days prior to shut down.

If you should have any problems or questions we encourage you to call or stop by our construction trailer located on site.

Additional project information may be requested should you have any questions using the contact below.

Sincerely,
Steve Rodriguez
Whiting -Turner Contracting Company
925-271-6590
Steve.Rodriguez@whiting-turner.com

Project: Prologis Northeast Gateway
Date:

Truck Information Form

Time In	Time Out	Vehicle Type	License Plate Number	Trucker's Name	Driver's Name	Material	Documentation [1]	Destination	Quantity

Documentation carried by the driver will include:

- Bills of lading or non-hazardous or hazardous waste manifests;
- Proof of insurance, valid registration, and current driver's license;
- Material profile information (reflecting chemical analysis results);
- Material weight records; and
- Complete copy of the Traffic Control Plan.

0020-2020-10-29

Project Name: Prologis Northeast Gateway

Construction Site Condition Log

Location:	Decription of Damage:	Date:	Inspected

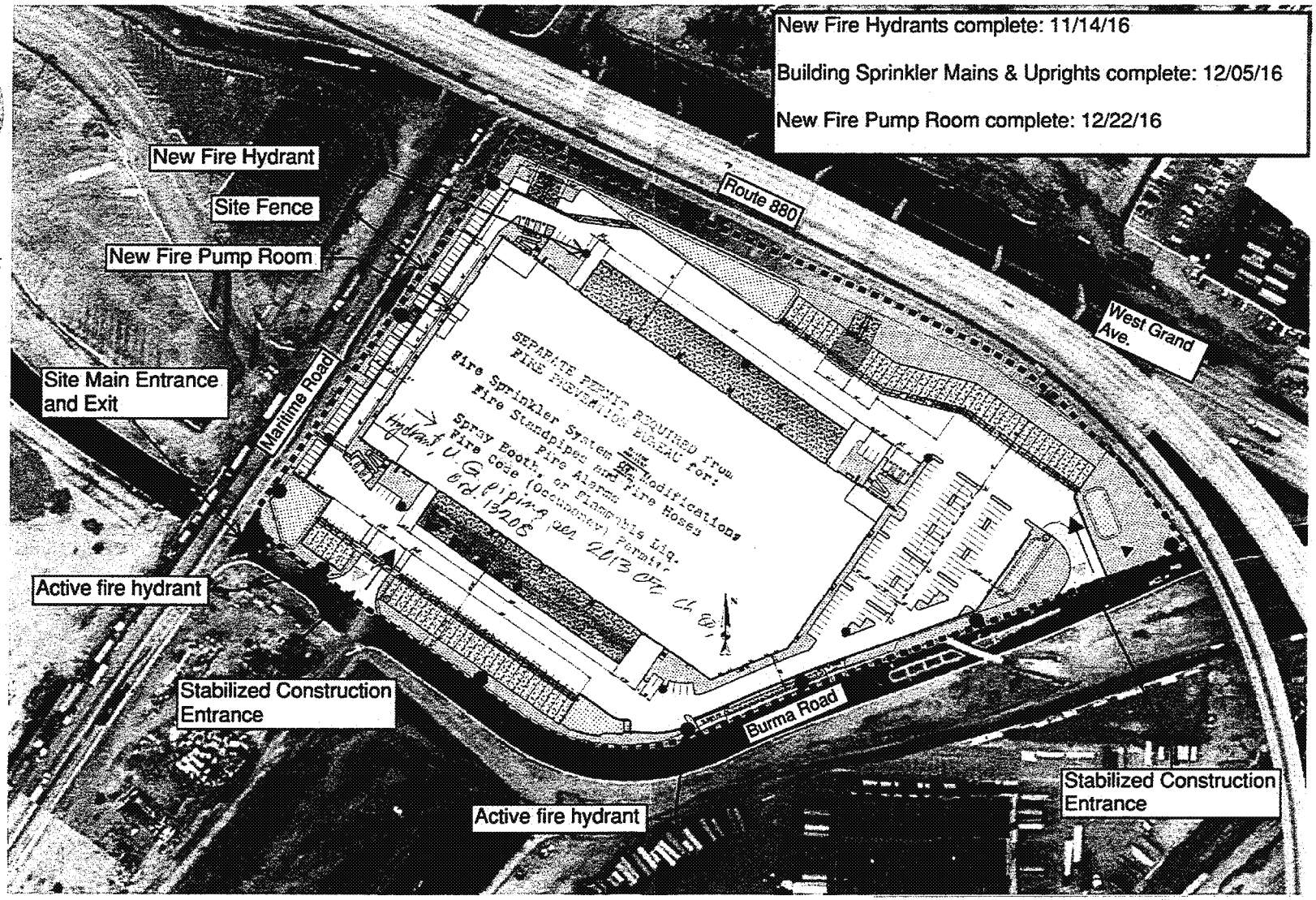
002108 2020-10-29

Exhibit N- Fire Safety Phasing Plan

Conceptual Review
As noted.

FIRE MARSHAL
APPROVED
BY
DATE 6-08-16
CITY OF OAKLAND

Subject to approval of shop drawings & hydraulic calcs.



● Existing Active Fire Hydrant
○ Construction Signage
● New Fire Hydrant
--- Construction Fence

Table 1
Risk Management Plan and Remedial Action Plan Information
Northeast Gateway Property
Oakland, California

RAP/RMP Designation	Northing	Easting	Location/Description	Constituents of Concern	Summary of Actions	Final Report Reference	DTSC Remedial Action Certification Date
RMP 22	2126388.536	6041985.046	Bldg. T-816 was a hazardous waste accumulation shed. TPH was detected in a soil sample collected near the former shed. No VOCs or TPH were detected in groundwater.	TPH, PAHs, VOCs	No action required. TPH remains in soil less than remediation goals.	Mastic, 2011	3/15/2011
RMP 23	2126546.617	6041720.998	Facility 815 was a washrack with waste oil sump, associated sand trap, and two associated 550-gallon waste oil USTs (Tanks 7 and 8).	TPH, PAHs, VOCs, Metals	Tanks were removed in 1990. Other structures were removed and the area was overexcavated in 1999. TPH, VOCs, PAHs, and metals remain in soil less than remediation goals. TPH, VOCs, and PAHs remain in groundwater below remediation goals.	EKI, 2010	7/19/2010
RMP 24	2126541.346	6041784.181	An oil-water separator (OWS-2) was located near Facility 815, and was removed and overexcavated in 1999.	TPH, PAHs, VOCs, Metals	Overexcavated in 1999. TPH, VOCs, PAHs, and metals remain in soil below remediation goals. TPH, VOCs, and PAHs remain in groundwater less than remediation goals.	EKI, 2010	7/19/2010
RMP 25	2126479.042	6041875.34	Former Bldg. T-815 was a paint and solvent storage shed.	TPH, PAHs, VOCs, Metals	Shed was removed after 1999. TPH, VOCs, PAHs, and metals remain in soil less than remediation goals. TPH, and VOCs remain in groundwater less than remediation goals.	EKI, 2010	7/19/2010
RMP 87	2126504.825	6041606.784	Building 812 was a former vehicle and equipment maintenance shop.	TPH, PAHs, VOCs, Metals, PCBs	No action required. TPH, VOCs, PAHs, and metals remain in soil less than remediation goals. TPH, VOCs, and metal remain in groundwater less than remediation goals.	EKI, 2010	7/19/2010
RMP 88	2126383.153	6042258.566	Building 823 was a wood shop and heavy equipment maintenance shop with a paint room	TPH, PAHs, VOCs, Metals, PCBs	No action required. TPH, VOCs, and metals remain in soil less than remediation goals. TPH, VOCs, and metal remain in groundwater less than remediation goals.	EKI, 2010	7/19/2010
RMP 113	2126434.841	6042138.387	One former 1000-gallon fuel oil UST (Tank A, a.k.a. TK15).	TPH, PAHs, VOCs, Metals, PCBs	Tank A removed in 1990. TPH and VOCs remain in soil and groundwater less than remediation goals.	EKI, 2010	7/19/2010
RMP 114	2126527.224	6041477.077	One former 550-gallon waste oil UST (Tank 8A).	TPH, PAHs, VOCs, Metals, PCBs	Removed in 1996. TPH and metals remain in soil less than remediation goals. TPH, VOCs, PAHs, and metals remain in groundwater less than remediation goals.	EKI, 2010	7/19/2010
RMP 123	2126562.164	6041727.832	Two former 550-gallon waste oil USTs (Tanks 7 and 8).	TPH, PAHs, VOCs, Metals	UST 7 removed in 1990 and UST 8 removed in 1981. TPH, VOCs, PAHs, and metals remain in soil less than remediation goals. TPH, VOCs, and PAHs remain in groundwater less than remediation goals.	EKI, 2010	7/19/2010
RMP 159	2126588.287	6041712.97	Confirmation soil samples near a utility line with PAHs in soil at concentrations exceeding Remediation Goals	TPH, PAHs, VOCs	Soil excavation in 2013. TPH, VOCs, and PAHs remain in soil less than remediation goals.	AMEC, 2013	6/27/2013
RAP Site 5	NA	NA	VOCs in groundwater proximate to Buildings 808 and 823. Vinyl chloride detected in reconnaissance groundwater samples at concentrations exceeding remediation goals, but less than remediation goals in monitoring well samples.	VOCs	No action. VOCs remain in groundwater less than remediation goals.	EKI, 2009	6/8/2009 and 6/18/09

AMEC, 2013 - AMEC Environment & Infrastructure, Inc. letter regarding Request for Completion and Summary of Remediation Activities, RMP Locations 98 and 159, Former Oakland Army Base, Economic Development Conveyance Area, Oakland, California. June 18.
EKI, 2009 - Erler & Kalinowski, Inc., Completion Report for VOCs in Groundwater at Buildings 808 and 823, Former Oakland Army Base - EDC Area, Oakland, California. April 24.
EKI, 2010 - Erler & Kalinowski, Inc. letter regarding Request for Completion - RMP Locations 23, 24, 25, 87, 88, 113, 114, and 123 in the East Gateway Area, Former Oakland Army Base - EDC Area, Oakland, California. June 29.
Mastic, 2011 - Mastic Engineering and Consulting, Inc. letter regarding Revised Request for Completion - RMP Locations 7, 22, and 29, Former Oakland Army Base - Economic Development Conveyance Area, Oakland, California. February 25.
DTSC = California Department of Toxic Substances Control
PAHs = polycyclic aromatic hydrocarbons
PCBs = polychlorinated biphenyls
RAP = Remedial Action Plan
RMP = Risk Management Plan
TPH = total petroleum hydrocarbons
VOCs = volatile organic compounds

Department of Toxic Substances Control

Linda S. Adams
Acting Secretary for
Environmental Protection

Leonard E. Robinson
Acting Director
700 Heinz Avenue
Berkeley, California 94710-2721

Edmund G. Brown Jr.
Governor

REMEDIAL ACTION CERTIFICATION

Risk Management Plan Locations 7, 22, and 29
Oakland Gateway Development Area
700 Murmansk Street, Suite 3
Oakland, California 94607

---

1. Certification of Remedial Action:

I hereby certify that the foregoing information is true and correct to the best of my knowledge.

Henry Wong
Remedial Project Manager
Brownfields and Environmental Restoration Program

3/15/2011
Date

Karen M. Toth, P.E.
Unit Chief
Brownfields and Environmental Restoration Program

3/17/2011
Date

Gerard Aarons, PG 7430, CHG 771
Engineering Geologist,
Geological Services Unit
Office of Geology
Brownfields and Environmental Restoration Program

3/15/2011
Date

2. **Certification Statement:** Based upon the information which is currently and actually known to the Department of Toxic Substances Control (DTSC),

__ DTSC has determined that all appropriate response actions have been completed, that all acceptable engineering practices were implemented and that no further removal/remedial action is necessary.

__ DTSC has determined, based upon a remedial investigation or site characterization that the site poses no significant threat to public health, welfare or the environment and therefore implementation of removal/remedial measures is not necessary.

X DTSC has determined that all appropriate removal/remedial actions have been completed and that all acceptable engineering practices were implemented; however, the site requires ongoing operation and maintenance (O&M) and monitoring efforts. The site will be deleted from the "active" site list following (1) a trial operation and maintenance period and (2) execution of a formal written settlement between the Department and the responsible parties, if appropriate. However, the site will be placed on the Department's list of sites undergoing O&M to ensure proper monitoring of long-term clean-up efforts.

3. **Site Name and Location:**

Risk Management Plan (RMP) Locations 7, 22, and 29
Oakland Gateway Development Area
700 Murmansk Street, Suite 3
Oakland, California 94607

A. List of any other names that have been used to identify the site:

RMP Locations
- RMP Location 7 – Former incinerator (Building 147) and an adjoining concrete garbage pit, 1 acre
- RMP Location 22 – Former hazardous waste accumulation shed (Building T-816), 0.1 acre
- RMP Location 29 – Hazardous material storage bay at the west end of Building 806, 0.8 acre

Alternative Names for the Project Site
- Gateway Development Area
- Former Oakland Army Base – Economic Development Conveyance Area
- Oakland Army Base (OARB)
- Base Realignment and Closure (BRAC) Parcels 3, 11, and 12
- Operable Units 1 and 4

B. Address of site if different from above:

RMP Location 7 is near Buildings 141 and 145 located the intersection of Burma Road and Bataan Avenue; RMP Location 22, is located near the intersection of Tobruk Street and Burma Road, RMP Location is located at the west end of Building 806 at West 19th Street, in the City of Oakland, California.

C. Assessor's Parcel Number: O000-0507-001-11
(This number starts with the letter "O" and follows by three zeros.)

D. DTSC Identification Numbers:

Site Code: 201537
EnviroStor ID: 01970016

4. Responsible Parties:

Landowner
City of Oakland

Contact Person:
Mr. Mark Arniola, P.G.
Environmental Program Specialist
Public Works Agency
Environmental Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, California 94612-2034
(510) 238-7371
marniola@oaklandnet.com

5. Brief History:

Prior to 1916, much of the area encompassing OARB was natural tidal marsh or shallow open water. Subsequent land reclamation activities in the general areas created the land where OARB is situated. The Army began operation at OARB in the early 1940s, closed the base in September 1999, and transferred 363.5 acres of property to the City of Oakland in July 2003. In August 2006, the City of Oakland deeded approximately half of the transferred area to the Port of Oakland. DTSC has renamed the transferred 363.5-acre property as the "Oakland Gateway Development Area."

On September 27, 2002, DTSC approved the Remedial Action Plan (RAP) and selected remedies for seven RAP Sites and approximately 150 RMP Locations.

RMP Locations and features include washracks, sumps, oil/water separators, miscellaneous operations, underground storage tanks, aboveground storage tanks, former industrial and chemical handling locations, historical spills and stains, lead in soil around buildings, former polychlorinated biphenyl (PCB)-transformers and equipment locations, storm drains and sanitary sewers, railroad tracks, and marine sediments. The RAP selects a presumptive remedy outlined in the Risk Management Plan (Appendix E of the RAP) for supplementing environmental data and implementing necessary cleanup actions during infrastructure installation or redevelopment.

On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* for the Oakland Gateway Development Area, which includes RMP Locations 7, 22, and 29. Since the former base property is not being remediated to residential or drinking water standards, the Covenant requires land and groundwater use restrictions and compliance with the RMP for proper soil and groundwater management.

6. RMP Locations 7, 22, and 29:

On February 25, 2011, the City of Oakland finalized the *Request for Completion - RMP Location 7, 22, and 29* documenting the achievement of the remedial action objectives.

RMP Location 7

RMP Location 7 is a one-acre area where a former incinerator (Building 147) and an adjoining concrete garbage pit were located. The Army constructed the 10-ton incinerator and adjoining 16' x 6' x 3.5' adjoining concrete garbage pit in 1948; the Army demolished the incinerator and pit in 1964. The Army's record does not indicate the types of waste that were burned in the incinerator or stored in the pit. Since 1964, the area has been a mostly paved and gravel surface open area used for trailer and cargo container storage. The area is currently undeveloped.

The Army and City of Oakland collected six soil samples and two groundwater samples and analyzed for volatile organic compounds (VOC), semi-volatile SVOCs, polycyclic aromatic hydrocarbons (PAH), total petroleum hydrocarbons as diesel (TPH-d), TPH as motor oil (TPH-mo), metals, PCBs, dioxins, and furans. Soil and groundwater analytical results do not show chemical of concern (COC) concentrations above remediation goals.

RMP Location 22

RMP Location 22 measure approximately 0.1 acre and is an area where a former is a location a former hazardous waste accumulation shed (Building T-816) was located. The building is no longer on site and is assumed to have been

demolished. The area is currently undeveloped. No additional operational record regarding Building T-816 was available for review.

The Army and City of Oakland collected five soil samples and one groundwater sample and analyzed for VOCs, SVOCs, PAHs, TPH-d, TPH-mo, metals, and PCBs. Soil and groundwater analytical results do not show COC concentrations above remediation goals.

RMP Location 29

RMP Location 29 is a hazardous material storage bay of approximately 0.8 acre at the west end of Building 806. Hazardous material stored in this area included chlorinated hydrocarbons, pesticide, insecticides, mercuric solutions, and flammable materials. According to the Army's August 2001 report, the western-most bay of Building 806 was also the designated storage area for radioactive items. The Army report indicates that no spills of radiological items have occurred and that the results of surveys conducted in 1999 were free from any evidence of radiological contamination.

The Army and City of Oakland collected nine soil samples and two groundwater samples and analyzed for VOCs, SVOCs, PAHs, TPH-d, TPH-mo, metals, pesticides, and PCBs. Soil and groundwater analytical results do not show COC concentrations above remediation goals.

Approval of Request for Completion

On March 15, 2011, DTSC approved the Request for Completion and concluded that the City of Oakland (a) had adequately investigated RMP Locations 7, 22, and 29, (b) had demonstrated achievement of the remedial action objectives, and (c) had implemented the required institutional control remedy for the subject RMP Locations.

All RAP Sites and RMP Locations within the Oakland Gateway Development Area, upon remedy implementation, continue to be parts of the RMP Implementation Area. The August 8, 2003 *Covenant to Restrict Use of Property, Environmental Restriction* requires landowner(s) to follow the risk management protocols set forth in the RMP regarding planning and implementation of earthwork construction, redevelopment, and/or post-development activities.

7. Type of Site:

Included in EnviroStor? Yes

RCRA Permitted Facility	_____	Bond Funded	_____
RCRA Facility Closure	_____	RP Funded	_____
NPL	_____	Federal Facility	_____

Other (i.e., walk-in): Please see Section 14.E of this Certification for project funding.

8. Size of Site:

RMP Locations 7, 22, and 29 encompass approximately two acres.

Small __X__ Medium _____ Large _____ Extra Large _____

9. Dates of Remedial Action

The Army and the City of Oakland investigated RMP Locations 7, 22, and 29 from 2000 through 2010. On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* for the Oakland Gateway Development Area, which includes RMP Locations 7, 22, and 29.

10. Response Action Taken on Site: (check appropriate action)

____ Initial removal or remedial action (site inspection/sampling)

__X__ Final remedial action

____ RCRA enforcement/closure action

____ No action, further investigation verified that no cleanup action at site was needed

A. Type of Remedial Action:

The RAP selects the following remedies for the RMP Locations:

- For locations where no contamination has been found to date, the area will be inspected and sampled in accordance with the RMP during redevelopment to confirm no contamination exists above remediation goals at these locations;
- For locations requiring additional soil and groundwater characterization, the areas will be inspected and sampled/monitored during redevelopment as outlined in the RMP;
- For locations requiring removal of an existing structure or sites where impacted soil is anticipated, the RMP assumes that an average of about 50 cubic yards of debris and contaminated soil

will be removed at each site and disposed as hazardous substances at an off-site permitted facility; and

- Implementation of institutional controls to:
  - Prohibit sensitive land uses;
  - Restrict construction of groundwater wells and extraction of groundwater without DTSC's approval;
  - Prevent disturbance of surface soil, subsurface soil, and groundwater monitoring wells, except as conducted pursuant to the RMP; and
  - Comply with the RMP for soil and groundwater management, maintenance of ground covers, mitigation during earthwork, management of below grade structures, and construction dewatering.

B. Estimated quantity of waste associated with the site (i.e., tons/gallons/ cubic yards) was:

1. _____ Waste Treated Amount: _____
2. _____ Untreated (capped sites) Amount: _____
3. _____ Soil Removed Amount: _____
4. _____ Wastewater Removed Amount: _____
5. __X__ Institutional Controls
   The institutional controls remedy applies to all Oakland Gateway Development Area property including RMP Locations 7, 22, and 29.

11. Cleanup Levels/Standards

A. What were the cleanup standards established by DTSC pursuant to the final remedial action plan or workplan (if cleanup occurred as the result of a removal action workplan or interim remedial measures prior to development of a RAP)?

The RAP specifies risk-based remediation goals for meeting the remedial action objectives based on commercial and industrial reuses. Remediation goals for most chemicals are risk-based and represent the lowest calculated values of the non-carcinogenic or carcinogenic risk goal for each chemical of concern (COC) that are protective of all potentially exposed populations. However, some remediation goals are based on other chemical-specific parameters (such as potential leachability of a

chemical from soil to groundwater) when these values are more stringent that the calculated human health goals.

The RAP, Table 7-11 lists numerical cleanup targets as the soil and groundwater remediation goals that correspond to a 1×10^{-6} incremental lifetime cancer risk for each COC. When more than ten carcinogenic COCs are present at concentrations exceeding remediation goals, the overarching remedial action objective is the cumulative target risk level of 1×10^{-5} for carcinogenic COCs applicable at each RAP Site and RMP Location.

Remediation goals represent the maximum allowable concentrations for the respective COCs and cannot be increased to allocate amongst the residual COCs to meet the overarching cumulative risk of 1×10^{-5}. However, remediation goals can be adjusted downward, as need, if the cumulative cancer risk level exceeds 1×10^{-5} or the total hazard index (HI) exceeds 1. Remedial action objectives are achieved when residual COCs in soil and groundwater are no greater than a cumulative HI of 1 or a cumulative carcinogenic risk of 1×10^{-5} for each potentially exposed population.

The Army investigated RMP Locations 7, 22, and 29 from 2000 through 2010. COC concentrations in soil and groundwater samples are below remediation goals. The number of samples and types of analyses at the subject RMP Locations are adequate to demonstrate that the remedial action objectives established in the DTSC-approved RAP/RMP have been met. RMP Locations 7, 22, and 29 are not significant sources of soil and groundwater contamination and no significant data gaps are evident.

B. Were the specified cleanup standards met? Yes __X__ No _____

C. If "no", why not:

12. DTSC Involvement in the Remedial Action:

A. Did DTSC order the Removal Action?

Yes _____ No __X__ Date of Order _____

B. Did DTSC review and approve (check appropriate action and indicate date of review/approval if done):

_____ Sampling Analysis Procedures Date: _____

_____ Health & Safety Protections Date: _____

_____ Removal/Disposal Procedures Date: _____

__X__ Remedial Action Plan Date: September 27, 2002

_____ Removal Action Workplan Date: _____

C. If site was abated by a responsible party, did DTSC receive a signed statement from a licensed professional on all Remedial Action?

Yes __X__ No ____ Name: Bethany P. Flynn, P.G., 5710

D. Did a registered engineer or geologist verify that acceptable engineering practices were implemented?

Yes __X__ No ____ Name: Gerard Aarons, P.G., 7430

E. Did DTSC confirm completion of all remedial action?

Yes __X__ No ____ Date of verification: March 15, 2011

F. Did DTSC (directly or through a contractor) actually perform the Remedial Action?
Yes ____ No __X__

G. Was there a community relations plan in place?
Yes __X__ No ____

H. Was a remedial action plan or removal action workplan developed for this site?
Yes __X__ No ____

I. Did DTSC hold a public meeting regarding the draft RAW or RAP?
Yes __X__ No ____

J. Were public comments addressed?
Yes __X__ No ____
Date of DTSC analysis and response: September 27, 2002

K. Are all of the facts cited above adequately documented in the DTSC files?
Yes __X__ No ____

If no, identify areas where documentation is lacking.

_____

13. EPA Involvement in the Remedial Action:

A. Was the EPA involved in the site cleanup?
Yes _X_ No ____

B. If yes, did EPA concur with all remedial actions?
Yes _X_ No ____

C. EPA comments: EPA staff provided consultative services on this project.

EPA staff involved in cleanup:

Xuan-Mai Tran
Remedial Project Manager
U.S. Environmental Protection Agency
Region IX
Federal Facilities Cleanup Branch
75 Hawthorne Street, (SFD-8-2)
San Francisco, California 94105
(415) 972-3002
Tran.Xuan-Mai@epamail.epa.gov

14. Other Regulatory Agency Involvement in the Cleanup Action:

Agency:	Activity:
_X_ RWQCB	The Regional Water Quality Control Board staff provided consultative services on this project.
____ ARB	_____
____ CHP	_____
____ Caltrans	_____
____ Other	_____

Name of contact persons and agency:

George Leyva, P.G.
Project Manager
California Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612
(510) 622-2379
gleyva@waterboards.ca.gov

15. Post-Closure / Post-Remedy Activities:

A. Will there be post-closure / post-remedy activities at this site? (e.g., Operation and Maintenance)
Yes _X_ No ____

If yes, describe:

On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* (Series No. 2003466371) for the Oakland Gateway Development Area, which includes RMP Locations 7, 22, and 29. The City of Oakland implemented the institutional control remedy by recording the Covenant with the Alameda County Assessor's Office. Since the former base property is not being remediated to residential and drinking water standards, the Covenant requires land and groundwater use restrictions and compliance with the RMP for proper soil and groundwater management. The RMP is Appendix E to the September 27, 2002 DTSC-approved RAP.

The remedial action objectives were based on commercial and industrial land uses. Since residual chemicals in soil and groundwater at the site render the property not suitable for unrestricted use, five-year statutory reviews are required for RMP Locations 7, 22, and 29. The trigger date for a statutory five-year review was the mobilization date of first remedy implementation for the Oakland Gateway Development Area project (i.e., Building 1 RAP Site on November 28, 2005). The City of Oakland has submitted the draft Five-Year Review Report in June 2010.

B. Have post-closure plans been prepared and approved by DTSC?
Yes ____ No _X_
Post-closure plan is not required or necessary for this site.

C. What is the estimated duration of post-closure (including operations and maintenance activities) activities?

Unless ended in accordance with the *Covenant to Restriction Use of Property, Environmental Restriction*, by law, or by DTSC in the exercise of its discretion, the Covenant and five-year review requirements shall continue in effect in perpetuity.

D. Are deed restrictions proposed or in place? Yes _X_ No ____

If yes, have deed restrictions been recorded with the County recorder?

Yes _X_ No _____ Date: August 8, 2003

If no, who is responsible for assuring that the deed restrictions are recorded?

_____

Who is the DTSC contact person?

Henry Wong
Hazardous Substances Engineer
Brownfields and Environmental Restoration Program
(510) 540-3770
hwong@dtsc.ca.gov

E. Has cost recovery been initiated? Yes _X_ No _____

Has DTSC received all payments? Yes _____ No _X_

If yes, amount received $ _____; _____% of DTSC costs billed.

On November 13, 2008, DTSC determined that the Army has failed to meet certain obligations of the Memorandum of Agreement (MOA) entered into between the Army, DTSC, RWQCB in April 2003. Specifically, the Army has failed to provide funds for DTSC and RWQCB oversight under Section 27.1 of the MOA. Section 27.1 requires that oversight funds will be "... provided through the Defense/State Memorandum of Agreement (DSMOA), executed August 21, 1992 ... or some other appropriate mechanism as agreed upon by the parties ..."

To date the Army has not provided alternative mechanism for payment of oversight costs to DTSC and RWQCB. Accordingly, DTSC and RWQCB have not been paid for oversight costs since July 2008. The Army's and DTSC's management teams are working toward a resolution on this issue.

F. Were local planning agencies notified of the cleanup action?

Yes _X_ No _____ If yes, the name and address of agency:

Mark Arniola, P.G.
Environmental Program Specialist
Public Works Agency
Environmental Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, California 94612-2034
(510) 238-7371

marniola@oaklandnet.com

16. **Expenditure of Funds and Source:**

(Information to be supplied by Accounting Unit)

Funding Source and Amount Expended:

_____ HWCA $ _____ _____ HSA $ _____
_____ HSCF $ _____ _____ RCRA$ _____
_____ RP $ _____ _____ Other $ _____
_____ Federal Cooperative Agreement $ _____

17. **Problems Encountered Which Caused Major Delays:** None

18. **Accomplishment Unique to the Project:** None

19. **Final Use of Site:** The City of Oakland plans to develop RMP Locations 7, 22, and 29 and vicinity areas for commercial and industrial land uses.

Department of Toxic Substances Control

Linda S. Adams
Secretary for
Environmental Protection

Maziar Movassaghi
Acting Director
700 Heinz Avenue
Berkeley, California 94710-2721

Arnold Schwarzenegger
Governor

July 19, 2010

Mr. Mark Arniola, P.G.
Environmental Program Specialist
Public Works Agency
Environmental Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, California 94612-2034
marniola@oaklandnet.com

DTSC APPROVAL, COMPLETION REQUEST, RMP LOCATIONS 23, 24, 25, 87, 88, 113, 114, and 123, FORMER OAKLAND ARMY BASE – ECONOMIC DEVELOPMENT CONVEYANCE AREA, OAKLAND, CALIFORNIA

Dear Mr. Arniola:

The Department of Toxic Substances Control (DTSC) has received the June 29, 2010 *Request for Completion – RMP Locations 23, 24, 25, 87, 88, 113, 114, and 123 in the East Gateway Area* (Completion Request). The Completion Request reports the remedial action implemented at eight Risk Management Plan (RMP) Locations totaling approximately 1.55-acre within the East Gateway Area of the Former Oakland Army Base – Economic Development Conveyance Area (also known as the Oakland Gateway Development Area) in Oakland, California. The City of Oakland is requesting completion of the following eight RMP Locations:

- RMP Location 23 – Former Facility 815 consisted of a washrack, a sand trap, and five collection sumps,
- RMP Location 24 – Former oil water separator (OWS-2) near former Facility 815,
- RMP Location 25 – Former Building T-815 used as a paint and solvent storage shed,
- RMP Location 87 – Building 812,
- RMP Location 88 – Building 823,
- RMP Location 113 – Former 1,000-gallon fuel oil Underground Storage Tank-A (UST-A),
- RMP Location 114 – Former 550-gallon waste oil UST-8A, and

Mr. Mark Arniola
July 19, 2010
Page 2

- RMP Location 123 – Two former 550-gallon waste oil USTs (Tanks 7 and 8).

In 1999, the Army excavated the RMP Location 23 area and removed stained soils associated with the sand trap and washrack; however, the Army encountered an active fire main, fire hydrant, and power poles on the north side of excavation. Residual chemical of concern (COC) concentrations in soil at the north sidewall have slightly exceeded remediation goals. The City of Oakland has created a new RMP Location identified as "*RMP Location 159 – Residual soil at North Side of Building 815 Excavation.*" RMP Location 159 will be addressed during future site redevelopment.

The September 27, 2002 DTSC-approved Remedial Action Plan (RAP) for the former Oakland Army Base requires remediation of RAP Sites and RMP Locations. The Completion Request reports soil and groundwater data at the RMP Locations 23, 24, 25, 87, 88, 113, 114, and 123, summarizes previous impacted-soil removal activities at RMP Locations 23, 113, and 123, and demonstrates that the residual COC concentrations at these RMP Locations meet the remedial action objectives specified in the RAP. The City of Oakland plans to develop the East Gateway Area for commercial and industrial land uses.

On June 25, 2010, DTSC provided comments on the draft Completion Request. The City of Oakland has responded to DTSC's comments and revised the Completion Request satisfactorily. Based on the information presented in the Completion Request, DTSC concludes that the City of Oakland (a) has investigated RMP Locations 23, 24, 25, 87, 88, 113, 114, and 123 adequately, (b) has removed impacted-soil from RMP Locations 23, 113, and 123, (c) has demonstrated achievement of the remedial action objectives, and (d) has implemented the required institutional control remedy for the subject RMP Locations. DTSC hereby approves the Completion Request and concurs with identification of RMP Location 159.

Please note that all RMP Locations and RAP Sites, upon remedy implementation, continue to be parts of the RMP Implementation Area. Such areas will still be subject to the risk management protocols set forth in the RMP regarding planning and implementation of earthwork construction, redevelopment, and/or post-development activities. In the event that the City of Oakland, future landowners, and/or developers discover unknown contamination and the RMP cannot address such new contamination, DTSC reserves the right to require additional environmental work, as appropriate.

If you have any questions, please contact me at (510) 540-3770.

Sincerely,

Henry Wong
Remedial Project Manager
Brownfields and Environmental Restoration Program

Email Distribution:

Mr. Michael T. Steiger, P.E.
Project Manager
Erler & Kalinowski, Incorporated
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Environmental and Safety
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Ms. Xuan-Mai Tran
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U.S. Environmental Protection Agency
Region 9
Federal Facilities Cleanup Branch
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Mr. George Leyva, P.G.
Project Manager
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, Suite 1400
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gleyva@waterboards.ca.gov

Mr. Bill Brawner
Army's Program Manager for
Oakland Gateway Development Area
Operational Army and Medical Branch
Department of the Army
2530 Crystal Drive
Room 5066E
Arlington, Virginia 22202
bill.brawner@conus.army.mil

Mr. Scott Armstrong
Army's BRAC Environmental Coordinator for
Oakland Gateway Development Area
CALIBRE
5200 Oleander Drive
Carmichael, California 95608
scott.armstrong@calibresys.com

Department of Toxic Substances Control

Matthew Rodriquez
Secretary for
Environmental Protection

Deborah O. Raphael, Director
700 Heinz Avenue
Berkeley, California 94710-2721

Edmund G. Brown Jr.
Governor

REMEDIAL ACTION CERTIFICATION

RMP Locations 98 and 159
Oakland Gateway Development Area
700 Murmansk Street, Suite 3
Oakland, California 94607

---

1. Certification of Remedial Action:

I hereby certify that the foregoing information is true and correct to the best of my knowledge.

Henry Wong, P.E.
Remedial Project Manager
Brownfields and Environmental Restoration Program

6/27/2013
Date

Karen M. Toth, P.E.
Unit Chief
Brownfields and Environmental Restoration Program

6/26/2013
Date

Gerard Aarons, PG 7430, CHG 771
Engineering Geologist
Geological Services Unit
Office of Geology
Brownfields and Environmental Restoration Program

6/27/2013
Date

2. **Certification Statement:** Based upon the information which is currently and actually known to the Department of Toxic Substances Control (DTSC),

__ DTSC has determined that all appropriate response actions have been completed, that all acceptable engineering practices were implemented and that no further removal/remedial action is necessary.

__ DTSC has determined, based upon a remedial investigation or site characterization that the site poses no significant threat to public health, welfare or the environment and therefore implementation of removal/remedial measures is not necessary.

X DTSC has determined that all appropriate removal/remedial actions have been completed and that all acceptable engineering practices were implemented; however, the site requires ongoing operation and maintenance (O&M) and monitoring efforts. The site will be deleted from the "active" site list following (1) a trial operation and maintenance period and (2) execution of a formal written settlement between the Department and the responsible parties, if appropriate. However, the site will be placed on the Department's list of sites undergoing O&M to ensure proper monitoring of long-term clean-up efforts.

3. **Site Name and Location:**

RMP Locations 98 and 159
Oakland Gateway Development Area
700 Murmansk Street, Suite 3
Oakland, California 94607

A. List of any other names that have been used to identify the site:

RMP Locations

- RMP Location 98: A former 550-gallon gasoline above ground storage tank (AST) located west of Building 14
- RMP Location 159: The location of a former sand trap and vehicle wash rack

Alternative Names for the Project Site

- Base Realignment and Closure Parcels 4 and 11
- Operable Unit 1
- Gateway Development Area
- Former Oakland Army Base – Economic Development Conveyance Area
- Oakland Army Base

B. Address of site if different from above:

RMP Location 98 is located on the south side of Burma Road, west of its intersection with Maritime Street, in the City of Oakland, California. RMP Location 159 is located on the south side of Urkraine Street, east of its intersection with Maritime Street, in the City of Oakland, California.

C. Assessor's Parcel Number: O000-0507-001-11
(This number starts with the letter "O" and is followed by three zeros.)

D. DTSC Identification Numbers:

Site Code: 201537
EnviroStor ID: 01970016

4. Responsible Parties:

Landowner
City of Oakland

Contact Person:
Mr. Mark Arniola, P.G.
Environmental Program Specialist
Public Works Agency
Environmental Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, California 94612-2034
(510) 238-7371
marniola@oaklandnet.com

5. Project History:

Prior to 1916, much of the area encompassing the former Oakland Army Base was natural tidal marsh or shallow open water. Subsequent land reclamation activities in the general areas created the land where the Army property is situated. The Army began operation at the former Oakland Army Base in the early 1940s, closed the base in September 1999, and transferred 363.5 acres of property to the City of Oakland in July 2003. In August 2006 the City of Oakland deeded approximately half of the transferred area to the Port of Oakland. DTSC has renamed the transferred 363.5-acre property as the "Oakland Gateway Development Area."

On September 27, 2002, DTSC approved the Remedial Action Plan (RAP) and selected remedies for seven RAP Sites and approximately 150 Risk

Management Plan (RMP) Locations. RAP Sites are large areas with contaminated soil and/or groundwater that must be remediated before infrastructure installation or redevelopment. In contrast, RMP Locations and features include washracks, sumps, oil/water separators, miscellaneous operations, underground storage tanks, aboveground storage tanks, former industrial and chemical handling locations, historical spills and stains, lead in soil around buildings, former polychlorinated biphenyl (PCB)-transformers and equipment locations, storm drains and sanitary sewers, railroad tracks, and marine sediments. The RAP has selected a presumptive remedy outlined in the Risk Management Plan (Appendix E of the RAP) for supplementing environmental data and implementing necessary cleanup actions during infrastructure installation or redevelopment.

On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* (Covenant) for the Oakland Gateway Development Area, which includes RMP Locations 98 and 159. Since the former base property is not being remediated to residential or drinking water standards, the Covenant requires land and groundwater use restrictions and compliance with the RMP for proper soil and groundwater management.

6. RMP Locations 98 and 159:

On June 18, 2013, the City of Oakland finalized the *Request for Completion and Summary of Remediation Activities RMP Locations 98 and 159* (Completion Request) (a) presenting soil and groundwater data collected by the Army and supplemented by the City of Oakland, (b) summarizing the soil remediation activities, (c) evaluating whether the data satisfy RMP sampling requirements, and (d) documenting achievement of the remedial action objectives at the RMP Locations.

RMP Location 98

RMP Location 98 is the former 550-gallon gasoline AST located near the southwest corner of Building 14. The AST was removed in 1998; its installation date is unknown. The AST was reportedly used to store unleaded gasoline drained from vehicles before they were loaded onto ships and to fuel vehicles off-loaded from ships. The RAP identifies lead impacted soil at RMP Location 98.

- *1997 through 2000 Investigation*:

  In July 1997, August 1998, and February 2000, the Army collected a total of 17 soil samples at depths from the ground surface to 7 feet below ground surface (bgs). The soil samples were analyzed for volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons (PAHs), total petroleum hydrocarbons in gasoline range (TPH-g), TPH in diesel range

(TPH-d), TPH in motor oil range (TPH-mo), and metals. For these 17 soil samples, lead concentrations in two samples at 2 feet bgs and 1.5 feet bgs were detected at 2,910 mg/kg and 883 mg/kg, respectively, above the lead remediation goal of 750 mg/kg. All other chemicals of concern (COCs) were detected with soil concentrations below the remediation goals.

In July 1997 and August 1998, the Army collected five grab groundwater samples from four borings for VOC, TPH-g, TPH-d, TPH-mo, and metal analyses. All COCs were detected with groundwater concentrations below remediation goals.

- *2011 Remediation*:

  In June 2011 the City of Oakland excavated the lead-impacted soil to a depth of three feet within a 10-foot by 30-foot area. Five soil samples (RMP98CS001 through RMP98CS005) were collected from the four sidewalls and the bottom for lead analysis. The analytical result of bottom sample (RMP98CS005) indicated the lead was present at a concentration of 950 mg/kg. The sidewall samples were all below the remediation goal. In July 2011 the City of Oakland continued excavation down to the water table (approximately 5 feet bgs). Following the over-excavation extension, a soil sample (RMP98CS007) was collected from the excavation bottom for lead analysis; the lead concentration was detected at a concentration of 19 mg/kg in this bottom confirmation sample.

  During the initial excavation activities conducted in June 2011, an area of stained soil with a petroleum-like odor was encountered in the northeast corner of the excavation. A sample of this material (RMP98CS006) was collected and submitted for VOC, PAH, PCB, TPH-d, TPH-g, and TPH-mo analyses. Analytical results indicated the presence of VOCs, PAHs, and TPH-d at concentrations above the respective remediation goals. In July 2011 the excavation was extended five feet beyond the initial boundary to "chase" the petroleum impacted material. Following this over-excavation, three additional sidewall samples (RMP 98CS008 through RMP 98CS010) and one bottom sample (RMP98CS011) were collected for VOC, PAH, and TPH-d analyses. All COC concentrations from the four additional confirmation samples were below remediation goal.

- *2012 Data Gap Investigation*:

  In April 2012 the City of Oakland conducted a data gap investigation to further evaluate the extent of lead in soil near sampling location ICFAS04S01, because the July 2011 excavation was obstructed by the presence of a tenant trailer and a buried electrical power line. Nine soil samples were collected from four borings (RMP98SL001 through RMP98SL004) advanced to 3.5 feet bgs. Analytical results from the nine soil samples indicated that the 2 to 2.5-

feet bgs sample in three of the four borings had lead concentrations that exceeded the remediation goal. Concentrations at the 2 to 2.5-feet bgs samples ranged from 340 mg/kg (RMP98SL003-2-2.5) to 12,000 mg/kg (RMP98SL002-2.5). None of the samples collected from 3 to 3.5-feet bgs depths exceeded the lead remediation goal. No evidence of petroleum hydrocarbons (visual or olfactory) was identified within the soil samples suggesting that the lead contamination may not have been associated with the 550-gallon gasoline AST.

- *2013 Remediation*:

  In February 2013 the City of Oakland excavated the lead-impacted area identified in April 2012 to a depth of 3 feet. Following the excavation, five soil samples (RMP98CS012 through RMP98CS016) were collected from the four sidewalls and bottom for lead analysis.

  In addition, soil was excavated in an area down to 1.5 feet bgs that was not excavated during the 2011 excavation due to the presence of a buried electrical power line. Care was taken to avoid damaging the electrical line that was encountered within a concrete covered utility conduit at a depth of 1.5 feet bgs. Once the concrete overlying the electric line was uncovered, a bucket width (3 feet) was excavated west of the electrical line to collect one soil sample (RMP98CS017) for VOC, semi-volatile organic compounds (SVOCs), TPH-d, and lead analyses.

  Analytical results from soil samples (RMP98CS012 through RMP98CS017) were detected with COCs below remediation goals.

  Four-point composite samples collected from the excavated soil placed into the two stockpiles were also analyzed for VOCs, SVOCs, PCBs, TPH-g, TPH-d, TPH-mo, and metals. Based on the analytical results, approximately 28 cubic yards of soil was disposed of as a RCRA hazardous waste at a landfill in Buttonwillow, California. Another 28 cubic yards of soil was disposed of as nonhazardous solid waste at at Keller Canyon Landfill in Bay Point, California.

RMP Location 159

RMP Location 159 is located at the northwestern corner of Facility 815. Former Facility 815 (RMP Location 23) consisted of a vehicle washrack, a sand trap, an oil water separator (RMP Location 24), and two waste oil underground storage tanks (USTs) (RMP Location 123). The two RMP Location 123 USTs were removed in 1990 and Facility 815 and the associated RMP Locations 23 and 24 features were dismantled and removed in 1999. Excavation, over-excavation, confirmation sampling and soil and groundwater investigations performed at Facility 815 resulted in completion of RMP Locations 24 and 123 and all but the

northwestern portion of RMP Location 23. The northwestern portion of RMP 23 was subsequently split apart from RMP Location 23 and identified as new RMP Location 159. DTSC approved the completion request for RMP Locations 23, 24, and 123 in July 2010.

- *1999 Army Excavation of Former Facility 815*:

  During excavation at the Former Facility 815 (i.e., RMP Location 23) in November 1999, the Army collected nine confirmation soil samples (11S26, 11S28 through 11S31, 11S35, 11S36, and 11S41) at the northeastern sidewall, which are in the southwestern margin of RMP Location 159. Stained soil was present on the northeastern excavation sidewall, indicative of COC impacted soil; however, excavation was halted due to the presence of a fire main, two power poles, and a fire hydrant located near the northeastern limit of the excavation. Analytical results of excavation soil samples 11S31, 11S35, and 11S41 indicated that COCs were present above their respective remediation goals at northeastern sidewall of the Former Facility 815.

  In December 1999, the Army subsequently collected 11 soil samples from five borings (11S42 through 11S45 and 11S47) drilled during a data gap investigation along a transect parallel to the excavation just north of the power poles to determine if COCs were present within soil just north fire main, power poles, and the fire hydrant that halted excavation in November 1999. In January 2000, two additional soil samples were collected from one boring (11S46) located west the Former Facility 815. Analytical results of excavation soil samples 11S31, 11S35, and 11S41 indicated that COCs were present above their respective remediation goals at northeastern sidewall of the Former Facility 815. Soil samples collected in December 1999 and January 2000 were below laboratory reporting levels or detected at concentrations below remediation goals.

  Groundwater samples were previously collected from five wells and seven grab groundwater soil borings in the vicinity of the Former Facility 815 for VOC, PAH, PCB, pesticide, petroleum hydrocarbons, and metal analyses. All analytes in the groundwater samples were detected at concentrations below their respective remediation goals.

- *2010 Creation of RMP 159*:

  During the review of a completion request for RMP Location 23 in early 2010, DTSC designated the northeastern sidewall, where samples 11S31, 11S35, and 11S41 were located, as RMP Location 159. Analytical results of excavation confirmation samples 11S31, 11S35, and 11S41 indicated that COCs were present above their respective remediation goals at RMP Location 159 as follows:

- TPH-d was detected at a concentration of 11,000 mg/kg at 6-feet bgs in soil sample 11S31 (TPH-d remediation goal is 8,000 mg/kg),
- TPH-g was detected at a concentration of 2,500 mg/kg at 5.5-feet bgs in soil sample 11S41 (TPH-g remediation goal is 2,400 mg/kg),
- Total xylenes were detected at a concentration of 2.5 mg/kg at 5.5-feet in soil sample 11S41 and at a concentration of 1.66 mg/kg at 3.5 feet bgs in soil sample 11S35 (total xylenes remediation goal is 1 mg/kg),
- Naphthalene was detected at a concentration of 6 mg/kg at 5.5-feet in soil sample 11S41 (naphthalene remediation goal is 4.9 mg/kg),
- Chrysene was detected at a concentration of 7.7 mg/kg at a depth of 3.5-feet in soil sample 11S35 (chrysene remediation goal is 4.7 mg/kg).

- *2013 Soil Excavation*:

In February 2013 the City of Oakland excavated a 2-foot by 20-foot trench to approximately 6 feet bgs at RMP Location 159. Following the excavation, five soil samples (RMP 159CS001 through RMP 159CS005) were collected from the four sidewalls and bottom for VOC, SVOCs, TPH-g, TPH-d, and TPH-mo analyses. Soil analytical results do not show COC concentrations above remediation goals.

One four-point composite sample collected from the excavated soil was also analyzed for VOCs, SVOCs, PCBs, TPHs, and metals. Based on the analytical results, approximately 9 cubic yards of soil was disposed of as non-hazardous solid waste at a permitted landfill in Bay Point, California.

The excavation was backfilled in March 2013 with clean fill to a depth of approximately 2.5 feet bgs. From 2.5 feet bgs to the surface, the excavation was backfilled with 2-sack sand cement slurry to insure that areas near the sewer line would be supported.

A 2-foot by 20-foot trench was the only area excavated out of the proposed 7-foot by 43-foot excavation to encompass sample location 11S31 due to the presence of buried utility lines, the fire main, two power poles, and a fire hydrant. In addition to a water line that was previously known to run the down the middle of the proposed excavation, an AT&T distribution line was identified by Underground Service Alert and an unknown utility was identified during the geophysical utility clearance. The unknown utility was determined to be a 6-inch sewer line located approximately 2 feet bgs.

The excavations conducted at RMP Location 159 in 1999 and 2013 removed the maximum amount of soil that could be accessed without risking worker safety or causing damage to underground utilities. The residual TPH-d concentration at soil sample location 11S31 at 6 feet bgs contains TPH-d at 11,000 mg/kg (remediation goal is 8,000 mg/kg). Since TPH-d concentrations at 11S26 (9.4 mg/kg), 11S28 (1.4 mg/kg), 11S35 (530 mg/kg excavated), 11S42 at 2 feet bgs (5 mg/kg), 11S42 at 5 feet bgs (5 mg/kg), and 11S42 at 5.5 feet bgs (4 mg/kg) were all collected within approximately 12 feet of location 11S31, it seems the elevated TPH-d concentration at 11S31 is well bounded.

RMP Location 159 is still part of the RMP Implementation Area and hence subject to the risk management protocols set forth in the RMP regarding planning and implementation of earthwork construction or other redevelopment or post-development subsurface construction activities.

Approval of Completion Request

On June 27, 2013, DTSC approved the June 18, 2013 Completion Request and concluded that the City of Oakland (a) had adequately assessed, investigated, and remediated RMP Locations 98 and 159, (b) had demonstrated achievement of the remedial action objectives, and (c) had implemented the required institutional control remedy for the subject areas.

All RAP Sites and RMP Locations within the Oakland Gateway Development Area, upon remedy implementation, continue to be parts of the RMP Implementation Area. The August 8, 2003 *Covenant to Restrict Use of Property, Environmental Restriction* requires landowner(s) to follow the risk management protocols set forth in the RMP regarding planning and implementation of earthwork construction, redevelopment, and/or post-development activities.

7. Type of Site:

Included in EnviroStor? Yes

RCRA Permitted Facility	_____	Bond Funded	_____
RCRA Facility Closure	_____	RP Funded	_____
NPL	_____	Federal Facility	_____
Other (i.e., walk-in):	X		

8. Size of Site:

Approximately 810 square feet

Small X Medium _____ Large _____ Extra Large _____

9. Dates of Remedial Action

The Army, City of Oakland, and Port of Oakland assessed, investigated and remediated RMP Locations 98 and 159 from April 2002 through June 2013. On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* for the Oakland Gateway Development Area, which includes RMP Locations 98 and 159.

10. Response Action Taken on Site: (check appropriate action)

____ Initial removal or remedial action (site inspection/sampling)

_X_ Final remedial action

____ RCRA enforcement/closure action

____ No action, further investigation verified that no cleanup action at site was needed

A. Type of Remedial Action:

The RAP selects the following remedies:

- In-situ chemical oxidation/reduction; and
- Implementation of institutional controls to:
  - Prohibit sensitive land uses;
  - Restrict construction of groundwater wells and extraction of groundwater without DTSC's approval;
  - Prevent disturbance of surface soil, subsurface soil, and groundwater monitoring wells, except as conducted pursuant to the RMP; and
  - Comply with the RMP for soil and groundwater management, maintenance of ground covers, mitigation during earthwork, management of below grade structures, and construction dewatering.

B. Estimated quantity of remediation waste/hazardous waste associated with the site (i.e., tons/gallons/ cubic yards) was:

1. _____ Waste Treated Off-Site Amount: _____

2. _____ Untreated (capped sites) Amount: _____

3. _X_ Soil Removed Amount: 65 cubic yards

4. _____ Groundwater Disposed Off-Site Amount: _____

5. __X__ Institutional Controls
The institutional controls remedy applies to all Oakland Gateway Development Area property including RMP Locations 98 and 159.

11. Cleanup Levels/Standards

A. What were the cleanup standards established by DTSC pursuant to the final remedial action plan or workplan (if cleanup occurred as the result of a removal action workplan or interim remedial measures prior to development of a RAP)?

The RAP, Table 7-11 lists numerical cleanup targets as the soil and groundwater remediation goals that correspond to a 1×10^{-6} incremental lifetime cancer risk for each COC. When more than ten carcinogenic COCs are present at concentrations exceeding remediation goals, the overarching remedial action objective is the cumulative target risk level of 1×10^{-5} for carcinogenic COCs applicable at each RAP Site and RMP Location.

Remediation goals represent the maximum allowable concentrations for the respective COCs and cannot be increased to allocate amongst the residual COCs to meet the overarching cumulative risk of 1×10^{-5}. However, remediation goals can be adjusted downward, as need, if the cumulative cancer risk level exceeds 1×10^{-5} or the total hazard index (HI) exceeds 1. Remedial action objectives are achieved when residual COCs in soil and groundwater are no greater than a cumulative HI of 1 or a cumulative carcinogenic risk of 1×10^{-5} for each potentially exposed population.

B. Were the specified cleanup standards met? Yes __X__ No _____

C. If "no", why not:

12. DTSC Involvement in the Remedial Action:

A. Did DTSC order the Removal Action?

Yes _____ No __X__ Date of Order _____

B. Did DTSC review and approve (check appropriate action and indicate date of review/approval if done):

_____ Sampling Analysis Procedures Date: _____

_____ Health & Safety Protections Date: _____

_____ Removal/Disposal Procedures Date: _____

__X__ Remedial Action Plan Date: September 27, 2002

_____ Removal Action Workplan Date: _____

C. If site was abated by a responsible party, did DTSC receive a signed statement from a licensed professional on all Remedial Action?

Yes __X__ No ____ Name: Bethany P. Flynn, PG 5710

D. Did a registered engineer or geologist verify that acceptable engineering practices were implemented?

Yes __X__ No ____ Name: Gerard Aarons, PG 7430
Henry Wong, P.E., C81458

E. Did DTSC confirm completion of all remedial action?

Yes __X__ No ____ Date of verification: June 27, 2013

F. Did DTSC (directly or through a contractor) actually perform the Remedial Action?
Yes ____ No __X__

G. Was there a community relations plan in place?
Yes __X__ No ____

H. Was a remedial action plan or removal action workplan developed for this site?
Yes __X__ No ____

I. Did DTSC hold a public meeting regarding the draft RAW or RAP?
Yes __X__ No ____

J. Were public comments addressed?
Yes __X__ No ____
Date of DTSC analysis and response: September 27, 2002

K. Are all of the facts cited above adequately documented in the DTSC files?
Yes __X__ No ____

If no, identify areas where documentation is lacking.

_____

13. EPA Involvement in the Remedial Action:

A. Was the EPA involved in the site cleanup?
Yes _X_ No ____

B. If yes, did EPA concur with all remedial actions?
Yes _X_ No ____

C. EPA comments: EPA staff provided consultative services on this project.

EPA staff involved in cleanup:

Xuan-Mai Tran
Remedial Project Manager
U.S. Environmental Protection Agency
Region IX
Federal Facilities Cleanup Branch
75 Hawthorne Street, (SFD-8-2)
San Francisco, California 94105
(415) 972-3002
tran.xuan-mai@epamail.epa.gov

14. Other Regulatory Agency Involvement in the Cleanup Action:

Agency:	Activity:
_X_ RWQCB	The Regional Water Quality Control Board staff provided consultative services on this project.
____ ARB	_____
____ CHP	_____
____ Caltrans	_____
____ Other	_____

Name of contact persons and agency:

George Leyva, PG
Project Manager
California Regional Water Quality Control Board

1515 Clay Street, Suite 1400
Oakland, California 94612
(510) 622-2352
george.leyva@waterboards.ca.gov

15. Post-Closure / Post-Remedy Activities:

A. Will there be post-closure / post-remedy activities at this site? (e.g., Operation and Maintenance)
Yes _X_ No ____

If yes, describe:

On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* (Alameda County Series Number 2003466371) for the Oakland Gateway Development Area, which includes Building 991 RAP Site. The City of Oakland implemented the institutional control remedy by recording the Covenant with the Alameda County Assessor's Office. Since the former base property is not being remediated to residential and drinking water standards, the Covenant requires land and groundwater use restrictions and compliance with the RMP for proper soil and groundwater management. The RMP is Appendix E to the September 27, 2002 DTSC-approved RAP.

The remedial action objectives were based on commercial and industrial land uses. Since residual chemicals in soil and groundwater at the site render the property not suitable for unrestricted use, five-year statutory reviews are required for RMP Locations 98 and 159. The trigger date for a statutory five-year review was the mobilization date of first remedy implementation for the Port-owned portion of the Oakland Gateway Development Area project (i.e., UST 11/12/13 RAP Site on August 1, 2007). On August 30, 2012, the Port of Oakland submitted the draft Five-Year Review to DTSC for review. DTSC plans to complete its review of the Five-Year Review by July 2013.

B. Have post-closure plans been prepared and approved by DTSC?
Yes ____ No _X_
A post-closure plan is not required or necessary for this site.

C. What is the estimated duration of post-closure (including operations and maintenance activities) activities?

Unless ended in accordance with the *Covenant to Restriction Use of Property, Environmental Restriction*, by law, or by DTSC in the exercise of

its discretion, the Covenant and five-year review requirements shall continue in effect in perpetuity.

D. Are deed restrictions proposed or in place? Yes _X_ No ____

If yes, have deed restrictions been recorded with the County recorder?

Yes _X_ No _____ Date: August 8, 2003

If no, who is responsible for assuring that the deed restrictions are recorded?

_____

Who is the DTSC contact person?

Henry Wong, P.E.
Hazardous Substances Engineer
Brownfields and Environmental Restoration Program
(510) 540-3770
henry.wong@dtsc.ca.gov

E. Has cost recovery been initiated? Yes _X_ No _____

Has DTSC received all payments? Yes _____ No _X_

If yes, amount received $ _____; _____% of DTSC costs billed.

On November 13, 2008, DTSC determined that the Army has failed to meet certain obligations of the Memorandum of Agreement (MOA) entered into between the Army, DTSC, and RWQCB in April 2003. Specifically, the Army has failed to provide funds for DTSC and RWQCB oversight under Section 27.1 of the MOA. Section 27.1 requires that oversight funds will be "... provided through the Defense/State Memorandum of Agreement (DSMOA), executed on August 21, 1992 ... or some other appropriate mechanism as agreed upon by the parties..." Accordingly, DTSC and RWQCB have not been paid for oversight costs since July 2008.

The City's, Port's, Army's and DTSC's management teams are working toward a resolution on this issue.

F. Were local planning agencies notified of the cleanup action?

Yes _X_ No _____ If yes, the name and address of agency:

Mark Arniola, PG

Environmental Program Specialist
Public Works Agency
Environmental Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, California 94612-2034
(510) 238-7371
marniola@oaklandnet.com

16. **Expenditure of Funds and Source:**

(Information to be supplied by Accounting Unit)

Funding Source and Amount Expended:

_____ HWCA $ _____ _____ HSA $ _____
_____ HSCF $ _____ _____ RCRA$ _____
_____ RP $ _____ _____ Other $ _____
_____ Federal Cooperative Agreement $ _____

17. **Problems Encountered Which Caused Major Delays:** None

18. **Accomplishment Unique to the Project:** None

19. **Final Use of Site:** The City of Oakland plans to develop RMP Locations 98 and 159 and vicinity for commercial and industrial land uses.

Department of Toxic Substances Control

Linda S. Adams
Secretary for
Environmental Protection

Maziar Movassaghi
Acting Director
700 Heinz Avenue
Berkeley, California 94710-2721

Arnold Schwarzenegger
Governor

REMEDIAL ACTION CERTIFICATION

Buildings 808 and 823 Remedial Action Plan Site
Oakland Gateway Development Area
700 Murmansk Street, Suite 3
Oakland, California 94607

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1. **Certification of Remedial Action:**

I hereby certify that the foregoing information is true and correct to the best of my knowledge.

Henry Wong
Remedial Project Manager

6/18/2009
Date

Dot Lofstrom, P.G.
Leader
East Bay Urban Infill Team

6-18-09
Date

REGISTERED PROFESSIONAL ENGINEER
DANIEL EDWARD MURPHY
No. 049465
Exp. 9/30/2010
CIVIL
STATE OF CALIFORNIA

Daniel Murphy, P.E.
DTSC Civil Engineer in Responsible Charge

6/18/09
Date

2. **Certification Statement:** Based upon the information which is currently and actually known to the Department of Toxic Substances Control (DTSC),

__ DTSC has determined that all appropriate response actions have been completed, that all acceptable engineering practices were implemented and that no further removal/remedial action is necessary.

__ DTSC has determined, based upon a remedial investigation or site characterization that the site poses no significant threat to public health, welfare or the environment and therefore implementation of removal/remedial measures is not necessary.

X DTSC has determined that all appropriate removal/remedial actions have been completed and that all acceptable engineering practices were implemented; however, the site requires ongoing operation and maintenance (O&M) and monitoring efforts. The site will be deleted from the "active" site list following (1) a trial operation and maintenance period and (2) execution of a formal written settlement between the Department and the responsible parties, if appropriate. However, the site will be placed on the Department's list of sites undergoing O&M to ensure proper monitoring of long-term clean-up efforts.

3. **Site Name and Location:**

Buildings 808 and 823 Remedial Action Plan (RAP) Site
(aka: VOCs in Groundwater at Buildings 808 and 823)
Oakland Gateway Development Area
700 Murmansk Street, Suite 3
Oakland, California 94607

A. List of any other names that have been used to identify the site:

VOCs in Groundwater at Buildings 808 and 823
Former Oakland Army Base – Economic Development Conveyance Area
Oakland Army Base
A portion of Base Realignment and Closure (BRAC) Parcel 11
A portion of Operable Unit 1

B. Address of site if different from above:

Areas east of 2413 Ukraine Street, Oakland, California

C. Assessor's Parcel Number: O000-0507-001-11

D. DTSC Identification Numbers:

Operable Unit:	Buildings 808 and 823
Site Code:	201537
EnviroStor ID:	01970016

4. Responsible Parties:

Landowner
City of Oakland

Contact Person
Mr. Mark Arniola
Environmental Program Specialist
Public Works Agency
Environmental Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, California 94612-2034
(510) 238-7371
marniola@oaklandnet.com

Relationship to Site: *Contact person for responsible party*

5. Brief Description and History of the Site:

The Buildings 808 and 823 RAP Site, also known as "VOCs in Groundwater at Buildings 808 and 823," is an approximately 1.3-acre site within the former Oakland Army Base (OARB), Oakland, California. Prior to 1916, much of the area encompassing the OARB was natural tidal marsh or shallow open water. Subsequent to 1916, land was created and industrial buildings constructed that predate OARB activities.

The Army constructed Building 808 in 1942 and used it as a general purpose warehouse. Building 808 is currently occupied by a commercial tenant, Lighting by Steinheimer, and is used as a warehouse and production office for lighting and set design. Inactive railroad tracks are adjacent to Building 808.

The Army also constructed Building 823 in 1942. Army historical documents show that Building 823 contained a paint room, paint booth finishing room, and carpenter shop. Currently, Building 823 is occupied by a commercial tenant, Arthur Freyer Lighting, and is used as a warehouse and production office for lighting design. Records indicate that Army personnel stripped paint at Building

823 with chemicals such as chlorinated solvents. Other reports indicate that Building 823 was also used as a heavy equipment maintenance facility. Specific locations and types of equipment and chemicals that were involved with these historical operations by the Army are unknown.

Vinyl chloride and lesser concentrations of other volatile organic compounds (VOCs) were present in shallow groundwater in an area north of Building 808 and south of Building 823. No significant soil contamination has been identified and the source of the VOCs in shallow groundwater is not known. Possible sources include Building 823, and storm drains and sanitary sewers that run through the area.

Maximum VOC concentrations detected in shallow groundwater from grab groundwater locations near Buildings 808 and 823 are vinyl chloride at 267 micrograms per liter (µg/L), cis-1,2 dichloroethene at 13 µg/L, trans 1,2 dichloroethene at 3.6 µg/L, trichloroethene at 4.1 µg/L, and 1,1 dichloroethene at 2 µg/L. VOCs in shallow groundwater near Buildings 808 and 823 appear to be in steady state and are not migrating.

The lateral extent of VOC-impacted shallow groundwater was further delineated as part of the City of Oakland's Phase II Investigation in May 2002. Vinyl chloride at concentrations of less than 5 µg/L were detected in groundwater samples collected along the southern edge of this area. VOC-impacted groundwater near Buildings 808 and 823 was defined as a RAP Site because vinyl chloride in two grab groundwater samples (Locations 11S49 and 11S50 with 267 and 111 µg/L of vinyl chloride, respectively) collected in January 2000 exceeded the remediation goal of 32 µg/L.

On September 27, 2002, DTSC approved the RAP for the former Oakland Army Base. The RAP selected in-situ bioremediation of vinyl chloride in groundwater, groundwater monitoring, and institutional controls as the remedy for the Buildings 808 and 823 RAP Site.

On May 19, 2003, the City of Oakland and DTSC entered into a Consent Agreement to bind the City to enter into environmental restrictions for the Oakland Gateway Development Area as necessary to protect human health and the environment, and to require the remediation of the former base by the City in accordance with the RAP and associated Risk Management Plan (RMP). The RMP is Appendix E to the September 27, 2002 DTSC-approved RAP.

On August 6, 2003, Governor Davis approved the early transfer of approximately 363.5 acres of the former Oakland Army Base to the City of Oakland. The Buildings 808 and 823 RAP Site is a portion of the transferred property.

On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* (Covenant) for the Oakland Gateway Development Area, which includes the Buildings 808 and 823 RAP Site. The City of Oakland implemented the institutional control remedy by recording the Covenant with the Alameda County Assessor's Office. Since the former base property is not being remediated to residential or drinking water standards to allow for unrestricted reuse, the Covenant requires land and groundwater use restrictions and compliance with the RMP for proper soil and groundwater management.

On October 24, 2005, DTSC approved the *Pre-Design Investigation Memorandum* (PDIM) for additional four quarters of groundwater monitoring to better define the plume boundary and to aid preparation of the remedial design document. Vinyl chloride is the only COC for the Buildings 808 and 823 RAP Site. The maximum detected concentration of vinyl chloride in groundwater from four recent quarterly monitoring events was 26 µg/L, which is below the remediation goal of 32 µg/L. All other VOCs were below the respective remediation goals.

On March 20, 2009, DTSC issued the "Risk Management Plan Modification" letter specifying new language for RMP, Section 6.2 regarding vapor intrusion mitigation measures. This RMP Modification requires additional evaluation and consultation with DTSC if new buildings were to be constructed at the Buildings 808 and 823 RAP Site and vicinity areas.

6. Type of Site:

Included in EnviroStor? Yes

RCRA Permitted Facility	_____	Bond Funded	_____
RCRA Facility Closure	_____	RP Funded	_____
NPL	_____	Federal Facility	_____

Other (i.e., walk-in): Please see Section 14.E of this Certification.

7. Size of Site:

Approximately 1.3 Acres

Small _____ Medium __X__ Large _____ Extra Large _____

8. Dates of Remedial Action

The City of Oakland conducted four quarterly groundwater monitoring events pursuant to the DTSC-approved PDIM from December 2005 to September 2006. On April 24, 2009, the City of Oakland submitted the final Completion Report summarizing the monitoring activities, presenting analytical data, and requesting closure of the subject RAP Site.

9. Response Action Taken on Site: (check appropriate action)

____ *Initial removal or remedial action (site inspection/sampling)*

_X_ Final remedial action

____ RCRA enforcement/closure action

____ No action, further investigation verified that no cleanup action at site was needed

A. Type of Remedial Action:

The RAP selected the following remedy for the Buildings 808 and 823 RAP Site:

- In-situ bioremediation of vinyl chloride in groundwater and groundwater monitoring;
- Remediation to allow for planned land uses (i.e., commercial and industrial) consistent with the Amended Reuse Plan; and
- Implementation of institutional controls to:
  - Prohibit sensitive land uses;
  - Restrict construction of groundwater wells and extraction of groundwater without DTSC's approval;
  - Prevent disturbance of surface soil, subsurface soil, and groundwater monitoring wells, except as conducted pursuant to the RMP; and
  - Comply with the RMP for soil and groundwater management, maintenance of ground covers, mitigation during earthwork, management of below grade structures, and construction dewatering.

B. Estimated quantity of waste associated with the site (i.e., tons/gallons/ cubic yards) was:

1. _____ Waste Treated Amount: _____

2. _____ Untreated (capped sites) Amount: _____

3. _____ Soil Removed Amount: _____

4. _____ Wastewater Removed Amount: _____

5. _____ Institutional Controls Amount: 1.3 Acres

10. Cleanup Levels/Standards

A. What were the cleanup standards established by DTSC pursuant to the final remedial action plan (RAP) or workplan (if cleanup occurred as the result of a removal action workplan (RAW) or interim remedial measures (IRM) prior to development of a RAP)?

Risk-based remediation goals developed for OARB are utilized to meet the remedial action objectives. These goals were developed and presented in the RAP, including the rationale, calculation, and input parameters used in establishing the remediation goals. Remediation goals for most chemical are risk-based and represent the lowest calculated values of the non-carcinogenic or carcinogenic risk goal for each chemical of concern that are protective of all potentially exposed populations. However, some remediation goals are based on other chemical-specific parameters (such as potential leachability of a chemical from soil to groundwater) when these values are more stringent that the calculated human health goals.

<u>Achievement of the Remedial Action Objectives</u>

Are COC concentrations below the respective remediation goals?

Vinyl chloride is the only COC for the Buildings 808 and 823 RAP Site. The maximum detected concentration of vinyl chloride in groundwater from four recent quarterly monitoring events was 26 µg/L, which is below the remediation goal of 32 µg/L. All other VOCs were below the respective remediation goals.

Are cumulative excess cancer risk less than 1.0E-05 and non-cancer hazard index less than 1 for potential human receptors?

Using the maximum detected vinyl chloride of 26 µg/L and other VOC concentrations from the 2005 and 2006 groundwater data sets and all soil

data, the cumulative risks and hazardous index (HI) for the indoor commercial worker (i.e., potential human receptors) are as follows:

Groundwater Risk:	8.1E-07		
Soil Risk:	2.0E-07		
Total Risk:	1.1E-06	→	*Less than 1.0E-05*

Groundwater HI:	3.6E-04		
Soil HI:	1.9E-04		
Total HI:	5.5E-04	→	*Less than 1*

The total risk and hazard index are less than the remedial action objectives.

B. Were the specified cleanup standards met? Yes __X__ No _____

C. If "no", why not:

11. DTSC Involvement in the Remedial Action:

A. Did DTSC order the Removal Action?

Yes _____ No __X__ Date of Order _____

B. Did DTSC review and approve (check appropriate action and indicate date of review/approval if done):

_____ Sampling Analysis Procedures Date: _____

_____ Health & Safety Protections Date: _____

_____ Removal/Disposal Procedures Date: _____

__X__ Remedial Action Plan Date: September 27, 2002

_____ Removal Action Workplan Date: _____

C. If site was abated by a responsible party, did DTSC receive a signed statement from a licensed professional on all Remedial Action?

Yes __X__ No ____ Name: Michael Steiger, P.E., C63348

D. Did a registered engineer or geologist verify that acceptable engineering practices were implemented?

Yes _X_ No ____ Name: Daniel Murphy, P.E., C49465

E. Did DTSC confirm completion of all Remedial Action?

Yes _X_ No ____ Date of verification: June 8, 2009

F. Did DTSC (directly or through a contractor) actually perform the Remedial Action?
Yes ____ No _X_

G. Was there a community relations plan in place?
Yes _X_ No ____

H. Was a remedial action plan or removal action workplan developed for this site?
Yes _X_ No ____

I. Did DTSC hold a public meeting regarding the draft RAW or RAP?
Yes _X_ No ____

J. Were public comments addressed?
Yes _X_ No ____
Date of DTSC analysis and response: September 27, 2002

K. Are all of the facts cited above adequately documented in the DTSC files?
Yes _X_ No ____

If no, identify areas where documentation is lacking.

_____

12. EPA Involvement in the Remedial Action:

A. Was the EPA involved in the site cleanup?
Yes _X_ No ____

B. If yes, did EPA concur with all remedial actions?
Yes _X_ No ____

C. EPA comments: EPA staff provided consultative services on this project.

EPA staff involved in cleanup:

Xuan-Mai Tran

Remedial Project Manager
U.S. Environmental Protection Agency
Region IX
Federal Facilities Cleanup Branch
75 Hawthorne Street, (SFD-8-2)
San Francisco, California 94105
(415) 972-3002

13. Other Regulatory Agency Involvement in the Cleanup Action:

Agency:	Activity:
____ RWQCB	The Regional Water Quality Control Board (RWQCB) staff provided consultative services on this project.
____ ARB	_____
____ CHP	_____
____ Caltrans	_____
____ Other	_____

Name of contact persons and agency:

Devender Narala
Project Manager
California Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612
(510) 622-2309

14. Post-Closure / Post-Remedy Activities:

A. Will there be post-closure / post-remedy activities at this site? (e.g., Operation and Maintenance)
Yes _X_ No ____

If yes, describe:

On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* (Covenant) for the Oakland Gateway Development Area, which includes

the Buildings 808 and 823 RAP Site. The City of Oakland implemented the institutional control remedy by recording the Covenant with the Alameda County Assessor's Office. Since the former base property is not being remediated to residential and drinking water standards to allow for unrestricted reuse, the Covenant requires land and groundwater use restrictions and compliance with the RMP for proper soil and groundwater management. The RMP is Appendix E to the September 27, 2002 DTSC-approved RAP.

The City of Oakland and DTSC executed the *Covenant to Restrict Use of Property, Environmental Restriction* on August 8, 2003, which:

- Prohibit sensitive land uses;
- Restrict construction of groundwater wells and extraction of groundwater without DTSC's approval;
- Prevent disturbance of surface soil, subsurface soil, and groundwater monitoring wells, except as conducted pursuant to the RMP; and
- Comply with the RMP for soil and groundwater management, maintenance of ground covers, mitigation during earthwork, management of below grade structures, and construction dewatering.

The remedial action objectives were based on commercial and industrial land uses. Since residual chemicals in soil and groundwater at the site render the property not suitable for unrestricted use, five-year statutory reviews are required for the Buildings 808 and 823 RAP Site. The trigger date for a statutory five-year review was the mobilization date of first remedy implementation for the Oakland Gateway Development Area project (i.e., Building 1 RAP Site on November 28, 2005). Therefore, DTSC should review and approve the first statutory five-year review report on or before November 28, 2010. As a result, DTSC shall receive the first Draft Five-Year Review Report in May 2010.

B. Have post-closure plans been prepared and approved by DTSC?
Yes ____ No _X__
Post-closure plan is not required or necessary for this site.

C. What is the estimated duration of post-closure (including operations and maintenance activities) activities?

Unless ended in accordance with the *Covenant to Restriction Use of Property, Environmental Restriction*, by law, or by DTSC in the exercise of its discretion, the covenant and five-year review requirements shall continue in effect in perpetuity.

D. Are deed restrictions proposed or in place? Yes _X__No ____

If yes, have deed restrictions been recorded with the County recorder?

Yes _X_ No _____ Date: August 8, 2003

If no, who is responsible for assuring that the deed restrictions are recorded?

_____

Who is the DTSC contact person?

Henry Wong, (510) 540-3770
Name/Phone Number

E. Has cost recovery been initiated? Yes _X_ No _____

Has DTSC received all payments? Yes _____ No _X_

If yes, amount received $ _____; _____% of DTSC costs billed.

On November 13, 2008, DTSC determined that the Army has failed to meet certain obligations of the Memorandum of Agreement (MOA) enter into between the Army, DTSC, RWQCB in April 2003. Specifically, the Army has failed to provide funds for DTSC and RWQCB oversight under Section 27.1 of the MOA. Section 27.1 requires that oversight funds will be "... provided through the Defense/State Memorandum of Agreement (DSMOA), executed August 21, 1992 ... or some other appropriate mechanism as agreed upon by the parties..."

To date the Army has provided no alternative mechanism for payment of oversight costs to DTSC and RWQCB. Accordingly, DTSC and RWQCB have not been paid for oversight costs since July 2008.

F. Were local planning agencies notified of the cleanup action?

Yes _X_ No _____ If yes, the name and address of agency:

Mark Arniola, P.G.
Environmental Program Specialist
Public Works Agency
Environmental Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, California 94612-2034
(510) 238-7371

marniola@oaklandnet.com

15. **Expenditure of Funds and Source:**

(Information to be supplied by Accounting Unit)

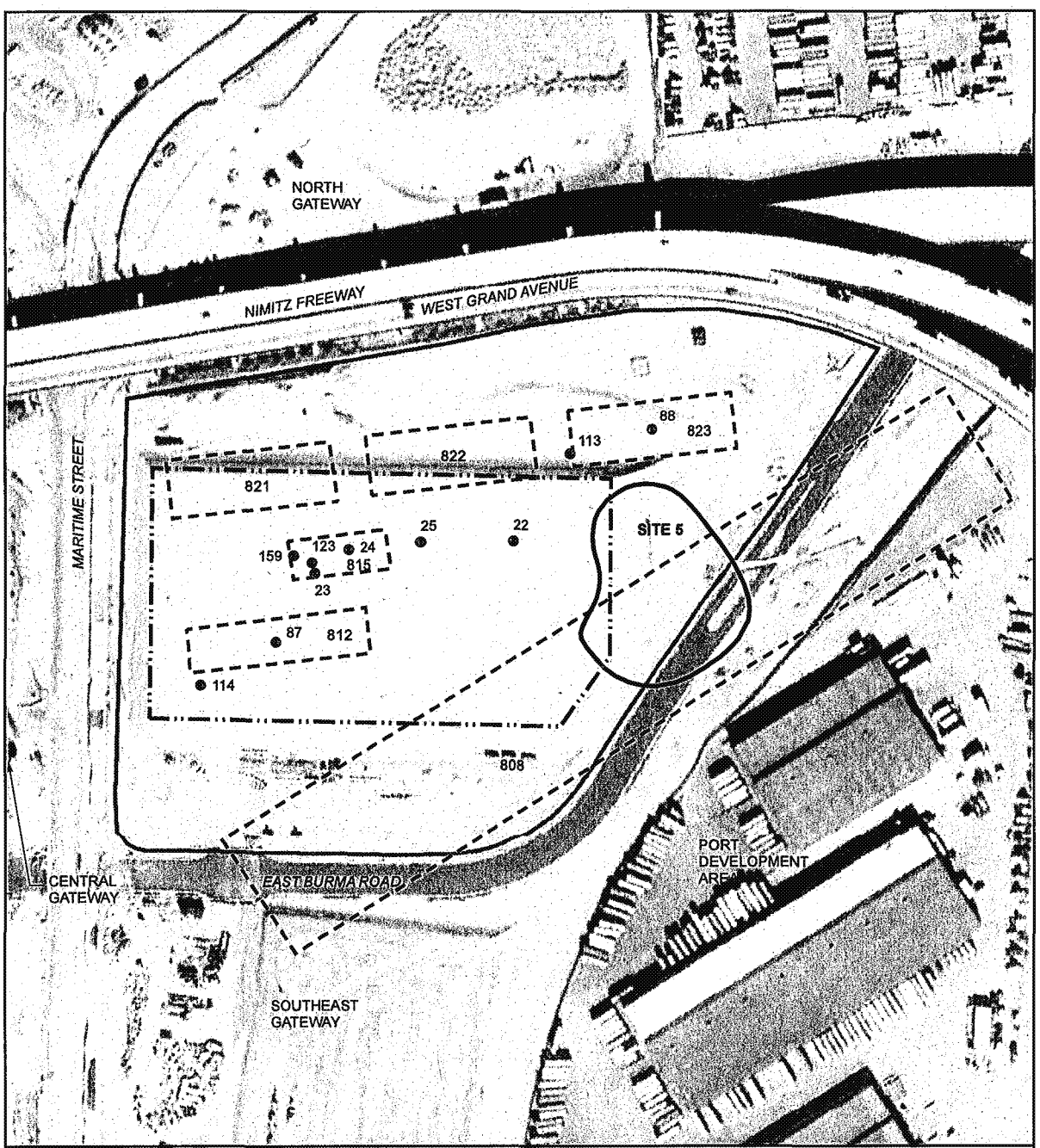
Funding Source and Amount Expended:

_____ HWCA $ _____ _____ HSA $ _____
_____ HSCF $ _____ _____ RCRA$ _____
_____ RP $ _____ _____ Other $ _____
_____ Federal Cooperative Agreement $ _____

16. **Problems Encountered Which Caused Major Delays:** None.

17. **Accomplishment Unique to the Project:** None.

18. **Final Use of Site:** The City of Oakland plans to develop the site for commercial and/or industrial land uses.



LEGEND

- RMP LOCATION
- REMEDIAL ACTION PLAN
- SITE BOUNDARY
- APPROXIMATE PROPOSED FUTURE BUILDING LOCATION
- APPROXIMATE FORMER BUILDING LOCATION

N

0 200
SCALE IN FEET

NOTES:
812 = FORMER BUILDING DESIGNATION
113 = RMP NUMBER
RMP = REMEDIAL ACTION PLAN

FARALLON CONSULTING
Washington: Issaquah | Bellingham | Seattle
Oregon: Portland | Bend | Baker City
California: Oakland | Sacramento | Irvine
Quality Service for Environmental Solutions | farallonconsulting.com

FIGURE 1
SITE PLAN
NORTHEAST GATEWAY PROPERTY
OAKLAND, CALIFORNIA

FARALLON PN: 1071-009

Drawn By: tperrin | Checked By: SA | Date: 5/10/2016 | Disc Reference:
Document Path: G:\Projects\1071 Prologis\1071009 2015 Due Diligence\009 Oakland Army Base\GIS\Figure NE_RMP-RAP-Future-Former-Bldg.mxd

PROLOGIS WT Wilmot Tower

NEIGHBORHOOD SURVEY/ NOTICE

Project Name

Project Address

RE: PROPOSED SATURDAY WORK SCHEDULE: [Insert Dates]

Dear Neighbor:

[Explain the purpose of letter is to inform neighbors that a 'request' has been made to Building Services to authorize work on numerous upcoming Saturdays, and that input from neighbors is being solicited.)

[Insert explanation of WHY this work needs to be accomplished outside of normal working DAYS or HOURS (i.e. M-F, 7am – 7pm).

[Explain the site management measures that are and will remain in place to control noise, dust, parking, traffic and other impacts related to this job site].

WHAT: Scope of Construction Activity that you are requesting to do, including size of work force, equipment to be used, etc... **[Work scope must be limited to relatively quiet work to satisfy the Oakland Noise Ordinance limit of 55 dba on weekends in residential areas. No material deliveries, off hauling, or other loud unenclosed activities]**

WHERE: Work location to be limited to inside only with windows and doors closed.

WHEN: 9am – 5pm, Saturdays from xx/xx/xx to yy/yy/yy. **[Our Office will only authorize up to 4 Saturdays at a time, until a track record of complaint-free performance is established that we can support. We also reserve the right to withdraw Saturday authorization for failure to satisfy important construction-related Planning Conditions of Approval]**

Please forward your comments, questions, or concerns to (contact info for project managers, including phone # and email address] or to Bill Quesada, Oakland Building Services, (510) 238-6345, bquesada@oaklandnet.com.

For emergencies or site complaints regarding this construction site, please contact the job superintendent (contact # and email of the on-site job superintendent). **[The GC must maintain a job superintendent on-site all day for each requested Saturday, to manage construction and complaints. No subs working alone].**

Municon Consultants

Vibration Monitoring, Construction Instrumentation, Photo Surveys

July 29, 2016

The Whiting-Turner Contracting Company
4690 Chabot Drive, Suite 120
Pleasanton, California 94588
Attn: Ryan Dotson

RE: **OAKLAND GLOBAL LOGISTICS CENTER PHASE I, NORTH EAST GATEWAY, OAKLAND, CA**
SUBJECT: **Proposal for Pre-construction and Post-Construction Haul Route Video Survey**

Please find herein our proposal for the truck haul route video survey for your project at **Oakland Global Logistics Center Phase I, North East Gateway, Oakland, California (the Project).** With extensive experience with all phases of construction monitoring and litigation mitigation in urban environments, we are uniquely qualified to handle this assignment. We have over 24 years of experience in the execution and document control for large and small scale pre-construction photo and video surveys.

**** * We are Reliable * ****

We have over 24 years of experience and a strong record of repeat clients.

**** * We are Experienced * ****

We have conducted more pre-construction photo surveys than other West Coast firms.

**** * We are Safety Conscious * ****

We hold regular weekly "toolbox" safety meetings as our personnel are regularly tending our equipment on or adjacent to contractor heavy construction sites.

**** * We are Certified * ****

▪ CA UCP - UDBE (12867) ▪ CA DGS-SBE (18229) ▪
SF HRC LBE/W CMD 31810741 ▪ SBA SBE (Woman-Owned) 79-9371554
CA DIR # 1000002530

Municon Consultants

Vibration Monitoring, Construction Instrumentation, Photo Surveys

PRE-CONSTRUCTION PHOTO AND VIDEO SURVEYS

Municon specializes in pre-construction photo and video surveys with large numbers of buildings (as many as 350) and the document control of data. We have performed photo surveys for the Cathedral Hill Hospital, the San Francisco City Hall, the Transbay Terminal demolition, demolition of San Francisco Pier 36, the Warren Avenue/BART/UPRR undercrossing in Fremont, the BART Oakland Airport Connector, and multiple other public works and private projects in San Francisco and the Bay Area. We have performed video surveys of the route leading to the Harry Tracy Water Treatment Plant, the project site for the Warren Avenue Undercrossing in Fremont, the route to the Calaveras Dam, and multiple other public works and private projects in San Francisco and the Bay Area.

PROJECT DESCRIPTION

On the Northeast Gateway site Prologis will construct a new 256,000 sf warehouse on a site covering approximately 702,000sf bordered by Maritime Street, Burma Road and West Grand Ave. The project site improvements will include new underground utilities, landscaping, concrete and ac paving and bio-swales. The new warehouse building will include 55 truck docks, 78 trailer parking stalls, 171 auto parking stalls and two electric vehicle charging stations.

Yours truly,
MUNICON Consultants

Aemero L. Hailemichael

Aemero L. Hailemichael

Barry C. Roth

Barry Roth, P.E. 16090
Principal Engineer

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Municon Consultants

Vibration Monitoring, Construction Instrumentation, Photo Surveys

1.00 PRE- AND POST-CONSTRUCTION VIDEO SURVEY OF TRUCK HAUL ROUTES.

1.01 General.

You have informed us that you need a pre- and post-construction video survey of the approved inbound and outbound truck haul routes of your project. The truck haul route map shows the use of city streets, freeway on- and-off ramps and city streets. We will perform a video survey of the pavement conditions of the streets you identified as truck haul routes. Maritime Street from West Grand Avenue to 7th Street, West Grand avenue from Frontage Road to Maritime Street and E. Burma Road which runs alongside the site, 7th Street from Maritime Street to Brush Street and Brush Street from 7th Street to 19th Street.

Our video survey is not a "Pavement condition evaluation" as we will offer no recommendations or conclusions as to the causes of distress observed or remaining service life of the pavement, and we will not perform deflectometer or other tests on the pavement.

1.10 Scope.

1.11 PRE-CONSTRUCTION VIDEO SURVEY

Municon will perform a pre-construction video survey of pavement conditions of **Maritime Street** from West Grand Avenue to 7th Street, **West Grand Avenue** from Frontage Road to Maritime Street, **Burma Road** from its intersection with Maritime Street to its end at the cul de sac of Burma, **7th Street** from Maritime Street to Brush Street and **Brush Street** from 7th Street to 19th Street. We will survey all the lanes, sidewalks, gutters and other existing facilities. We will document existing conditions in high definition digital videography using a HD digital video camera. We will contemporaneously narrate the video with descriptions of the location being viewed and any distress, damage or other anomalies, the direction of the camera view, and the date and time at the time of videotaping. We will perform the video survey of the pavement conditions for a:

LUMP SUM.....**$6,000.**

1.12 POST-CONSTRUCTION VIDEO SURVEY

Upon the end of your project, Municon will perform a post-construction video survey of pavement conditions of the same roads documented in our pre-construction video survey. We will perform the post-construction video survey of the pavement conditions for a:

LUMP SUM.....**$6,000.**

Municon Consultants
Vibration Monitoring, Construction Instrumentation, Photo Surveys

1.13 WORK PRODUCTS –VIDEO SURVEY RECORDS.

We will submit to you two (2) bound copies of our report, which will include DVDs (or, if permitted, USB storage device) with the original HD video files as recorded, a letter describing our survey and attesting to taking the video, and a site plan showing the areas surveyed. Electronic copies of the documentation will be included on the DVDs.

The costs for preparing the documentation and production of our reports are included in the costs for the survey above.

1.20 TIMING AND SCHEDULE.

We anticipate that we can complete our video survey in one full day in the field, including travel time. We request one week of advance notice, if possible, to begin work on the surveys.

Processing of the data and report production require additional office efforts beyond the field time. Reports will be delivered within two (2) weeks of the completion of the field survey.

VIDEO SURVEY TOTAL.....$12,000.

*** * * No sections 2, 3 or 4 in this proposal * * ***

Municon Consultants

Vibration Monitoring, Construction Instrumentation, Photo Surveys

5.00 CONTRACTUAL TERMS CONDITIONS & LIMITATIONS.

1. Authorization can be by simple purchase order or professional agreement referencing this proposal.

2. No certified payrolls; we are not a contractor, labor, trade nor union signatory. No retention. Payment within 30 days of invoicing.

3. We will provide insurance up to our existing limits and statutory workers compensation limits.

4. No indemnification of any person's active negligence.

5. Access arrangements to be provided by project owner unless explicitly offered herein.

6. Unless specifically called for or explicitly offered herein, written interpretations or professional opinions, and other data reports are not included.

7. Usage rates for equipment apply for each month, or part of a month, the equipment is deployed for use on your project. These rates will apply each month, if your work durations exceed our estimates.

We believe that the estimate and proposal herein addresses the requirements of the permit conditions for photo documentation, and we look forward to working with you on this project. All work proposed here will be under the direction of the undersigned.

Yours truly,
MUNICON Consultants

Aemero L. Hailemichael

Aemero L. Hailemichael

Barry C. Roth

Barry Roth, P.E. 16090
Principal Engineer

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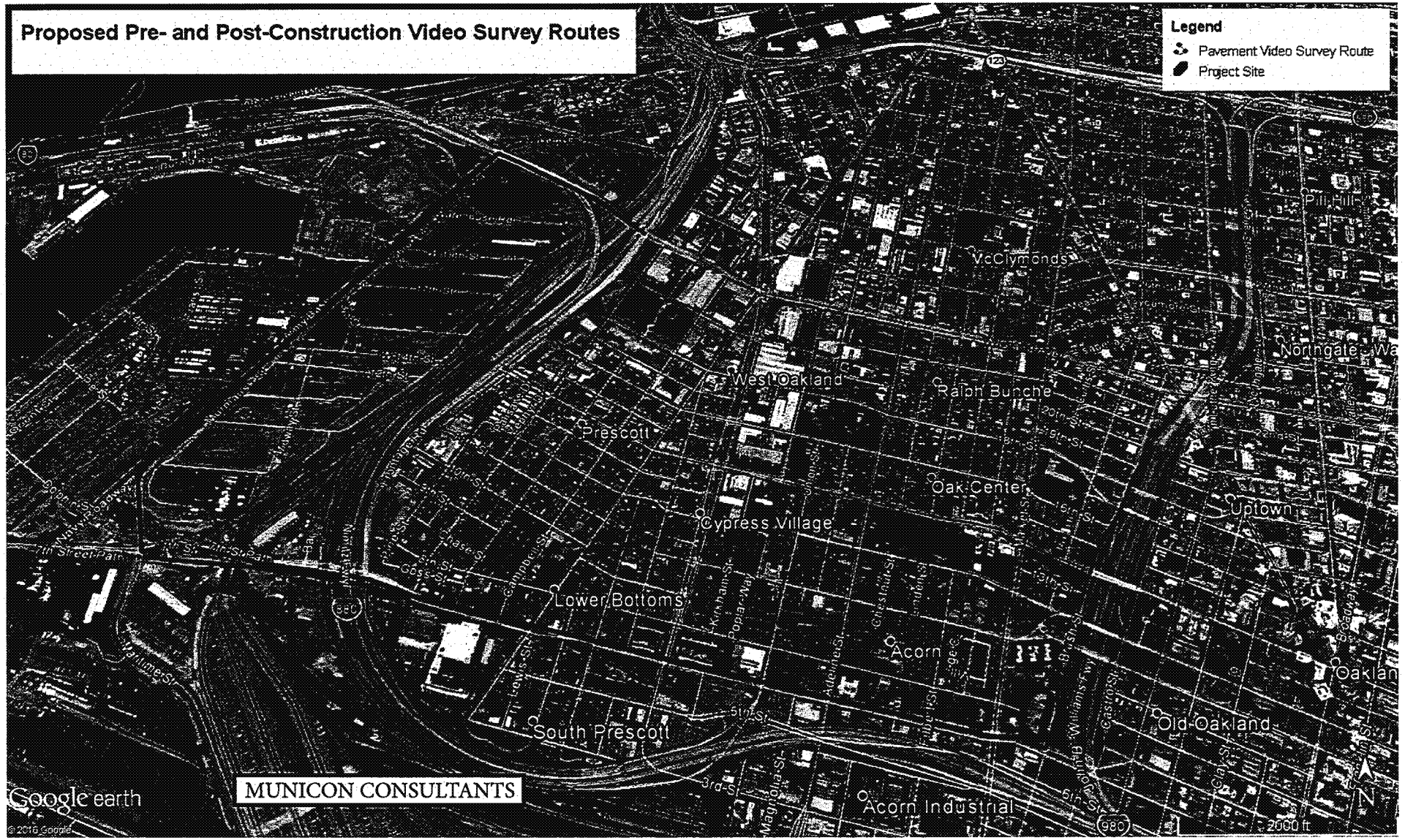
Proposed Pre- and Post-Construction Video Survey Routes
Legend
Pavement Video Survey Route
Project Site
West Oakland
Ralph Bunche
Prescott
Oak Center
Cypress Village
Lower Bottoms
Acorn
South Prescott
Old Oakland
Acorn Industrial
Uptown
Google earth
MUNICON CONSULTANTS

JGL ACOUSTICS, INC

July 15, 2016

Prologis, L.P.
3353 Gateway Blvd.
Fremont, CA 94538

Attention: Cory Chung
Subject: Oakland Global Logistics Center, Phase 1
Construction Noise Impacts

Ladies & Gentlemen:

This report addresses the issue of construction noise impacts from the proposed project located on the south side of West Grand Avenue between Maritime Street and Burma Road in Oakland, CA. Figure 1 shows the site location relative to the nearby freeways with the proposed project location highlighted in yellow. The proposed project will consist of a single warehouse building with an approximate floor area of 256, 216 square feet. The building will have loading docks on the north and south sides and a parking lot in the northeast corner. Figure 2 presents a site plan for the project. This report specifically addresses the issue of environmental noise impacts resulting from the construction of the Phase 1 building.

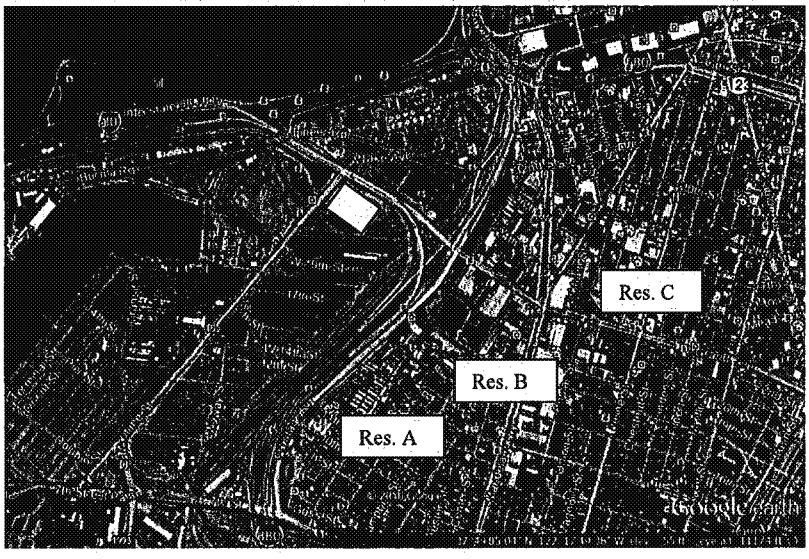

Figure 1.

Aerial view showing the location of the site (shown in yellow) relative to nearby freeways and nearest residences (shown by red triangles).

PROLOGIS WT Wilding Turner

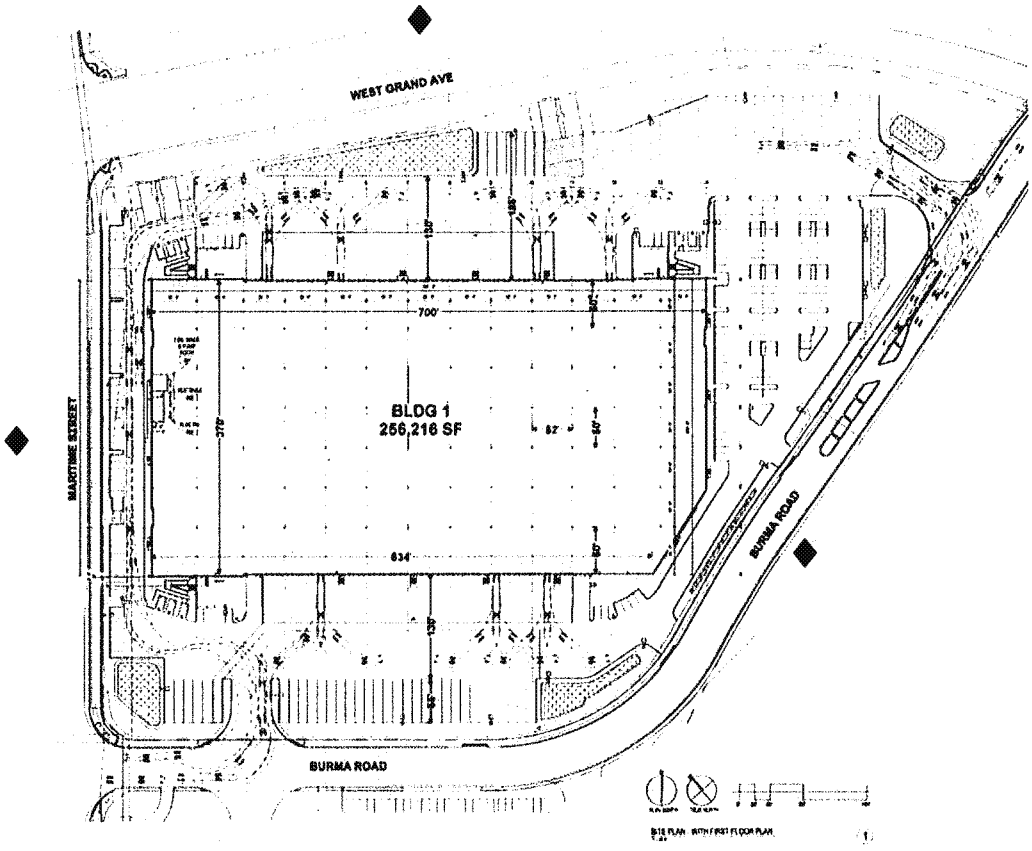

Figure 2. Site plan for the Phase 1 building showing noise model receiver locations.

As shown in Figure 2 the project is surrounded on all sides by local streets, and beyond these streets is additional industrial property. The nearest residential property is on the east side of I-880, more than 2,500 feet southeast of the proposed project.

Standard Conditions of Approval

This project has received several conditions of approval related to noise. SCA NOI-1 requires that construction activities are limited to 7:00 AM to 7:00 PM Monday through Saturday. It is my understanding that concrete work will occur outside of the allowed

construction hours for a period of 6 days to pour the building slab and 8 days to pour the tilt up walls. It will be important to ensure that late night construction work meets the requirements of OMC 8.18.020 relating to nuisance noise impacts to residential areas.

Oakland Construction Noise Ordinance

Table 17.120.04 in the Oakland Noise Ordinance establishes maximum allowable noise levels for construction projects impacting industrial, commercial, and residential receiving properties. The maximum allowable noise level during the 7 AM to 7 PM weekday period on commercial and industrial property is 85 dB for short term operations and 70 dBA for long term operations. . The maximum allowable noise level during the 7 AM to 7 PM weekday period on residential property is 80 dBA for short term operations and 65 dBA for long term operations. On weekends the maximum allowable levels are 15 dBA lower for short term operations and 10 dBA lower for long term operations.

Construction Noise Sources

According to the Contractor, Table 1 presents a listing of the major noise sources associated with the late night construction phase of this project. Table 2 identifies the noise sources that are expected to operate during normal construction hours. Equipment sound levels and usage factors were obtained from the FHWA Construction Noise Handbook. The usage factor represents the percentage of the time that the noise source is generating its maximum noise level.

Late night work is expected to last for 6 days to pour the building floor slab, with as many as 13 concrete trucks per hour and start times beginning as early as 1:00 AM and as late as 4:00 AM. Late night work for pouring the tilt up walls is expected to last for 8 days, with as many as 8 trucks per hour and a proposed start time of 4 AM. At any one time, the maximum number of concrete trucks on the construction site is expected to be 7.

Predicted Construction Noise Levels

Construction noise levels were computed in the vicinity of the subject project using the internationally recognized computer model CadnaA (ver. 4.6.156). The assessment of late night operations assumed continuous operation of 7 concrete trucks on site with 4 diesel generators to create power for the lights. The total on-site sound power level for all of the late night sources is126 dB (ref. 1 picowatt), taking into account the usage factor and the total number of concrete truck on site at one time. The predicted total late night construction noise level at the adjacent properties and at the nearest residences is shown in Table 3.

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Table 1. Late night noise sources and expected source noise level.

Source Description	Number of Sources/Hr.	Usage Factor (%)	LpA (dBA @ 50 feet)	Est. LwA (dB ref. 1 pW)
Concrete Trucks	13	40%	85	117
Generator (lights)	4	100%	80	112

Table 2. Construction noise sources and noise levels occurring from 7 AM to 7 PM.

Source Description	Number of Sources	Usage Factor (%)	LpA (dBA @ 50 feet)	Est. LwA (dB ref. 1 pW)
Grading Scraper	1	40	85	117
Loader	2	40	80	112
Grader	1	40	85	117
Water Truck	2	40	84	116
Skip Loader	2	40	80	112
Paving Machine	1	50	85	117
Roller Compactor	1	20	85	117
Vibratory Plate Compactor	1	20	80	112
Transfer Dump Truck	1	40	84	116
Power Tool Generator	2	50	82	114
Power Tool Compressor	1	40	80	112
Backhoe	2	40	80	112
Dump Truck	2	40	84	116
Concrete Truck	2	40	85	117
Concrete Pump	1	20	82	114
Concrete Saw	1	50	85	117
Crawler Crane	1	16	85	117
Diesel Boom Lift	2	20	85	117
Diesel Forklift	2	50	85	117
Street Sweeper	1	50	85	117
Excavator	1	40	85	117
Diesel Scissor Lift	1	20	85	117

JGL ACOUSTICS, INC

Table 3. Predicted late night noise levels (dBA).

Receiver	Distance to Nearest Source	Predicted	Max. Allowed
Across Maritime St.	120 feet	68.7	70
Across Burma Rd.	296 feet	68.6	70
Across W. Grand Ave.	120 feet	62.3	70
Residence A	2,516 feet	44.5	45
Residence B	2,621 feet	44.6	45
Residence C	3,661 feet	40.9	45

The predicted construction noise level shown in Table 3 meet the requirements of the Oakland noise ordinance. It should be emphasized that the nearest residences are all located on the other side of I-880, and the background noise level from this freeway will likely exceed the predicted construction noise levels by a significant margin, even in the middle of the night. As a result, it is extremely unlikely that the construction noise would be audible in the residential area.

Table 4 presents the predicted daytime noise level at each of the six receiver locations of interest. Interestingly enough, the total sound power level of all 31 daytime noise sources is virtually the same as the late night noise sources. As a result, the predicted daytime noise levels are nearly the same as the predicted nighttime noise levels.

Table 4. Predicted daytime noise levels (dBA).

Receiver	Distance to Nearest Source	Predicted	Max. Allowed
Across Maritime St.	120 feet	67.7	70
Across Burma Rd.	296 feet	66.6	70
Across W. Grand Ave.	120 feet	62.3	70
Residence A	2,516 feet	44.1	65
Residence B	2,621 feet	44.2	65
Residence C	3,661 feet	40.5	65

Note that the predicted daytime noise levels are at or below the maximum allowed noise levels, so the proposed project is expected to fully comply with the Oakland noise ordinance.

JGL ACOUSTICS, INC.

If you have any questions or comments regarding these findings, do not hesitate to contact me directly.

Very truly yours,
JGL Acoustics, Inc.

Jerry G. Lilly, P.E., FASA
President
Member INCE (*Bd. Cert.*), ASHRAE, ASTM, NCAC

Attachment E

Air Quality Plan Implementation at Army Base – Tentative Timeline

Oakland Army Base Redevelopment Project
Tentative Timeline for Air Quality Plan Implementation (subject to change)
September 8, 2016

Horizontal Infrastructure				
Site	**Developer**	**Facility Type**	**Construction-Phase Air Quality Plan**	**Construction Timeline**
Entire Site (City portion of Army Base)	City/CCIG	Infrastructure (e.g., streets & utilities)	Approved Dec. 2013	Dec. 2013 – Jun. 2017

Vertical Development						
Site	**Developer**	**Facility Type**	**Construction-Phase Air Quality Plan Estimated Timeline**	**Construction Estimated Timeline**	**Operational-Phase Air Quality Plan Estimated Timeline**	**Estimated Start of Operations**
Northeast Gateway[1]	Prologis	Trade & Logistics Warehouse	Mar. – Sep. 2016	Sep. 2016 – Jun. 2017	Jan. – Jun. 2017	Jun. 2017
New Central Gateway – Phase 1[2]	Prologis	Ancillary Maritime Support Services	Sep. – Nov. 2016	Nov. 2016 – Mar. 2017	Oct. 2016 – Mar. 2017	Mar. 2017
West Gateway	Oakland Bulk & Oversized Terminal	Marine Bulk Terminal	Oct. 2016 – Mar. 2017	Mar. 2017 – Aug. 2018	Mar. – Aug. 2018	Aug. 2018
Southeast Gateway[3]	Prologis	Trade & Logistics Warehouse	Feb. – Jul. 2017	Jul. 2017 – Mar. 2018	Oct. 2017 – Mar. 2018	Mar. 2018
New Central Gateway – Phase 2[4]	Prologis	Trade & Logistics Warehouse	Mar. – Aug. 2017	Aug. 2017 – Apr. 2018	Nov. 2017 – Apr. 2018	Apr. 2018
AMS Site	OMSS	Ancillary Maritime Support Services	May – Sep. 2017	Sep. 2017 – Dec. 2017	Jul. – Dec. 2017	Dec. 2017
North Gateway 1	CASS	Recycling	May – Sep. 2017	Sep. 2017 – Feb. 2019	Sep. 2018 – Feb. 2019	Feb. 2019
North Gateway 2	CWS	Recycling	Oct. 2017 – Mar. 2018	Mar. 2018 – Sep. 2020	Apr. – Sep. 2020	Sep. 2020
MH-1[5]	CCIG	Trade & Logistics Warehouse	Nov. 2019 – Apr. 2020	Apr. 2020 – Mar. 2021	Oct. 2020 – Mar. 2021	Mar. 2021

[1] "Northeast Gateway" is the northern portion of the East Gateway area.
[2] "New Central Gateway" is the eastern portion of the former Central Gateway area.
[3] "Southeast Gateway" is the southern portion of the East Gateway area.
[4] "New Central Gateway" is the eastern portion of the former Central Gateway area.
[5] "MH-1" is the western portion of the former Central Gateway area.

002173 2020-10-29

Oakland Army Base Redevelopment Project
Tentative Timeline for Air Quality Plan Implementation (subject to change)
September 8, 2016

Air Quality Plan Components

The list below identifies which air quality-related requirements from the Oakland Army Base Standard Conditions of Approval / Mitigation Monitoring and Reporting Program ("SCAMMRP") are anticipated to be addressed in the Construction-Phase Air Quality Plan and the Operational-Phase Air Quality Plan.

Construction-Phase Air Quality Plan:

- Construction Management Plan (SCA AIR-1)
- Construction-Related Air Pollution Controls (SCA AIR-2)
- Construction Traffic and Parking (SCA TRANS-2)
- Traffic Control Plan – Hazardous Materials (Mitigation 4.3-13)

Operational-Phase Air Quality Plan:

- Truck Management Plan (Mitigation 4.3-7)
- Maritime and Rail-Related Emissions Reduction Plan (Mitigation 4.4-3b)
- Truck Diesel Emission Reduction Plan (Mitigation 4.4-4)
- Transportation Control Measures (Mitigation 4.4-5)
- Energy-Conserving Fixtures and Designs (Mitigation 4.4-6)
- Demonstration Projects (Mitigation 5.4-1)
- Parking and Transportation Demand Management (SCA TRANS-1)

ASSOCIATION OF BAY AREA GOVERNMENTS
Representing City and County Governments of the San Francisco Bay Area
ABAG

Mr. David R. Lloyd
Office of Land and Emergency Response
Office of Brownfields and Land Revitalization
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., MC:5105T
Washington, DC 20460

December 18, 2015

R09-16-A-003

RE: Transmittal Letter

Dear Mr. Lloyd:

This constitutes the Transmittal Letter for the Association of Bay Area Government's Brownfields Coalition Assessment Grant application.

Applicant:	Association of Bay Area Governments
DUNS number:	07-907-392000000
Funding Requested	
Grant type:	Brownfields Coalition Assessment Grant
Amount:	$600,000
Contamination:	Hazardous Substances ($300,000) and Petroleum Products ($300,000)
Location:	Cities of Oakland, San Leandro, and Hayward and County of Alameda California
Contacts:	Project Manager JoAnna Bullock, Senior Planner and Grants Administrator MetroCenter, 101 8th Street, Oakland, CA 510 464-7968 office 510 464-7985 fax joannab@abag.ca.gov
	Chief Executive Ezra Rapport, Executive Director MetroCenter, 101 8th Street, Oakland, CA 510 464-7900 office 510 464-7985 fax ezrar@abag.ca.gov
Date submitted:	December 18, 2015
Project Period:	July 2016 – July 2019
Population:	180,000

Thank you for your consideration of our grant application. We hope that we have developed a compelling justification for funding site assessments in the along the San Francisco Bay Area and look forward to advancing this important work to transform the East 14th Street/Mission Boulevard corridor.

Respectfully,

Ezra Rapport
Executive Director

1. COMMUNITY NEED

1.a Economic and Community Benefits

1.a.i. Targeted Community Description: The target area is located in the cities of Oakland, San Leandro and Hayward as well as the Ashland and Cherryland Census Designated Places in unincorporated Alameda County, within the East Bay of the San Francisco Bay Area. Together with the Association of Bay Area Governments (the coalition lead), these jurisdictions make up the coalition.

The coalition's proposal focuses on a 15 mile corridor of downtowns and mixed-use neighborhoods that have been identified by coalition members as Priority Development Areas (PDAs)—places with adopted local plans for sustainable, location-efficient redevelopment that also support the Bay Area's regional vision for an equitable, low carbon future.

The corridor is defined by the East Bay's historic main street—known as International Boulevard in Oakland, East 14th Street in San Leandro, and Mission Boulevard in unincorporated Alameda County and Hayward—and five adjacent Bay Area Rapid Transit (BART) stations. It served as a primary road and streetcar route through the East Bay from its urbanization in the 19th century until the completion of Interstates 880 and 580 in the late 1950s and continues to be a critical link between Oakland and Hayward. The five BART stations within the target area connect its residents to nearly a million jobs, as well as educational and cultural opportunities throughout the region.[1] To complement BART, the region's first Bus Rapid Transit (BRT) route will begin service in the corridor in 2017.

Historically, the corridor was an employment center with abundant industrial and commercial jobs, particularly for people of color.[2] Major corporations including Magnavox, General Electric and Montgomery Ward operated large scale divisions beginning in the 1920s through the mid-1970s. A significant portion of the Bay Area's African American and Latino residents formed communities in the corridor. As the target area's neighborhoods experienced suburban flight and industry moved away, jobs dwindled and the area began to fall into significant decline.[3] Accompanying this decline was a spike in crime, blight and the abandonment of commercial and industrial buildings and parcels—many of which are known or suspected brownfields.

Today the corridor is characterized by vacant lots, abandoned industrial facilities, gas stations, and dilapidated structures occupied by auto-repair shops, liquor stores, nail salons, and storefront churches. The current economic recovery has provided very limited benefits to the area while creating displacement pressure on corridor residents and businesses.[4] Environmental contamination—both documented and perceived—continues to pose an obstacle to community health and economic development.

1.a.ii. Demographic Information: As Table 1 illustrates, sensitive populations with greater susceptibility to many of the contaminants and cumulative environmental issues in the target area make up a disproportionate share of its residents—including minorities, the unemployed, the poor, children, and very young children. The target area also has high concentrations of populations with multiple risk factors that can exacerbate exposure to contaminants and cumulative issues, including children living in poverty (triple the rate in Alameda County and nearly double the state and national

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[1] Association of Bay Area Governments. (2013). *Plan Bay Area: Final Forecast of Jobs, Population and Housing.*

[2] Johnson, Marilyn S. (1993). *The Second Gold Rush: Oakland and the East Bay in World War II.*

[3] Self, Robert O. (2003). *American Babylon: race and the struggle for postwar Oakland.*

[4] Zuk, Miriam. (2015). *Regional Early Warning System for Displacement.* (Data on Target Area: http://www.urbandisplacement.org/research, accessed November 30, 2015)

rate), and the percentage of new single mothers in poverty (more than double the county rate and a well above the state rate).[5]

Table 1. Demographic Information

	Target Area	Remainder of Target Area Jurisdictions (portion outside target area)	Alameda County	California	United States
Population	191,000	512,000	1,560,000	38,100,000	314,000,000
% Minority	90%	64%	67%	61%	37%
% Unemployed	15%	10%	10%	11%	9%
Poverty Rate	22%	8%	9%	16%	16%
% Children (under 18)	27%	20%	22%	24%	23%
% Children in Poverty (under 18)	9%	3%	3%	5%	5%
% Very Young Children (under 5)	8%	6%	5%	7%	6%
Single mothers in poverty as % of women that gave birth in past year	24%	12%	10%	16%	18%
% Senior Citizens (over 65)	9%	14%	12%	12%	14%
Median HH Income	$42,826	$76,550	$ 73,775	$ 61,489	$ 53,482

Source for all data: 2009-2014 American Community Survey (ACS) (numbers rounded)

1.a.iii. Description of Brownfields: Suspected and known brownfields are present throughout the corridor, located directly adjacent to the homes, schools and parks of the sensitive populations disproportionately represented in its communities. Built before the advent of modern environmental standards, the corridor is a checkerboard of industrial, residential, civic and commercial land uses. Industrial operations that once attracted working families in search of better lives are now sources of contamination, blight and disinvestment that damage the health and welfare of an at-risk population. Oakland's General Electric (GE) transformer assembly plant provided 300 middle wage jobs during its operation between 1927 and 1975. Today, it remains abandoned with no solid plans for reuse, its soils contaminated with polychlorinated biphenyls (PCBs) from coolants and lubricants in electrical equipment.[6] Groundwater contamination from trichloroethylene (TCE) (commonly used to clean metal parts)[7] extends beyond the site, which is surrounded on two sides by neighborhoods. Residents of these neighborhoods, which are in the top 4 percentile statewide for impaired water risk and face elevated levels of toxic releases, have the highest cancer mortality rate in Alameda County—more than 60% above the county as a whole and well above neighborhoods with similar demographic characteristics.[8] These neighborhoods also have elevated incidence of low birth weight–which, like cancer, has been identified as a potential impact of PCB and TCE exposure, and

[5] 2009-2014 American Community Survey (ACS)
[6] CA DTSC Public Notice, "Approval of Final Remediation Plan, Former General Electric Facility," July 2011
[7] Ibid
[8] California Office of Environmental Health Hazard Assessment *Enviroscreen*, 2015; Alameda County Public Health Department, *Alameda County Vital Statistics Files 2011-2013*

which is especially harmful to a community with a high proportion of young children and single mothers in poverty.[9] Between mid-June and mid-December 2015, 485 violent crimes were recorded in a one-mile radius of the site, including 96 robberies and 3 murders.[10]

The GE plant is a microcosm of the impact of brownfields on the corridor; a symbol of disinvestment, poor health, and lost opportunity. It is one of 670 brownfields in the target area identified by the California Department of Toxic Substances Control (DTSC),[11] all of which are located within 1,000 feet of a residential area and many of which share a property line with a residence. 170 of the sites identified by DTSC remain open, including 90 Leaking Underground Storage Tanks (LUST)—primarily former gas and service stations. Frequently identified contaminants at the LUST sites include TPH (particularly benzene) as well as PCBs, TCEs and PCEs—creating soil, groundwater, and indoor air contamination. A wide variety of contaminants have been identified at the other open cleanup sites, reflecting a diversity of historic land uses that available records indicate ranged from heavy manufacturing plants (producing glass containers, plastic, and many other products) to an excavation pit and a bulk petroleum distribution facility. Frequently identified contaminants from these sites include PCE, PCBs and TCEs, with contamination from volatile organic compounds (VOCs), TCA, and lead also found at several locations.[12]

In addition to known brownfields left behind by historic land uses, many businesses operating today in the target area are associated with contaminants. This includes 65 gas stations, 81 laundromats, and 529 manufacturing businesses.[13] Like identified brownfields in the target area, all of these businesses are within 1,000 feet of a residential area, which as noted in *Demographic Information* are made up of a disproportionate share of sensitive populations such as children in poverty.

1.a.vi. Cumulative Environmental Issues: Contributing to the risks created by brownfields, one operating and nine non-operating hazardous waste facilities are within one mile or less of the target area, among them an active electronics and universal waste recycling plant and several plating and beverage container companies.[14] The target area is also adjacent Interstate 880, which is used heavily by trucks in route to the Port of Oakland, one of the busiest ports in the country, leading to elevated particulate matter emissions—particularly during commute hours when trucks idle.[15] Exposure is increased by the frequent use of operable windows to ventilate homes and other buildings, as well as the proximity of public spaces such as playgrounds and parks to I-880 and to the target area's other high-pollution roadway, International Blvd/East 14th St/Mission Blvd.

Based upon a cumulative analysis of all mobile and stationary sources of pollution, the target area was identified by the Bay Area Air Quality Management District (BAAQMD) as a cumulative impact area, reflecting elevated levels of Toxic Air Contaminants (TAC) and fine particulate matter (PM).[16] BAAQMD also designated the target area a CARE community—a designation used to identify communities with sensitive populations overburdened by air quality and other environmental risks.[17] In addition to these challenges, much of the target area is underserved by grocery stores, has a deficit of parks relative to population compared to other parts of the county, and is more susceptible to the

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[9] Alameda County Public Health Department, *Alameda County Vital Statistics Files 2011-2013*; 2009-2014 ACS

[10] Oakland Police Department and crimemapping.com, accessed 12/13/15

[11] DTSC *Geotracker Database*, accessed 12/14/15

[12] Ibid.

[13] Dunn and Bradstreet NETS data 2014

[14] DTSC *EnviroStor Database*, accessed 12/16/15

[15] Ibid

[16] MTC and ABAG. (2013). *Plan Bay Area Environmental Impact Report*

[17] BAAQMD Community Air Risk Evaluation Program (CARE), http://www.baaqmd.gov/plans-and-climate/community-air-risk-evaluation-care-program, accessed 12/16/15

urban heat island effect than other areas.[18]

1.b. Impacts on Targeted Communities: Target area residents have dramatically lower health outcomes than residents of adjacent neighborhoods, Alameda County, and California. Many of these negative outcomes are potentially linked to exposure to the contaminants present in target area brownfields—which can take place through direct contact, overland flow dispersion of toxic compounds, wind, groundwater drainage and vapor intrusion—and the cumulative environmental issues in the area. The presence of sensitive populations highlighted above in *Demographic Information* likely exacerbates the impact of these exposures.

The cancer mortality rate, which is a potential effect of exposure to the PCBs and TCE contamination in the target area, ranges from 168 per 10,000 to 230 per 10,000 in the zip codes within the target area, compared to 146 per 10,000 in Alameda County and 131 per 10,000 in California. Asthma hospitalization, potentially liked to exposure to the high levels of PM and TAC in the target area, is 40% above the county and 240% percent above the state for children under 5 and 44% above the county and 350% percent above the state overall. The prevalence of diabetes and obesity are 17% and 28% above county averages, respectively.[19]

Hospitalization from violent assault (which includes murder) is 200% higher in target area zip codes than the county, resulting from a higher crime rate potentially related to blight and lack of access to opportunity. Reflecting the confluence of multiple risk factors, life expectancy at birth in parts of the target area is 70, 10 years below the county average and as many as 29 years below wealthier communities in the county. This ranks 117th worldwide, equal to Bangladesh.[20]

In addition to explicit health and safety impacts, vacant brownfields contribute to a land use pattern that does not provide the basic necessities needed by community members such as community centers, grocery stores and parks. The underutilization of the area's land also represents a missed opportunity to provide space for job training, small business incubation, and much-needed housing within walking distance of inexpensive public transit that in less than half an hour reaches the region's major job centers and educational opportunities (and in the process provides an environmentally sustainable commute mode).

1.c. Financial Need

1.c.i. Economic Conditions: Regional and local funding is not available to conduct the assessments that will be supported by this grant. In 2011, the State of California eliminated Redevelopment Agencies, which had utilized tax increment financing for the acquisition, assessment, remediation, and reuse of blighted properties—including many brownfields. The elimination of Redevelopment resulted in an estimated $28 million budget shortfall for the City of Oakland in Fiscal Years 2011-12 and 2012-13 alone.[21] In Alameda County, this figure is $60 million annually, and in Hayward $5 million annually.[22] The loss of Redevelopment compounded longstanding fiscal crises in coalition jurisdictions, which face rising costs for government services coupled with stagnant sales taxes and local property taxes capped by state law at 1%.

The area's protracted industrial decline, beginning with the closure of major factories in the 1960s and 1970s and compounded by decades of vacancy on the large parcels of land left behind (many of them known or suspected brownfields), has contributed to the persistently high unemployment and

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[18] Greenbelt Alliance; UC-Berkeley (2014). *Mapping Climate Change Exposures*

[19] All data in this paragraph: Alameda County Public Health Department, *Alameda County Vital Statistics Files, 2011-2013*

[20] Ibid., US Central Intelligence Agency (2013). *2013 CIA Factbook.*

[21] City of Oakland Press Release, 11/29/11 "Community and Economic Development Agency Dissolved", http://www2.oaklandnet.com/Government/o/CEDA/index.htm, accessed 12/18/ 14

[22] City of Hayward, 2012 *Comprehensive Annual Financial Report* http://www.hayward-ca.gov/CITY-GOVERNMENT/DEPARTMENTS/FINANCE/documents/2012/FY2012_Hayward_CAFR.pdf, accessed 12/18/14

poverty rates highlighted in *Demographic Information.* The GE plant closure described above, which cost the area 350 jobs, was part of a broader trend of lost economic opportunity: between 1950 and 1970, Oakland alone lost 10,000 jobs alone, many of them like GE along the International Blvd/East 14th Street corridor. The resulting lack of buying power has for decades depressed sales taxes—a critical revenue source for California cities and a potential source of funding for remediation and cleanup. This was exacerbated by the closure of major department stores along the corridor, including a 9 story Montgomery Ward in 1989 in Oakland and Mervyn's 340,000 flagship store and headquarters in Hayward. The area's industrial decline also led to dramatically lower home values and rental rates, as highlighted in *Economic Effects of Brownfields* below.

Together, these factors severely limit the ability of any of the Coalition members to address the shared brownfields challenge alone. The formation of the Coalition and its collaborative proposal reflect the need to work together to overcome an economic and fiscal obstacle that no member can tackle individually.

1.c.ii. Economic Effects of Brownfields: The prevalence of vacant and underutilized parcels in the target area contributes to a lack of economic activity, reducing potential demand for local businesses, dampening sales and property taxes while also reducing opportunities for community-building and visual surveillance—potentially facilitating the hubs of criminal activity on the corridor.[23] Data collected by the US Postal service indicates that vacancies at business addresses are 24% higher in target area Census Block groups with clusters of four or more brownfields than elsewhere in Alameda County.[24]

These conditions have created a negative perception among businesses and potential investors that are reflected in rents and property values. A comparison on Loopnet.com in December 2015 found that the average price of retail space along the corridor averages $19/square foot; in contrast, rents along three retail corridors in surrounding areas averaged $26/sf (Castro Valley Blvd), $34/sf (Alameda Park St), and $54/s (Oakland Lakeshore/Grand).[25] According to the 2014 American Community Survey, the median residential rent in the corridor is $1,150—17% below the rent in other parts of coalition jurisdictions and 20% below Alameda County. Negative perceptions are also reflected in home values, which are a proxy for property taxes: At $250,000, the median home value in the target area is $200,000 below neighborhoods elsewhere in coalition jurisdictions and more than $230,000 below Alameda County.[26] These figures underscore the opportunity costs created by underutilized known or suspected brownfields. While no comprehensive analysis has been completed of the economic impact of blight and brownfields on the corridor, if the median value of the corridor's 28,000 homes were equal to the County, these homes would generate approximately $90 million each year in additional property taxes.[27]

Combined with other risk factors, the preponderance of vacant lots and blight created by known and suspected brownfields has reduced access to opportunity for local residents by limiting the number of potential jobs and local services within target area communities, contributing to the disproportionately high unemployment and poverty rates illustrated in *Table 1.*

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[23] For example, the northern part of the corridor is known as a hub for child trafficking in the western United States: http://www.sfgate.com/crime/article/How-girls-fall-into-clutches-of-pimps-4705407.php, accessed 12/1/15.

[24] HUD, 2014, *HUD Aggregated USPS Administrative Data On Address Vacancies*; Calculations by ABAG.

[25] Loopnet.com: http://www.loopnet.com/xNet/MainSite/Listing/Search/SearchResults.aspx#/Retail/For-Lease/clARYC$BAQIBDYVTQG2U20JAtunRyAThQkABAACoB4xcwAEAANgphV7A, accessed 12/1/15. Note that Loopnet is a site to advertise properties, not a comprehensive data source.

[26] 2009-2014 American Community Survey.

[27] ACS 2009-2014; Assumes a typical 1.2% property tax rate in the target area (including locally imposed and voter adopted taxes)

2. Project Description and Feasibility of Success

2.a. Project Description, Project Timing and Site Selection

2.a.i. Project Description: This grant will fund 20 Phase I and 6 Phase II environmental site assessments (ESAs) of high-impact suspected brownfields, implementing an integrated regional and local strategy for environmental, social and economic sustainability. In 2013, Bay Area elected officials adopted Plan Bay Area—a blueprint for growth and transportation investment that achieves the State of California's GHG emissions reduction target for the region. The foundation of Plan Bay Area's sustainable growth strategy is a network of Priority Development Areas (PDAs)—transit-rich places planned by cities for mixed-income housing, commercial development, and local services. The PDAs that make up the target area are expected to add 44,000 new housing units and 58,000 new jobs by 2040.[28] Land use plans recently adopted by coalition members for these PDAs set the stage for implementation by identifying opportunity sites for a mix of housing, employment, local services, and public spaces to create dense walkable communities. These sites are typically vacant, large enough for significant redevelopment that fulfills a community vision, and in need of assessment to confirm or remove suspicion of the presence of contaminants.

Because a comprehensive environmental review was conducted as part of each local PDA plan, projects on opportunity sites are exempt from most aspects of the entitlement process—reducing much of the uncertainty associated with development in disinvested areas. However, parcel-level analysis of potential contamination has still not been completed on most sites. Combined with longstanding concerns about known and suspected brownfields, the uncertainty surrounding many sites presents a barrier to both private and public investment. The perceived complexity and potential delays involved in conducting assessments deter investors from taking on the additional cost and instead investing in an area with fewer perceived issues. The ESAs funded by this grant will fill this gap, setting the stage for catalyst projects that align with local and regional plans, as well as state and federal sustainability principles.

The Memorandum of Agreement (MOA) established between coalition members at the outset of the grant will create a framework for defining site selection criteria, conducting site selection, creating a community engagement plan, and selecting consultants to perform ESAs. A minimum of four sites will be assessed in each jurisdiction. To prime the assessed sites for reuse, the coalition will conduct preliminary schematic design with engagement from Bay Area LISC, which has funded numerous reuse projects, set the stage for a more detailed cleanup plan.

The activities funded by this grant will position the high-impact sites selected by coalition members to acquire and leverage funding sources such as the state of California's Affordable Housing and Sustainable Communities program, the Golden State Acquisition Fund, the Bay Area Transit-Oriented Affordable Housing fund and the DTSC revolving loan fund, as well as to forge public-private partnerships and to take advantage of the influx of private capital seeking development sites in the Bay Area.

Outputs: 20 Phase I and 6 Phase II ESAs; 6 Preliminary Schematic Site Designs; Priority Sites Inventory; at least 7 Community Meetings

Outcomes: $230-$560 Million in investment; 2,050-4,100 Jobs; $7-$14 Million in ongoing revenues; Reduced community exposure to contaminants; Improved health outcomes

2.a.ii. Project Timing: The project is anticipated to commence in spring 2016 and close in spring 2019. Within a month of the grant award, the coalition members will sign a Memorandum of Agreement and the Association of Bay Area Governments (the project sponsor) will complete a Work Plan and schedule that will be included in the Cooperative Agreement with EPA. Project tasks and milestones established in the Work Plan will be tracked on a weekly basis and reported to EPA

[28] ABAG and MTC (2013). *Plan Bay Area Final Forecast of Jobs, Population and Housing*

as part of the Quarterly Report. The report will identify percentage completion of each task and progress toward milestones. In the case of delays, ABAG will provide EPA's project manager with an explanation for the delay and identify corrective action.
ABAG will coordinate site selection, contractor selection and oversight, public outreach, site access, and development of reuse strategy, working with Coalition Members through the process formalized in the MOA.

Table 2. Project Schedule

	Q2 2016	Q3 2016	Q4 2016	Q1 2017	Q2 2017	Q3 2017	Q4 2017	Q1 2018	Q2 2018
Notice of Award	x								
MOA Adoption	x								
Issue RFP & Consultant Selection		x							
Contract Award									
Site Selection		x	x	x					
Public Engagement	x	x		x			x		x
Assessments					x	x	x	x	
Schematic Designs							x	x	x

2.a.iii. Site Selection: Through the MOA, coalition members will establish a governance structure for establishing site selection criteria and for selecting sites. Detailed criteria will expand upon several general principles, prioritizing parcels that are: identified as opportunity sites with significant redevelopment potential in locally adopted plans; within 1/2 mile of frequent transit service; and meet EPA Brownfield site eligibility guidelines. Each coalition member jurisdiction will submit a set of preliminary priority sites from which a final set will be identified utilizing the process established by the coalition. A minimum of four ESAs will be performed in each local coalition member's jurisdiction.
Coalition members will pursue securing Site Access Agreements and once agreements are in place, public and privately-owned sites will be assessed. If access cannot be obtained for a blighted vacant priority site, coalition members may consider utilizing state laws such as the Gatto Act to gain access, or another site on the priority list may be assessed instead. Assessment sites are expected to be evenly divided between those with suspected petroleum contamination and those with suspected hazardous substances contamination.

2.b. Task Description and Budget Table

2.b.i. Task Description: With the exception of reporting, project tasks will be performed in collaboration with local jurisdiction and community based partners. ABAG staff will convene a series of meetings with local jurisdiction partners to assist with the process of developing a list of sites. Sites under consideration for inclusion on the list will first be screened using EPA site eligibility criteria and vetted with the California Department of Toxic Substances Control (DTSC). While the list is under development, we will convene community organization partners and begin the community engagement process. Regular meetings with local jurisdiction and community organization partners will be convened for the duration of the project.

Task 1 – Partner Engagement and Site Identification ***$35,472***

Local jurisdiction partners will develop an initial list of potential sites. Sites will be evaluated using the criteria and process established by the Coalition following adoption of the MOA. The list of potential sites will be vetted using EPA guidelines and in consultation with the community

organization partners, resulting in a final list of sites and site access as discussed in *Site Selection.*
Outputs: MOA, Priority sites inventory; Site assessment list
Staff time: Senior Regional Planner: 11.1 hours/month @88.68/hour for 36 months = $35,472
Total: $35,472
Cost Basis (Petroleum Products): $17,736 Cost Basis (Hazardous Substances): $17,736

Task 2 – Community Engagement ***$34,318***
Community engagement efforts are an integral component of the MOA and will include community communication materials, regular community briefings, project web site, and messaging developed by local jurisdictions and community based organization partners. This effort will be coordinated by ABAG's Communication Specialist in collaboration with community organization partners resulting in a community engagement plan, at least five community meetings and two focus group meetings.
Outputs: Community engagement plan, Minimum five community meetings; Minimum two focus group meetings
Cost Basis
Pass-through: Capacity building for Community Based Organizations = $5,000
Supplies: printed material, website = $4,698
Staff time: Communication Specialist: 5.5 hours/month @$98.10/hour for 36 months = $19,620
Total: $34,318
Cost Basis (Petroleum Products): $17,159 Cost Basis (Hazardous Substances): $17,159

Task 3 – Phase I and Phase II Assessments ***$460,000***
The partnership will conduct a thorough consultant selection process to identify the most appropriate firm for this project. This portion of the project includes consultants performing Phase I and II Environmental Assessments as well as Quality Assurance Project Plans, Health and Safety Plans, Sampling and Analysis Plans, and other related reports as warranted.
Outputs: 20 Phase I ESAs; 6 Phase II ESAs
Cost Basis
Contractual: 20 Phase I ESAs @ $8,000 per Phase I ESA = $160,000
Contractual: 6 Phase II ESAs @ 50,000 per Phase II ESA = $300,000
Total: $460,000
Cost Basis (Petroleum Products):$230,000 Cost Basis (Hazardous Substances): $230,000

Task 4 –Preliminary Schematic Designs ***$13,302***
As land reuse is one of the primary goals of the project, ABAG staff and the project partnership will produce schematic designs for up to five sites that are deemed locations with high redevelopment potential and aligned with adopted local plans. Bay Area LISC will be consulted regarding feasibility.
Outputs: 6 Preliminary Schematic Designs
Cost Basis
Staff time: Regional Planner: 12.5 hours/month @88.68/hour for 12 months = $13,302
Total: $13,302
Cost Basis (Petroleum Products): $6,651 Cost Basis (Hazardous Substances): $6,651

Task 5 - Project Management and Reporting **$56,908**
This task includes staff time for general oversight of the project ACRES and general reporting requirements for the grant award. ABAG project staff will hold weekly project meetings to monitor progress, identify and develop strategies to resolve issues that arise, and generate quarterly reports.
Outputs: Quarterly Reports
Cost Basis

Staff time: Senior Regional Planner: 2.7 hours/month @$110.12/ hour for 36 months = $15,416
Senior Regional Planner: 5.5 hours/month@ $88.68/hour for 36 months = $17,736
Finance Specialist: 2.2 hours/month @ $76.35/hour for 36 months = $6,108
Indirect costs of financial and performance reporting: = $17,648
Total: $56,908
Cost Basis (Petroleum Products): $28,454 Cost Basis (Hazardous Substances): $28,454

2.b.ii. Budget Table: Separate budget tables are included for the hazardous substance and petroleum work that distinguish hazardous substances related tasks from petroleum related tasks.

Table 3. Hazardous Substance Budget

Budget Categories	Task 1	Task 2	Task 3	Task 4	Task 5	Total
Personnel	$17,736	$9,810		$6,651	$19,630	**$53,827**
Indirect Cost					$8,824	**$8,824**
Travel		$100				**$100**
Website		$475				**$475**
Printing		$630				**$630**
Contractual			$230,000			**$230,000**
CBO Support		$5,000				**$5,000**
Meetings		$1,144				**$1,144**
Total	**$17,736**	**$17,159**	**$230,000**	**$6,651**	**$28,454**	**$300,000**

Table 4. Petroleum Products Budget

Budget Categories	Task 1	Task 2	Task 3	Task 4	Task 5	Total
Personnel	$17,736	$9,810		$6,651	$19,630	**$53,827**
Indirect Cost					$8,824	**$8,824**
Travel		$100				**$100**
Website		$475				**$475**
Printing		$630				**$630**
Contractual			$230,000			**$230,000**
CBO Support		$5,000				**$5,000**
Meetings		$1,144				**$1,144**
Total	**$17,736**	**$17,159**	**$230,000**	**$6,651**	**$28,454**	**$300,000**

2.c. Ability to Leverage: ABAG is a regional planning agency that enables its members to develop sustainable projects. The coalition members have resources and leveraging opportunities to bring projects along this corridor to redevelopment. The coalition proposal is designed to position projects in corridor opportunity sites to attract investment that leverages existing and future funding sources, providing a substantial return on investment for the ESAs funded by the EPA.
Existing sources for cleanup and redevelopment include: the California DTSC Revolving Loan Fund, which provides up to $2.5M in low-cost financing for cleanup to facilitate projects similar to those anticipated on corridor opportunity sites; the California Water Resources Board's $200M Storm Water Grant Program, which can be used to fund new public spaces such as parks and community gardens identified on brownfield sites in community plans; the $400M state Affordable Housing and Sustainable Communities fund, which provides grants for mixed-income housing, active

transportation and green infrastructure in PDAs (including more than $7M won by Coalition Members in 2015); more than $100M in annual Low-Income Housing Tax Credits available to Bay Area Community Development Finance Institutions (such as community partner Bay Area LISC) to support affordable housing and community facilities; the $60M Transit Oriented Affordable Housing (TOAH) fund administered by MTC in partnership with ABAG. In addition to these existing sources, a range of potential new sources are under discussion, such as a Bay Area regional housing bond (potentially $500M annually) and a state housing bond similar to Proposition 1C ($3B), which was used successfully to support multiple brownfields reuse projects.

Local government partners may also choose to utilize California's Gatto Act to recover cleanup costs in cases where assessments reveal contamination for which there is a viable responsible party. The City of Oakland, for example, previously negotiated a $700,000 settlement from Chevron Corporation for cleanup of contamination characterized under a prior US EPA Assessment Grant for Oakland's Uptown Area.

In future years, coalition members may also establish Enhanced Infrastructure Finance Districts (EIFD), which would also become a source of leveraging. Enabled by a recent state law, EIFDs permit limited tax increment financing to fund infrastructure as well as remediation in areas (such as target area PDAs) consistent with regional Sustainable Communities Strategies (i.e. Plan Bay Area).

3 Community Engagement and Partnerships

3.a. Plan for Involving Targeted Community & Other Stakeholders; and Communicating Project Outcomes

3.a.i. Community Involvement Plan: The coalition's proposal leverages deep relationships with community stakeholders built during recent local and regional initiatives including Plan Bay Area, the HUD-funded Regional Prosperity Strategy, and recently adopted plans for the corridor's Priority Development Areas. After completing the MOA, coalition members will work with established partner community organizations to develop a community engagement plan tailored to the needs of the corridor's communities. We anticipate the community engagement plan will include the following:

- Convene five public meetings to: share information including project overview, composition and goals of the coalition, desired project outcomes, and timeline; receive input and feedback from community groups, property owners, local businesses and residents about site selection and land reuse planning; and share outcomes and discuss next steps
- Hold focus group meetings with interested members of the community to receive detailed input into project goals, site selection, and reuse planning
- Develop printed and online material on the overall project, opportunities for engagement, ESAs, and reuse planning; disseminate brochures in heavily traveled places along the corridor where they will be highly visible and accessible

3.a.ii. Communicating progress: The coalition will utilize methods that have proven successful in past regional and local planning initiatives. We are confident these methods will prove useful for this project but are continuously seeking best practices and open to modifying our approach if more effective methods are discovered. We anticipate that these will include:

- Establish community assistance telephone line to respond to inquiries from interested parties and residents; this will be particularly helpful for those without access to internet
- Create a web site that describes short and long term plans for the corridor, provides status of projects, and updates on overall progress (with translation as appropriate)

3.b. Partnerships with Government Agencies

3.b.i. Local/State Environmental Authority: The **California Department of Toxic Substances Control** (DTSC) oversees the investigation and remediation of Brownfield sites in the state. The target area is located in DTSC's Region IX Brownfield program. DTSC will be available to consult on the grant and provide input on site selection and other key decisions, as well as provide guidance on opportunities obtain future cleanup funding through sources such as its voluntary cleanup program and revolving loan fund.

3.b.ii. Other relevant Governmental Partnerships: ABAG is the sister organization to the Metropolitan Transportation Commission, which oversees regional transportation project funding. Together, ABAG and MTC are responsible for developing and implementing Plan Bay Area. In addition, ABAG maintains strong longstanding relationships with other regional planning and regulatory organizations including the San Francisco Regional Water Quality Control Board, Bay Area Air Quality Management District, and the County of Alameda's Department of Health Services and Public Health Department.

3.c. Partnerships with Community Organizations

3.c.i. Community Organization Description and Role: Community organization partners for this project include organizations that participated in the development of Plan Bay Area and community plans in coalition jurisdictions. ABAG and local coalition members have long standing relationships with many of these organizations and has successfully worked with them on many issues including housing, land use and social justice.

These organizations serve large communities along the corridor and focus on a number of issues including housing, open space and social equity. In addition to the organizations named, we will build on relationships and capacity developed through the HUD Sustainable Communities Grant. The coalition's goal is to design the work so that community organizations can maximize their effectiveness. To ensure community participation in this project, the budget includes funds to increase capacity and support these vital organizations.

Within 3 months of establishment of the MOA, ABAG will convene the community partners to provide a project overview, develop the community engagement plan, and solicit input about issues relevant to their areas of expertise. With assistance from the Coalition, community organization partners will organize and conduct public meetings in the portions of the corridor in which they have an established presence.

OCCUR is a community organization that brings together East Bay residents, merchants and governments to stimulate the economic development potential of emerging communities; it will focus on outreach and meeting facilitation. The **Unity Council** is a non-profit community development corporation with expertise in mixed-use development and building health communities; the Unity Council will provide insight into the development process as well as conduct outreach. **TRANSFORM** is a sustainable transportation organization active across the Bay Area and California, with a particular focus on the East Bay; TRANSFORM will focus on meeting facilitation and technical assistance around Transit-Oriented Development. **Greenbelt Alliance** is a Bay Area non-profit with expertise in meeting facilitation and smart growth policy; it will focus on meeting facilitation and providing technical assistance around conservation. **Bay Area LISC** is a community development finance institution (CDFI) responsible for distributing federal low-income tax credits and providing comprehensive place-based support to low income communities; LISC, which has built nearly 12,000 homes and apartments and over 1.4M square feet of community-serving development in the East Bay and larger Bay Area, will provide insight into funding strategies for projects on opportunity sites.

4. Project Benefits

4.a.i. Health and/or Welfare Benefits: The ESAs and reuse strategies funded by this grant are an important step in addressing the severe health impacts discussed in *Community Need.* Assessment followed by cleanup and redevelopment will help eliminate the risks of exposure to site contaminants, thereby protecting nearby and sensitive populations such as children and young single mothers in poverty. Reducing the population's exposure to contaminants will have the long term effect of potentially reducing cancer rates, increasing life expectancy and improving quality of life while also reducing risks to workers involved in future construction projects on these sites. Assessments that remove suspicions of contamination would provide the additional level of certainty required for public and private investment, allowing projects that implement community priorities to move ahead.

As local PDA plans recommend land uses that serve the existing community, including parks and affordable housing, the redevelopment of opportunity sites facilitated by this grant will combine health, welfare and economic benefits. In addition to creating job opportunities and reducing blight, many projects will provide services that address the immediate challenges facing corridor residents. Health and wellness centers, for example, are integrated into recent mixed-use housing developments in the area such as the Lion Creek Crossings in Oakland, a Phoenix Award winner. Other recent projects, such as the REACH Ashland Youth Center, a park with youth services, provide comprehensive wrap-around services including literacy, job training, and health.

Bringing new homes and businesses into target area will also help address disproportionately high levels of obesity and diabetes by increasing the number of local services, such as grocery stores, that can be reached on foot while also supporting higher levels of transit service. Consistent with local plans, projects on opportunity sites will provide easements for new pedestrian and bicycle connections, improving opportunities for active transportation and increasing greenspace. By increasing the use of sustainable modes of transportation, reuse will also help reduce emissions associated with asthma such as TAC and PM.

4.a.ii. Environmental Benefits: The ESAs funded by this grant will facilitate the removal of an array of contaminants that have for years damaged the soil, groundwater, stormwater, and indoor air quality of the target area such as PCBs, TCE, PCE, and TPH. In addition to addressing community environmental quality, contaminant removal will reduce risks to the health of the San Francisco Estuary from contaminated stormwater and the East Bay's water supply from groundwater contamination. The ESAs will also provide clarity on the relative risk of different sites, allowing future cleanup efforts to focus on locations that pose the greatest risks.

As development in the target area advances—spurred by the brownfield revitalization that this project and major transit investments will support—transportation options will expand and travel along the corridor will shift toward more sustainable modes. This will help reduce the pollution associated with auto travel, reducing concentrations of PM and TAC due to growing congestion on I-880. The addition of urban greening as amenities and required mitigation measures in new projects will also play an important role in comprehensively addressing air quality and other potential environmental and health risks. Parks, for example, will mitigate air quality impacts by adding trees that filter airborne contaminants while also mitigating soil and groundwater contamination through stormwater features such as bioswales that remove silt and pollution from surface runoff water.

4.b. Environmental Benefits from Infrastructure/Sustainable Reuse

4.b.i. Policies, Planning and Other Tools: The project will leverage a host of local and regional policies, tools and infrastructure investments. Community plans adopted across the target area provide zoning, anti-displacement and environmental mitigation measures that together support the development of affordable and mixed-income housing, retention of local residents, and increased

transportation choices, and healthier. Green building programs in each of the coalition partner cities will help insure that redevelop in the corridor is energy-efficient and promotes human health.

Supporting these policy tools is: regional technical assistance on placemaking, active transportation, and parking management provided by ABAG and the Metropolitan Transportation Commission through the regional PDA planning program; forthcoming Healthy Communities guidelines from the Bay Area Air Quality Management District; and stormwater best management practices disseminated by the SF Estuary Partnership.

Redevelopment in the target area spurred by the grant will leverage major federal, state and regional transit investments, including: the $200 million East Bay BRT, the first full Bus Rapid Transit route in the Bay Area; more than $1B in improvements to BART to increase frequency, capacity and safety; and multiple complete streets projects that support active transportation funded by Plan Bay 2013 regional transportation funding.

4.b.ii. Integrating Equitable Development or Livability Principles: The project will implement HUD-DOT-EPA Livability Principles as well as the equitable development policies integrated in the adopted local and regional plans of coalition members. To achieve HUD-DOT-EPA Livability Principles, it will **provide more transportation choices** by focusing mixed-use development at transit-supportive densities within walking distance of frequent, affordable public transit (BART and East Bay BRT), improving the public realm and travel conditions for healthy, active transportation such as walking and bicycling; **promote equitable, affordable housing** by setting the stage for projects that implement community plans calling for mixed-income housing that serves all age groups and backgrounds, addresses displacement pressures that are increasingly pushing low-income Bay Area families to move to outer areas of the region with higher transportation costs, and building homes in places with strong green building codes; **enhance economic competitiveness** by reducing the blight in the target area to make it more attractive to investors and small businesses, enlarging the customer base for local shops and services, setting the stage for major job-producing projects envisioned in local plans, and increasing access to transit that reaches the region's major employment and educational opportunities within ½ hour ; **support existing communities** by facilitating land recycling that will revitalize the corridor's communities, make efficient use of existing infrastructure, and focusing development on opportunity sites identified in plans driven by existing communities; **coordinate and leverage federal policies and investment** by taking an integrated implementation approach that aligns with recent federal investments including East Bay BART ($81M FTA Small Starts Grant), eight pilot projects in the target area to support equitable transit-oriented development and job creation (through the Bay Area's $5M HUD Sustainable Communities Grant), and hundreds of energy retrofits and renewable energy installations funded through Renewable Energy and Consumer Energy Efficiency Tax Credits; and **value communities and neighborhoods** by facilitating future development that includes much-needed public space, public realm improvements, and health care and other supportive services currently not adequately provided—improving community health, safety and walkability.

The project will also implement Play Bay Area policy to increase community stability and support affordable housing in transit-rich.[29] By helping build the mixed-income projects identified in local plans for opportunity sites, it implements anti-displacement policies in community plans for target area neighborhoods, such as the International Blvd TOD Plan's policy to provide equitable housing choices that leverage East Bay BRT stops[30] and the Ashland/Cherryland Business District Specific

[29] ABAG and MTC (2013), *Plan Bay Area*

[30] City of Oakland (2011). *International Blvd TOD Plan*

Plan's policy to reinforce the area's cultural diversity by promoting the area as a cultural and economy center.[31]

4.c Economic and Community Benefits

4.c.i. Economic and Other Benefits: Completion of these assessments will build a pipeline of mixed-use transit-oriented projects in locally identified opportunity sites along the corridor, positioning these struggling neighborhoods to take advantage of private investment and new local, state and regional funding. In addition to a growing pool of private real estate investment, new competitive public funding sources such as California's Affordable Housing and Sustainable Communities (AHSC) program (which uses the proceeds of Cap and Trade auctions) have emerged to support affordable housing and active transportation. The target area is among the most competitive in the state for this funding as a result of its demographic and environmental challenges; in the fund's first year alone, the corridor received $13 million in funding which will support construction of 220 units, leveraging $60 million in additional funds. The fund more than triples in 2016 and is expected to grow further in future years, increasing the timeliness of completing ESAs. The anticipated economic benefit of redevelopment facilitated by this grant is estimated at between $230 million to $560 million in immediate benefits and between $7 million to $14 million in ongoing annual local government revenue—enough to fund 35 to 70 mid-level police officers. Job creation is estimated at between 1,600 to 3,200 immediate jobs and between 450 and 900 ongoing positions supported by the redevelopment. One to two thousand new mixed-income homes are expected, as well as commercial development, community services and retail.[32] A 1% increase in the value of existing homes in the corridor spurred by reinvestment would create approximately $10 million in additional property taxes per year.

4.c.ii: Job Creation Potential: Partnerships with Workforce Development Programs: The Coalition will identify a process for integrating workforce development programs into the assessment, cleanup and redevelopment of sites for which ESAs are conducted. This will involve consulting with and identifying partners such as the Alameda County Workforce Investment Board (WIB) and recent EPA Environmental Workforce Development and Job Training Grantees in Oakland and Richmond. In the redevelopment process, local first source hiring policies would leverage workforce development programs as well.

5 Programmatic Capability and Past Performance

5.a. Programmatic Capability: ABAG is the Council of Governments for the San Francisco Bay Area and is well qualified to undertake the role of administering the Brownfields Coalition Assessment grant. As the designated regional planning agency for the Bay Area, ABAG has a long standing history of successfully tackling complex regional issues such as housing, hazard mitigation, resilience, economic development, regional land use, and the conservation. The staff that will administer the grant are directed by the Executive Director, the Finance Director and Planning Director. **JoAnna Bullock** is a Senior Planner and Grant Administrator; she will oversee the overall project ensuring that coalition partnerships, community engagement and site assessments are managed and projected outcomes are achieved. She has 30 years of project management experience and expertise in grant management, environmental issues including hazardous waste sites and community engagement. **Mark Shorett** is a Senior Regional Planner; he will lead day to day

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[31] County of Alameda (2014).

[32] Calculations in this paragraph based upon National Association of Homebuilders *Economic Impact of Home Building in a Typical Local Area* (2015), assuming between 10 and 20 100-unit multifamily housing projects as a result of redevelopment, consistent with a parcel size of 2 acres at 50 du/acre per local zoning. Similarly sized projects in the area include the Marea Alta apartments and Fruitvale Transit Village.

engagement with coalition members and community partners. Currently managing PDA Implementation and the East Bay Corridor Initiative, he has twelve years of experience in project management, redevelopment, urban design (including schematic architectural and site design), and economic development.

Through a consensus process established in the MOA, ABAG and other coalition members will hire contractors with the expertise required to conduct the ESAs involved in completing the grant. All procurements will follow EPA requirements.

5.b. Audit Findings: ABAG's most recent audit did not disclose any significant deficiencies, or material weaknesses or instances of noncompliance material to the basic financial statements. ABAG has implemented procedures to ensure compliance with all reporting requirements of federal grants and maintain evidence of submission accordingly.

5.c. Past Performance and Accomplishments

5.c.i. Currently or Has Ever Received an EPA Brownfields Grant (N/A)

5.c.ii. Has Not Received an EPA Brownfields Grant but has Received Other Federal or Non-Federal Assistance Agreements:

Purpose: ABAG's Resilience Program has received five grant awards from the US Geological Survey (USGS) since 2010 (a total of $412, 087) to advance hazard mitigation and recovery efforts in the region including: "Using Risk Communication Research for Improved Integration of Hazard, Risk, and Mitigation Information into ABAG's Bay Area Earthquake Website" (2010, $80,000); "A Sub-Regional Review of Earthquake-related Hazards in the San Francisco Bay Area" (2012, $80,000); "Bay Area Population and Earthquake Risk" (2013, $93,000); "Local Government Resilience Toolkit" (2014, $90,816); "Bay Area Housing Risk Communication" (2015, $68,271). ABAG also received a Smart Growth Implementation Assistance grant from the Environmental Protection Agency (EPA)'s Smart Growth Program (2014, $93,000), entitled Creating Safe, Smart Growth Strategies for the San Francisco Bay Area.

Accomplishments: ABAG utilized 2010 and 2012 USGS grants to redesign its natural hazards resilience website and to improve overall communication of risk and distribute mitigation strategies to local governments and the general public. The 2013 USGS grant enabled ABAG to assess the overlapping risks of disaster-vulnerable housing types, vulnerable populations, and areas subject to earthquakes and current and future flooding; this effort culminated in a suite of strategies for local governments for housing and community resilience. ABAG utilized a 2014 grant to refine a selection of these strategies to assist local governments in adopting mitigation and adaptation actions such as soft-story ordinances. A 2015 grant is enabling ABAG to more accurately model housing loss during major disasters and to improve tools to assist residents in retrofitting their homes and preparing for disasters.

The EPA Smart Growth Implementation Assistance grant leveraged the USGS 2013 grant to develop responsive, regionally-appropriate strategies to address the housing and vulnerable population risks identified in the project for both existing and future development.

2. Compliance with Grant Requirements: Our staff worked cooperatively with USGS; tasks were performed according to work plans, work products were delivered on schedule, terms and conditions of past grants were strictly adhered to, all reporting requirements were met, and the grants were properly closed. Staff worked closely with USGS, meeting monthly to develop the deliverable and ensure that the schedule was met.

ATTACHMENT A

Letter from California Department of Toxic Substances Control

Matthew Rodriquez
Secretary for
Environmental Protection

Department of Toxic Substances Control

Barbara A. Lee, Director
700 Heinz Avenue
Berkeley, California 94710-2721

Edmund G. Brown Jr.
Governor

November 20, 2015

Ms. Noemi Emeric-Ford
Site Assessment Manager
Brownfields and Site Assessment Section
USEPA Region 9
600 Wilshire Boulevard
Los Angeles, California 90017-3212

Dear Ms. Emeric-Ford:

The California Department of Toxic Substances Control (DTSC) has lead regulatory responsibility for investigating and remediating hazardous substances release sites in California. DTSC fully supports the Association of Bay Area Governments (ABAG) grant application for a $600,000 ($300,000 for hazardous substances and $300,000 for petroleum) Community-wide U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County. ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro, Hayward and Alameda County.

The coalition proposes to use the Community-Wide Assessment Grant, to assess sites identified by the local jurisdictions based on previous land use and location. Assessments would focus on areas within low-income neighborhoods that have been disproportionately impacted by pollutants and contamination. These Brownfields funds would help advance the growth of housing, local businesses and services within these communities.

We appreciate the opportunity to voice our support for this crucial funding.

Please contact me at (510) 540-3833 or janet.naito@dtsc.ca.gov if you have any questions.

Sincerely,

Janet Naito, Branch Chief
Berkeley Cleanup Operations Branch
Brownfields and Environmental Restoration Program

cc: JoAnna Bullock (via electronic mail to: JoAnnaB@abag.ca.gov)
Association of Bay Area Governments

ATTACHMENT B

Memorandum of Agreement

East Bay Corridor Brownfields Coalition

MEMORANDUM OF AGREEMENT
EAST BAY CORRIDOR BROWNFIELDS COALITION

This Memorandum of Agreement (MOA) is entered into by and between the following participating entities:
Association of Bay Area Governments
County of Alameda
City of Hayward
City of Oakland
City of San Leandro

I. Purpose of the Agreement

The purpose of this agreement sets out the terms by which the participating entities will work together to implement a Brownfields site identification and assessment program along the East Bay Corridor. This agreement will remain in effect from July 2016 to June 2019 and Senior Regional Planner Mark Shorett will be the key contact for ABAG.
This agreement sets out the terms by which the County of Alameda and the Cities of Oakland and Hayward will meet, make decisions, select sites, hire consultants and work with stakeholders and the communities surrounding the project area.

II. Background

In September 2013, the East Bay Corridors Initiative was formed as an implementation strategy for realizing Plan Bay Area, the region's long range sustainable growth plan. The East Bay Corridor is divided into two segments: the Oakland-Union City Corridor and the San Pablo Corridor. This agreement concerns a significant portion of the Oakland-Union City segment.

The activities to be undertaken by coalition Participants of the East Bay Corridor Initiative include:

- develop strategies to create thriving neighborhoods and downtowns
- identify and develop funding sources for plan implementation
- endorse joint applications by coalition Participants for grants and other funding that support agreed upon strategies

The East Bay Corridor Brownfields Coalition Assessments align well with the activities of the East Bay Corridors Initiative. Identifying and conducting site assessments along the Oakland, San Leandro, Hayward, Alameda County segment of the corridor will improve public health, advance implementation of local plans, increase marketability of land and greatly enhance land re-use along the corridor.

III. Proposed Activities

The Participants of the coalition will undertake the following activities.

- Meet on a regular basis as determined by coalition Participants
- In partnership with community organizations, develop a robust community engagement plan
- Allocate funding to increase capacity of community organization partners
- Develop a site selection process that prioritizes sites with high redevelopment impact potential

- Hire most appropriate and qualified consultants to conduct site assessments
- Assist with the development of land re-use plans

IV. Roles and Responsibilities
Each Participant of the coalition will have the following responsibilities:

- Each coalition Participant will assign a representative to the EBC Brownfields Program
- Each coalition Participant will participate in regular meetings, development of public engagement plan, site selection and consultant hiring process

V. Structure and Governance
For ease of formation and administration and to maintain flexibility, the East Bay Corridor Brownfields Coalition is structured as an unincorporated association of local and regional public entities. The coalition Participants agree that this MOA is independent of any other contract(s) or agreement(s) between or among the coalition Participants, or the contracts(s) or agreement(s) between or among any Corridor Jurisdiction that are promulgated to implement a grant or local plan.

Each coalition Participant will assign a representative and these representatives will collectively coordinate activities undertaken pursuant to this MOA. Through a unanimous vote representatives may establish rules related to decision making for the coalition.

Every representative has the right to appoint an alternative to the coalition.

VI. Participant Resources and Compensation
The coalition Participants acknowledge that the East Bay Corridor Brownfields Coalition is likely to require some investment of resource to be effective. Each coalition Participant will assign staff, at no cost, to act as its representative.

Financial support will be provided to community and non-profit organizations to facilitate their active participation in the project.

VII. Withdrawal and Termination
This MOA will continue until terminated by majority vote of the representatives, but coalition Participants may withdraw from this MOA on sixty (60) days notice to other coalition Participants. If a coalition Participant withdraws from the coalition, management of active Phase I and II assessments in their jurisdiction will be transferred to ABAG.

VIII. Amendments
This MOA may be amended by written agreement executed by the Participants in the same manner as this MOA.

IX. Effective Date
This MOA is effective upon the date the Participants execute the MOA

X. Signatures of Parties' Principals

ATTACHMENT C

Letters of Support

East Bay Corridor Brownfields Coalition Participants

ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

PLANNING DEPARTMENT

Chris Bazar
Agency Director

Albert Lopez
Planning Director

224
West Winton Ave.
Room 1[illegible]

Hayward
California
94544

phone
510.670.5400
fax
510.785.8793

www.acgov.org/cda

December 14, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments (ABAG)
101 8th Street
Oakland, CA 94607

Dear Mr. Rapport:

The County of Alameda is pleased to commit to supporting and participating in the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro and Hayward and Alameda County. This grant supports implementation of the County's Ashland-Cherryland Business District (ABCD) Specific Plan, Plan Bay Area, and our ongoing partnership to collaborate with ABAG and our neighboring jurisdictions through the East Bay Corridors Initiative.

The grant award would set the stage for the redevelopment of key opportunity properties identified by community members and in the ABCD Specific Plan. Strong support exists for creating much-needed community services, mixed-income housing, and economic development in this area, but ongoing concerns regarding environmental issues have limited the potential for achieving these objectives. The recent loss of our redevelopment agency and our ongoing budgetary limitations has also contributed to these challenges. In concert with ABAG and coalition jurisdictions, we will utilize this grant to assess our highest priority potential brownfield sites, engage community members, and work collaboratively with our neighboring jurisdictions.

The grant would leverage multiple grant-funded city projects, including our update to the Ashland-Cherryland Specific Plan funded by MTC and ABAG, the REACH youth center, and multiple streetscape improvements. We view this application as an opportunity to build on these resources and implement a collaborative vision for the transit corridors that connect us to our neighboring cities and the East Bay.

Please feel free to contact us with any questions regarding these commitments.

Sincerely,

Albert Lopez
Planning Director

CITY OF
HAYWARD
HEART OF THE BAY

November 20, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments (ABAG)
101 8th Street
Oakland, CA 94607

Dear Mr. Rapport:

The City of Hayward is pleased to commit to supporting and participating in the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro and Hayward and Alameda County. This grant supports implementation of the City's Mission Blvd Corridor Specific Plan/Form-Based Code and South Hayward/Mission Boulevard Form-Based Code, Plan Bay Area, and the East Bay Corridors Initiative—our ongoing effort to collaborate with ABAG and our neighboring East Bay jurisdictions.

The grant award would set the stage for the redevelopment of key opportunity properties identified in our recently adopted plans for Mission Boulevard. Strong support exists for creating new mixed-income housing, community services, and job-creating land uses in this area. However, ongoing concerns regarding environmental issues have limited somewhat the potential for achieving these objectives. The recent loss of our redevelopment agency and our ongoing budgetary limitations has also contributed to these challenges. In concert with ABAG and coalition jurisdictions, we will utilize this grant to assess our highest priority potential brownfield sites, engage community members, and work collaboratively with our neighboring jurisdictions.

The grant would leverage multiple grant-funded city efforts, including the current Downtown Hayward Specific Plan project, transportation improvements to Mission Boulevard and Foothill Boulevard, and redevelopment sites along Mission Boulevard and in Downtown. We view this application as an opportunity to build on these resources and implement a collaborative vision for the transit corridors that connect our cities. Please feel free to contact me with any questions regarding these commitments.

Sincerely,

David Rizk
Development Services Director
City of Hayward

Development Services Department
777 B Street, Hayward, CA 94541-5007
Tel: 510/583-4234 Fax: 510/583-3650 TDD: 510/247-3340 Website: www.hayward-ca.gov

CITY OF OAKLAND

DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 3315 • OAKLAND, CALIFORNIA 94612-2032

Office of the City Administrator
Department of Economic and Workforce Development

(510) 238-3627
FAX (510) 238-2226
TDD (510) 238-3254

December 17, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments (ABAG)
101 8th Street
Oakland, CA 94607

Dear Mr. Rapport,

The City of Oakland is pleased to commit to supporting and participating in the U.S. EPA Brownfields Coalition Assessment Grant for the International Boulevard/East 14th Street/Mission Boulevard corridor, including five Bay Area Rapid Transit (BART) station areas, in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro and Hayward and Alameda County. This grant supports implementation of the City's recently adopted Coliseum Area Specific Plan, International Boulevard Transit-Oriented Development (TOD) plan, Plan Bay Area, and our ongoing partnership with ABAG and our neighboring jurisdictions in the East Bay Corridors Initiative.

The grant award would set the stage for the redevelopment of key opportunity properties identified by community members. Our recent planning efforts have created momentum for implementing community priorities (i.e. affordable housing, local parks, and job creation) on these sites, but ongoing concerns regarding safety and environmental issues have limited public and private capacity for redevelopment. In addition, the loss of redevelopment agencies and city budgetary limitations has significantly diminished our resources to fund the type of effort that would be supported by this grant. In concert with ABAG and coalition jurisdictions, we will utilize this grant to assess our highest priority potential brownfield sites, engage community members, and continue to participate in the creation of a successful transit corridor between Oakland and Hayward.

The grant would leverage multiple planning and infrastructure investments, including the Oakland Sustainable Neighborhoods Initiative (OSNI) and International Blvd TOD Plan supported by the California Strategic Growth Council (SGC), the East Bay Bus Rapid Transit (BRT) project funded by AC Transit, ongoing investments in BART and improvements to International Blvd and other streets in the corridor funded by the Alameda County Transportation Commission. This application provides an opportunity to build upon these resources while implementing a collaborative local, regional, and corridor vision for smart, healthy, equitable development.

Sincerely,

Mark Sawicki
Director
Economic & Workforce Development Department

City of San Leandro
Civic Center, 835 E. 14th Street
San Leandro, California 94577
www.sanleandro.org

December 3, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments (ABAG)
101 8th Street
Oakland, CA 94607

Dear Mr. Rapport,

The City of San Leandro is pleased to support and participate in the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro and Hayward and Alameda County. This grant supports implementation of two key City specific plans, the Downtown TOD Strategy and East 14th South Area Strategy, as well as Plan Bay Area and our ongoing partnership with ABAG and neighboring East Bay jurisdictions through the East Bay Corridors Initiative.

The grant award would set the stage for the redevelopment of key opportunity properties identified by the City Council and community in our adopted Downtown and East 14th Street plans. Strong public support exists for creating much-needed community services, mixed-income housing, and economic development in these areas, but ongoing concerns regarding environmental issues are a factor in developing some of the opportunity sites. The recent loss of our redevelopment agency and our ongoing budgetary limitations have also contributed to these challenges. In concert with ABAG and coalition jurisdictions, we will utilize this grant to assess our highest priority potential brownfield sites, engage community members, and work collaboratively with our neighboring jurisdictions.

The grant would leverage multiple and recent grant-funded City projects including streetscape improvements in the Downtown TOD plan area and the Bay Fair TOD Specific Plan currently underway. We view this application as an opportunity to build on these resources and implement a collaborative vision for the transit corridors that connect us to our neighboring cities and the East Bay.

Please feel free to contact Tom Liao, Deputy Community Development Director, 510-577-6003, with any questions regarding these commitments.

Sincerely,

Cynthia Battenberg, Community Development Director

Pauline Russo Cutter, Mayor

City Council: Deborah Cox, Jim Prola, Benny Lee, Ursula Reed, Corina N. López, Lee Thomas

CITY OF SAN LEANDRO INCORPORATED 1872

ATTACHMENT D

Letters of Support

East Bay Corridor Brownfields Coalition

Community Organization Partners

GREENBELT ALLIANCE

San Francisco Office
312 Sutter Street, Suite 510
San Francisco, CA 94108
(415) 543-6771

December 17, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments
101 8th Street
Oakland, CA 94607

RE: U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor

Dear Mr. Rapport:

Greenbelt Alliance is the champion of the places that make the Bay Area special. We ensure the right development happens in the right places. Through land-us policy and planning expertise, engagement with decision makers, and efforts to educate and engage Bay Area residents, we work to protect the region's open spaces and make sure cities grow in a way that creates great neighborhoods for everyone.

Greenbelt Alliance has worked with community leaders and residents across the Bay Area to develop plans and approaches to bring development that will help meet community needs to areas around transit stations and along major transportation corridors. Done right, growth of this type will help reduce pressure to sprawl into the Bay Area's greenbelt, mitigate our region's impact on the climate, revitalize long neglected areas, and provide homes and access to jobs for Bay Area residents most in need.

Because of its consistency with our objectives, **Greenbelt Alliance supports the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG).** ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro and Hayward and Alameda County.

The East 14th Street/Mission Boulevard corridor has a rich cultural history and formerly served as an employment center, particularly for people of color. This major corridor provides a critical linkage between East Bay cities and is home to a diverse group of residents. Though the corridor has received little in the way of public and private investment over the past three decades, its importance in the regional long range sustainable growth plan make it a major focus for future growth and development.

002205 2020-10-29

The grant award would set the stage for the redevelopment of key opportunity properties identified by local jurisdictions and community members. The funds will be utilized to assess high priority potential brownfield sites, work collaboratively with neighboring jurisdictions, and engage community members. The desired outcome is to advance land reuse and promote growth and development along the corridor.

Greenbelt Alliance looks forward to participating in the community engagement process and the overall project. We anticipate that this will be a successful project that has the potential to improve services and increase mixed-income housing and economic development in East 14th Street/Mission Boulevard communities.

Sincerely

Jeremy Madsen
Executive Director

LISC Bay Area

December 14, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments
101 8th Street
Oakland, CA 94607

Dear Mr. Rapport,

Bay Area Local Initiatives Support Corporation (LISC) supports the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro and Hayward and Alameda County.

The East 14th Street/Mission Boulevard corridor has a rich cultural history and formerly served as an employment center, particularly for people of color. This major corridor provides a critical linkage between east bay cities and is home to a diverse group of residents. Though the corridor has received little in the way of public and private investment over the past three decades, its importance in the regional long range sustainable growth plan make it a major focus for future growth and development.

The grant award would set the stage for the redevelopment of key opportunity properties identified by local jurisdictions and community members. The funds will be utilized to assess high priority potential brownfield sites, work collaboratively with neighboring jurisdictions, and engage community members. The desired outcome is to advance land reuse and promote growth and development along the corridor.

Bay Area LISC will participate in the community engagement plan and the overall project. We look forward to successful project outcomes which have the potential to improve services and increase mixed-income housing and economic development in our communities.

Sincerely,

Marsha G. Murrington
Director of Economic Development

LOCAL INITIATIVES SUPPORT CORPORATION
369 Pine Street, Suite 350 • San Francisco, CA 94104 • Phone 415-397-7322 • Fax 415-397-8605
WWW.BAYAREALISC.ORG

OCCUR

Creating Communities of Opportunity

December 16, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments
101 8th Street
Oakland, CA 94607

Dear Mr. Rapport,

OCCUR supports the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application of behalf of itself, the Cities of Oakland, San Leandro and Hayward and Alameda County.

The East 14th Street/Mission Boulevard corridor has a rich cultural history and formerly served as an employment center, particularly for people of color. This major corridor provides a critical linkage between east bay cities and is home to diverse group of residents. Though the corridor has received little in the way of public and private investment over the past three decades, its importance in the regional long range sustainable growth plan make it a major focus for future growth and development.

The Grant award would set the stage for the redevelopment of key opportunity properties identified by local jurisdictions and community members.The funds will be utilized to assess high priority potential Brownfields sites, work collaboratively with neighboring jurisdictions, and engage community members. The desired outcome is to advance land reuse and promote growth and development along the corridor.

OCCUR will participate in the community engagement plan and the overall project. We look forward to successful project outcomes which have the potential to improve services and increase mixed-income housing and economic development in our communities.

Sincerely,

Sondra Alexander
Executive Director

1330 Broadway, Suite 905 | Oakland, CA 94612 ph (510) 839-2440 fax (510) 268-9065 occur@sbcglobal.net
www.occurnow.org

TransForm

Our communities. Our transportation. Our future.

December 11, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments
101 8th Street
Oakland, CA 94607

Dear Mr. Rapport,

TransForm supports the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application on behalf of itself; Alameda County; and the Cities of Oakland, San Leandro and Hayward.

The East 14th Street/Mission Boulevard corridor has a rich cultural history and formerly served as an employment center, particularly for people of color. This major corridor provides a critical linkage between East Bay cities and is home to a diverse group of residents. Though the corridor has received little in the way of public and private investment over the past three decades, its importance in the regional long range sustainable growth plan make it a major focus for future growth and development. The grant award would set the stage for the redevelopment of key opportunity properties identified by local jurisdictions and community members. The funds will be utilized to assess high priority potential brownfield sites, work collaboratively with neighboring jurisdictions, and engage community members. The desired outcome is to advance land reuse and promote growth and development along the corridor.

TransForm will participate in the community engagement plan and the overall project. We look forward to successful project outcomes which have the potential to improve services and increase mixed-income housing and economic development in our communities.

Sincerely

Stuart Cohen

Stuart Cohen
Executive Director

MAIN OFFICE: 436 14TH STREET, SUITE 600, OAKLAND, CA 94612 | T: 510.740.3150 |
SACRAMENTO: 717 K STREET, SUITE 300, SACRAMENTO, CA 95814 | T: 916.441.0204 |
SILICON VALLEY: 48 SOUTH 7TH STREET, SUITE 103, SAN JOSE, CA 95112 | T: 408.406.8074 |

WWW.TRANSFORMCA.ORG

THE UNITY COUNCIL

Date: December 9, 2015

The Unity Council supports the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward, and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro, and Hayward and Alameda County.

The East 14th Street/Mission Boulevard corridor has a rich cultural history. This major corridor provides a critical linkage between East Bay cities and is home to a diverse group of residents. Though the corridor has received little in the way of public and private investment over the past three decades, its importance in the regional long range sustainable growth plan make it a major focus for future growth and development. In light of the current Bus Rapid Transit line in development along International Boulevard/E. 14th Street, this vital artery is poised to play a center role in the area's ability to undergo sustainable growth.

The grant award would set the stage for the redevelopment of key opportunity properties identified by local jurisdictions and community members. The funds will be utilized to assess high priority potential Brownfield sites, work collaboratively with neighboring jurisdictions, and engage community members. The desired outcome is to advance land reuse and promote growth and development along the corridor.

The Unity Council will participate in the community engagement plan and the overall project. We look forward to successful project outcomes including improved services and increased mixed-income housing and economic development in our communities.

Sincerely,

X

Erin Patch
Executive Vice President

The Unity Council
1900 Fruitvale Ave Ste 2A, Oakland, CA 94601
510-535-6900 Office • 510-534-7771 Fax • www.unitycouncil.org

OMB Number: 4040-0004
Expiration Date: 8/31/2016

Application for Federal Assistance SF-424

* 1. Type of Submission:
- [ ] Preapplication
- [x] Application
- [ ] Changed/Corrected Application

* 2. Type of Application:
- [x] New
- [ ] Continuation
- [ ] Revision

* If Revision, select appropriate letter(s):

* Other (Specify):

* 3. Date Received: 12/18/2015

4. Applicant Identifier:

5a. Federal Entity Identifier:

5b. Federal Award Identifier:

State Use Only:

6. Date Received by State:

7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name: Association of Bay Area Governments

* b. Employer/Taxpayer Identification Number (EIN/TIN): 94-2832478

* c. Organizational DUNS: 0790739200000

d. Address:

* Street1: MetroCenter, 101 8th Street
Street2:
* City: Oakland
County/Parish:
* State: CA: California
Province:
* Country: USA: UNITED STATES
* Zip / Postal Code: 94607-4756

e. Organizational Unit:

Department Name: Planning Department

Division Name:

f. Name and contact information of person to be contacted on matters involving this application:

Prefix: Ms.
* First Name: JoAnna
Middle Name:
* Last Name: Bullock
Suffix:

Title: Senior Grants Administrator

Organizational Affiliation: Association of Bay Area Governments

* Telephone Number: 510 464-7968
Fax Number: 510 464-7985

* Email: joannab@abag.ca.gov

Application for Federal Assistance SF-424

*** 9. Type of Applicant 1: Select Applicant Type:**

E: Regional Organization

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

*** 10. Name of Federal Agency:**

Environmental Protection Agency

11. Catalog of Federal Domestic Assistance Number:

66.818

CFDA Title:

Brownfields Assessment and Cleanup Cooperative Agreements

*** 12. Funding Opportunity Number:**

EPA-OSWER-OBLR-15-04

* Title:

FY16 Guidelines for Brownfields Assessment Grants

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Add Attachment | Delete Attachment | View Attachment

*** 15. Descriptive Title of Applicant's Project:**

East Bay Corridor Brownfields Coalition Assessments

Attach supporting documents as specified in agency instructions.

Add Attachments | Delete Attachments | View Attachments

Application for Federal Assistance SF-424

16. Congressional Districts Of:

* a. Applicant CA-013 * b. Program/Project CA-013

Attach an additional list of Program/Project Congressional Districts if needed.

Add Attachment | Delete Attachment | View Attachment

17. Proposed Project:

* a. Start Date: 07/01/2016 * b. End Date: 06/30/2017

18. Estimated Funding ($):

* a. Federal	600,000.00
* b. Applicant	0.00
* c. State	0.00
* d. Local	0.00
* e. Other	0.00
* f. Program Income	0.00
* g. TOTAL	600,000.00

*** 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

☒ a. This application was made available to the State under the Executive Order 12372 Process for review on 12/18/2015.

☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.

☐ c. Program is not covered by E.O. 12372.

*** 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**

☐ Yes ☒ No

If "Yes", provide explanation and attach

Add Attachment | Delete Attachment | View Attachment

21. *By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

☒ ** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: Ms. * First Name: JoAnna

Middle Name:

* Last Name: Bullock

Suffix:

* Title: Senior Grants Administrator

* Telephone Number: 510 464-7968 Fax Number: 510 464-7985

* Email: joannab@abag.ca.gov

* Signature of Authorized Representative: JoAnna Bullock * Date Signed: 12/18/2015

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 8/17/2017 9:39:29 PM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]
Subject: Pls let me know if attachment doesn't come through: Port response to T6 cplt
Attachments: Port Letter to EPA - Response to Title VI Complaint.pdf

PORT OF OAKLAND

J. Christopher Lytle
Executive Director

August 16, 2017

VIA EMAIL AND UPS OVERNIGHT MAIL

Mr. Charles E. James, Sr.
Director
Office of the Secretary of Transportation
Departmental Office of Civil Rights
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Ms. Lilian S. Dorka
Director
External Civil Rights Compliance Officer
Office of General Counsel
U.S. Environmental Protection Agency
Mail code 1201A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

Dear Mr. James and Ms. Dorka:

I am writing on behalf of the Board of Port Commissioners ("Board") and the Port of Oakland (collectively referred to as the "Port") to respond to the U.S. Department of Transportation ("DOT") and U.S. Environmental Protection Agency's ("EPA") July 18, 2017, Notification of Acceptance for Investigation ("Acceptance Letter") issued to the Port and the City of Oakland ("City"), and the April 4, 2017, West Oakland Environmental Indicators Project ("WOEIP") Complaint Under Title VI of the Civil Rights Act of 1964 against the Port and the City ("Complaint").[1] This letter is written solely on behalf of the Port and not the City. I understand that the City is providing a separate letter to the DOT and EPA in response to the Acceptance Letter.

As further described in Section I below, while the Port is a department of the City, it is a separate legal entity from the City. The Port holds all Port property in trust for the people of the

[1] The information provided in this letter is submitted in the spirit of cooperation and for the sole purpose of assisting with the DOT and EPA investigation in this matter. This letter is not intended to be used, nor does the Port consent to its use, in any other administrative, trial, or other proceeding. While we believe this letter to be accurate in all respects, as further information becomes available, the Port may modify, correct, or supplement the information contained in this letter, but undertakes no obligation to do so.

State of California and must use and maintain its trust assets consistent with its Tidelands Trust obligations to promote commerce and navigation.

EXECUTIVE SUMMARY

In the Acceptance Letter[2], DOT and EPA state that their investigation will focus on:

(1) whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the OAB subjects the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 ("Title VI"); and

(2) whether the City's and Port's methods, including their public participation process, for approving and authorizing new development and expanded activities at the Port of Oakland and the OAB subject the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI.[3]

With respect to the first focus of the EPA-DOT investigation, the Port was not involved in the City's approval of a construction management plan or permission for groundbreaking on the Northeast Gateway development project and has no role in that project.[4] Accordingly, the Port will focus this letter and the legal analysis provided in Section III below, on the second prong of DOT's and EPA's investigative focus: the public participation process and other methods for approving and authorizing new development and expanded activities at the Port.

As we will show in this letter, the Port strives to operate both as a significant contributor to the local, regional, and national economies and as a steward of the public interest in management of Port assets. The health and welfare of residents who are the Port's neighbors is an integral concern of the Port's day-to-day operations. The Port has built into its decision-making process and operations various channels and manners of soliciting input from stakeholders, the public, and local communities, including when planning new development or activities. Indeed, there are multiple avenues for public participation and engagement in the Port's decision-making process,

[2] Although EPA and DOT have already determined that the WOEIP Complaint meets the agencies' jurisdictional requirements, the Port notes that the Complaint was submitted to DOT and EPA more than 180 days after the City's October 4, 2016, approval of the Northeast Gateway construction management plan. Furthermore, although specific dates of any Port action are not alleged in the Complaint, the Port's Oakland Army Base ("OAB") development project began years ago, and certainly more than 180 days prior to filing of the WOEIP Complaint.

[3] Acceptance Letter, p. 2.

[4] *See* October 4, 2016, Northeast Gateway development project approval from the City, attached as Exhibit A.

including, but not limited to: (1) the Board's open public meetings held in accordance with the Brown Act and the Port of Oakland Sunshine Ordinance No. 4265 ("Sunshine Ordinance")[5]; (2) the Port's Social Responsibility Department's ("SRD") engagement with community members at various West Oakland venues to solicit feedback on a variety of Port programs; (3) specific community outreach associated with the OAB development; and (4) meaningful public engagement and environmental mitigation pursuant to the California Environmental Quality Act ("CEQA").

Through its process of robust public engagement, the Port has committed to measures and procedures to address Port-related air pollutant emissions that have broken new ground and often have exceeded State and Federal regulatory requirement. These efforts include, but are not limited to: (1) developing a precedent setting Air Quality Mitigation Program associated with the Vision 2000 Maritime Development Program ("V2K Program"); (2) voluntarily undertaking emissions inventories; (3) cooperating with a State-led health risk assessment for West Oakland; (4) developing and implementing a Maritime Air Quality Improvement Plan ("MAQIP"); (5) developing and implementing a Comprehensive Truck Management Program ("CTMP") for the Port; (6) working with the City to develop a City-Port Truck Management Plan for the entire OAB; (7) supporting a cutting-edge battery-powered big rig truck pilot test at the Port; and (8) applying for and securing grants to aid in the design and construction of the necessary infrastructure to provide "shore power" so that vessels can plug in while at berth. This effort includes commissioning a high-voltage cable-on-reel system that will connect more vessels to the Port's landside shore power grid.

As we demonstrate below, the WOEIP Complaint mischaracterizes the Port's public engagement and air emissions reduction achievements. At the crux of WOEIP's Complaint, WOEIP alleges that the Port has "continuously refused, to engage the community in a meaningful process by which to receive and incorporate their input."[6] WOEIP's allegation simply is not true. In fact, community groups in West Oakland, including WOEIP, have publicly acknowledged the collaborative approach taken by the Port to reduce air pollutant emissions while expanding Port operations.

For example, in 2011, the Port announced that it was allocating $2.7 million to the Port of Oakland's Shore Power Program and to an Energy Efficiency and Renewable Energy Study. At the time of this announcement, Margaret Gordon, co-chair of the WOEIP and at that time a member of the Board of Port Commissioners, stated that "[t]his action is delivering real emission reduction results that benefit the community and paves the way for an innovative approach to energy and the

[5] Port Ordinance No. 4265: Ordinance Approval and Adopting Rules and Requirements for Noticing, Agendizing and Posting of Board of Port Commissioners Meetings, Assuring Public Access and Participation and Providing Cure and Correction of Non-Compliance with Open Meeting Laws, adopted Dec. 12, 2013, attached as Exhibit B

[6] Complaint, p. 28.

environment going forward...I am pleased that the Port and West Oakland community worked collaboratively to get us here and look forward to more collaborative partnerships as these projects are implemented."[7]

Ray Kidd, co-chair of the West Oakland Neighbors, had similar comments, stating that "West Oakland residents and many Port stakeholders have benefited from the emission reductions that have been achieved through the Port-community dialogue targeting sources such as trucks, buses, tugboats, cargo handling equipment, and now ships. We are pleased the Port has also embraced the community's suggestion of directing funding to an innovative and exciting energy research initiative in partnership with the community."[8]

As will be demonstrated in this letter, the Port's commitment to an open and public decision-making process, as well as its commitment to reducing Port-related emissions, goes back decades and has continued to the present day. The facts show that this public engagement and collaborative decision making has yielded huge reductions in air pollutants from Port-related sources.

The facts here simply do not support a Title VI disparate impact claim. The Port's methods for approving and authorizing new development and expanded activities provide for robust public engagement and have resulted in reduced air emissions. Even if there were a valid argument that the Port's public engagement methods were insufficient (which they are not), there is no causal link between those methods and the alleged disparate air quality in West Oakland, particularly because the Port is not the primary cause of air pollution in West Oakland.

In Section I below, we briefly describe the Port of Oakland and its critical role as part of the local, State, and national economy. In Section II, we provide some further factual background, including the Port's commitment to public engagement and emissions reductions, a description of air quality in West Oakland, and a description of the Port's strong civil rights and anti-discrimination policies. In Section III, we discuss the applicable legal standards and our conclusion that the Port has not discriminated against communities of color in violation of Title VI, and confirm the Port's commitment to environmental stewardship and its willingness to cooperate with this investigation. The Port believes DOT and EPA should close this investigation without any finding of discrimination against the Port. Nevertheless, the Port remains open to discussing the possibility of an informal resolution of this investigation.

[7] Press Release, Port Allocates $2.7 Million for Shore Power & Innovative Energy Study, April 4, 2011 ("Shore Power Press Release")(available at: http://www.portofoakland.com/press-releases/press-release-223/).
[8] Shore Power Press Release.

I. THE PORT OF OAKLAND

A. Port Established in 1927 Pursuant to an Amendment to The Charter of the City of Oakland: Duty to Promote Commerce, Shipping, and Navigation

Since the Port was founded in 1927, the Oakland maritime port ("Seaport") has served as a principal ocean gateway of the nation for international containerized cargo shipments. It is currently the 3rd busiest Seaport in California and the 7th busiest Seaport in the U.S., both as measured by cargo volume. Unlike some "operating port authorities" (*i.e.,* ports with employees who directly operate cargo handling facilities), the Port is mainly a "landlord" Seaport; that is, the Port leases land and facilities to various private companies (such as marine terminal operators and logistics businesses) who handle maritime cargo at various points in the supply chain. The Port does not engage in day-to-day operations of shipping, cargo handling, or transportation.

The Port is an independent department of the City governed by the Board, which is vested with exclusive control and management of Port property, Port facilities, and revenues by the Charter of the City of Oakland ("Charter").[9] The Port was established pursuant to an amendment to the Charter "[t]o promote and more definitely insure the comprehensive and adequate development of the Port of Oakland through continuity of control, management and operation."[10] The Board has the complete and exclusive power, and duty for and on behalf of the City to make provisions for the needs of commerce, shipping, and navigation of the Port and to promote, develop, construct, repair, maintain and operate all water front properties including piers, wharves, docks, and warehouses. Said Board power and duty includes the obligation to establish, equip and operate all other facilities or aids incident to the development, protection, and operation of the Port, as may be deemed proper and desirable in its judgment; the Board may modify its plans from time to time as the requirements of commerce, shipping, and navigation may demand.[11]

B. Port Holds All Port Property in Trust for the People of the State of California: Obligation to Comply with Tidelands Trust

The State of California holds all right, title, and interest in tide and submerged lands and beds of navigable waterways within its borders, and all such lands are held in trust for the benefit of the people of California. Beginning in 1919, the State granted the City of Oakland the right to the tidelands and submerged lands at the Port of Oakland. In that grant, the State limited the use of the tidelands:

> Only for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips,

[9] Article VI, Section 601 (Adopted by the people of the City of Oakland, Nov. 5, 1968).
[10] Article VII, Section 700 of the Charter.
[11] Article VII, Section 706(2) of the Charter.

quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation.[12]

Under the State's grant and the Tidelands Public Trust Doctrine, uses on the Port's public trust lands must serve statewide, as opposed to purely local, public purposes; those purposes are limited to water dependent or related uses, including commerce, fisheries, navigation, ecological preservation, and recreation. Thus, the Port is constrained in how it can use the land, and has the affirmative duty to use and develop the land consistent with these tideland trust consistent uses. Moreover, the Port is strictly constrained by the Tidelands Public Trust to use all of its assets consistent with trust purposes. Finally, the Port must not only comply with environmental laws and regulations, but also must comply with a myriad of other Federal and State laws and regulations, including the Shipping Act, which imposes restrictions and requirements on how the Port interacts with its tenants and customers.

C. Port Divided into Three Major Geographical Areas

The Port's property is divided into three major areas which are managed by three revenue divisions: the Oakland Seaport or Maritime area managed by the Maritime Department; the Oakland International Airport ("Airport") managed by the Aviation Department; and commercial properties managed by the Commercial Real Estate Department. All of the allegations in the Complaint relate to the Port's Maritime operations, which will be the focus of this response letter.

D. Port's Fundamental Role in the Economy

The Oakland Seaport consists of 1,300 acres of maritime-related facilities serving a local market of over 14.5 million consumers, 34 million within a seven-hour drive, and 50% of the US population by rail.

The Port is a fundamental part of the Bay Area and national economy. In Fiscal Year 2016, a total of approximately 2.3 million 20-foot equivalent units ("TEUs") of containerized cargo moved through the marine terminals located at the Port.[13] In 2010, the Port's Seaport operations were responsible for nearly 11,000 direct jobs, and another 17,000 induced or indirect jobs. In 2010, the Port paid more than $538 million in employee wages and salaries and generated approximately $233 million in State and local taxes.[14] About 80 percent of the containerized cargo exported through the Port is estimated to originate in the Bay Area and Northern California, and 85 percent of the containerized imports are consumed in the region.[15]

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[12] Chapter 516, Statutes of 1919.
[13] Port of Oakland Comprehensive Annual Financial Report for the Years Ended June 30, 2016 and 2015, p. ii.
[14] The Economic Import of the Port of Oakland – 2010, Martin Associates, April 18, 2011 ("Economic Impact Report"), pp 12-14, attached as Exhibit C.
[15] Economic Impact Report, p. 33.

II. FACTUAL BACKGROUND

A. The Port's Demonstrated Commitment to Public Engagement

The Port embraces environmental stewardship as one of its core organizational principles. As stated in the Port's Board-approved Strategic Plan, one of the "Prioritized Goals" for the Port is to "[s]ustain healthy communities through leading edge environmental stewardship." The objectives of this goal include, "[e]nsure effective communication and education regarding environmental and safety standards with business partners and the community."[16] At the Port, the "environment" includes both the natural environment and the human built environment and communities. In line with these goals, and in concert with community stakeholders, the Port has developed and implemented numerous programs to reduce the impacts of Seaport operations and development on the environment.

1. Board Adopted Sunshine Ordinance To Require More Notice And Promote Full Public Participation in the Port's Decision-Making Process Beyond State Law Requirements

The Port is a public entity with a strong commitment to an open and public decision-making process. Any approval or authorization made by the Board goes through a thorough public notice and review process. All major projects are presented to the Board of Port Commissioners in a public meeting and are included in advance on the public agenda, pursuant to California's open meetings law. In addition to following the public-notice and participation requirements of State law - the Brown Act - the Port of Oakland follows its own enhanced[17] public notice and participation rules in its Sunshine Ordinance.

The Board adopted the Sunshine Ordinance "to assure public access to and information of Board meetings and transparent public notice, information and input are essential for the proper administration and discharge of the Board's duties and powers and for the management and government of the Port and facilities."[18] Section 1.B. of the Sunshine Ordinance provides: "Requiring the noticing and posting of Board meetings beyond the requirements of the Brown Act provides for more time for the public and Board members to obtain and study the items on the Board's agenda, enhances understanding of the issues and encourages public input to and participation in the Board's decision-making."[19] In addition to the notice requirements, the

[16] Port of Oakland Strategic Plan, Fiscal Years 2011-2015 ("Strategic Plan"), p. 21.
[17] For example, under the Brown Act, there is a general requirement to post agendas 72-hours in advance of regular meetings, whereas under the Port's Sunshine Ordinance, agendas must be posted 10 days in advance of regular meetings. Sunshine Ordinance No. 4265, § V.A.1.
[18] Sunshine Ordinance No. 4265, p. 1.
[19] Sunshine Ordinance No. 4265, § 1.B.

Sunshine Ordinance provides for public comment in writing or at Board meetings on any item on the agenda and on any other item of interest that a member of the public would like to raise.[20]

The Board's open meeting process provides the public notice of, and the opportunity to comment on, all major Port activities, including development projects like those at the OAB. All of the emissions reduction programs and development projects discussed below went through the Board's open meeting and public participation process, in addition to any special efforts undertaken to incorporate public engagement for an individual project. Thus, the public had ample notice and opportunity to provide meaningful comment on these important Port plans.

2. The Port Implements Comprehensive Outreach Coordinated by Two Port Departments that Specifically Engage the Public

The Port's SRD is charged with engaging community stakeholders and instilling institutional culture and programs to fulfill the Port's social responsibilities. The SRD holds multiple public forums throughout the year to update residents living near Port property on Port activities, gathers community feedback, and follows up on suggestions and complaints. These meetings are open to all who are interested in learning about the Port's activities and providing feedback. Additionally, SRD employees regularly go to the Port's neighboring communities, like West Oakland, to attend community meetings as representatives of the Port and to solicit feedback from residents on a variety of Port projects and initiatives.

EPA recently recognized the Port's SRD as a "successful example" of a program that "can be tailored to emphasize investments in near-port communities and/or communities experiencing high rates of poverty, unemployment and underemployment."[21] The report describes the Port's efforts to invest in near-port communities, and highlights the following programs: "a small local business utilization policy, a disadvantaged business enterprise program, a Maritime and Aviation Project Labor Agreement (which includes a commitment to local hiring and local workforce development), and a living wage policy."[22]

The Port's Environmental Programs and Planning Department ("EPPD") leads the Port's programs specifically to ensure the highest standards of regulatory compliance and environmental performance. The EPPD works to improve responsiveness to environmental concerns raised by the community and Port customers, and increase the Port's capacity to respond to emerging environmental regulations, policies, and conditions.

[20] Sunshine Ordinance No. 4265, § X.
[21] U.S. EPA, A Ports Primer for Communities, Section 6.4 Case Studies: Job and Benefits, published July 2016 ("EPA Ports Primer") (available at https://www.epa.gov/ports-initiative/ports-primer-64-case-studies-job-and-benefits#oakland).
[22] EPA Ports Primer.

These Port Departments help to focus the Port on environmental impacts on neighboring communities and incorporate community concerns in the Port's decision-making process. In addition, the public has ready access to the Port's public website, which provides a wide variety of information about the Port's operations and future plans.[23] Board agendas and resolutions are posted on the website, along with many of the technical and planning documents discussed herein. The Port's website has a "live chat" option that connects members of the public with a member of the Port staff, who will respond to all nature of inquiries and requests, and, if necessary, connect the member of the public with the appropriate technical person at the Port.

3. *The Port Fully Complies With The California Environmental Quality Act Which Is Designed To Provide For Meaningful Public Input on Proposed Development*

CEQA is a State statute that requires State and local agencies to identify the significant environmental impacts of their proposed discretionary actions and any feasible alternatives or feasible mitigation measures that would substantially lessen the significant environmental effects of those actions.[24] Public disclosure and participation are "Basic Purposes of CEQA."[25]

Consistent with its Charter-conferred duties and powers, the Board functions as a Lead or Responsible Agency under CEQA. As defined in the CEQA Guidelines, the Lead Agency is "the public agency which has the principal responsibility for carrying out or approving a project"[26] and a Responsible Agency is an agency that is not the Lead Agency, but also has some discretionary approval power over the project, and consults with the Lead Agency regarding CEQA review."[27] For example, the Port acted as the Lead Agency for the Vision 2000 EIR (1998) and as a Responsible Agency for the City's Oakland Army Base Redevelopment Plan EIR (2002).

Pursuant to CEQA, if there is substantial evidence that a project may have a significant effect on the environment, the Lead Agency must prepare an environmental impact report ("EIR"). The EIR process requires multiple layers of public review and opportunity to comment.[28]

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[23] *See*, www.portofoakland.com.
[24] Public Resources Code § 21002.
[25] 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a).
[26] CEQA Guidelines, § 15367.
[27] CEQA Guidelines, § 15381.
[28] Public Resources Code § 21080(d). The Lead Agency must provide public notice that it is preparing an EIR; other agencies and the public then have 30 days to comment on the scope of the EIR. Public Resources Code § 21092(a). The Lead Agency then issues the Draft EIR, which must contain a project description and identify the project's environmental setting, significant environmental effects, unavoidable significant adverse effects, growth-inducing impacts, cumulative impacts, mitigation measures, and alternatives. The Lead Agency must provide public notice of the availability of the Draft EIR, with a minimum 45-day public comment period for most projects. The Lead Agency must evaluate comments on environmental issues, prepare written responses to comments, and include those responses in a Final EIR published prior to the Lead Agency's decision to approve or disapprove the project. If the project

The CEQA Guidelines provide that "Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities."[29] A primary substantive goal of CEQA (which is different from the federal National Environmental Policy Act process) is to require identification and implementation of feasible mitigation measures to reduce environmental impacts to less than significant levels.

The Vision 2000 EIR and the OAB Redevelopment Plan EIR fully complied with CEQA, including its public participation requirements, as have the Port's subsequent approvals of activities that implement these approved plans. As discussed below with regard to the OAB development project, the Board consulted with the City on its EIR (through Port staff), and then, acting as a Responsible Agency, adopted findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program ("MMRP") after considering the record, including the City's 2002 OAB Redevelopment EIR. The Port and the City are implementing mitigation measures in the MMRP as approved developments at the OAB proceed. Although litigation challenging the adequacy of projects' CEQA compliance is common, the approvals of the OAB Development Plan did not lead to CEQA litigation.

To the extent the Complaint asserts that it is inappropriate, due to the passage of time, for the Port and the City to continue to look to the 2002 OAB EIR (see Complaint p. 24), it is incorrect. Under CEQA, once an EIR has been certified for a project, further CEQA review is disfavored.[30] When considering a new discretionary action that would implement the approved project, the public agency must determine only whether new, or substantially more severe, significant environmental impacts would result compared to those identified in the earlier EIR, due a change in the project, a change in its circumstances, or new information that could not have been known with the exercise of reasonable diligence at the time the EIR was certified.[31] Mere passage of time

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would cause significant environmental impacts that cannot be reduced to a less-than-significant level through feasible mitigation measures or project alternatives, the Lead Agency can still approve the project, but only by identifying to the public, in a "statement of overriding considerations," why the benefits of the project outweigh its remaining significant environmental effects. Public Resources Code § 21081. A Responsible Agency must also make its own statement of overriding considerations if it decides to approve a project with significant unavoidable environmental effects.

[29] CEQA Guidelines, § 15201; see also CEQA Guidelines § 15002, subj. (i).

[30] Public Resources Code § 21166; *Friends of the College of San Mateo Gardens v. San Mateo Comity Coll. Dist.*, 1 Cal. 5th 937 (2016).

[31] Public Resources Code § 21166; CEQA Guidelines § 15162.

does not undermine reliance on a previously certified EIR; the question is whether the EIR remains relevant.[32]

B. The Port's Success in Reducing Air Pollutants from Port Sources

Through means described in this section, the Port's 2015 Seaport Emissions Inventory shows that the Port's emissions reductions efforts have been successful, resulting in major reductions in emissions associated with the Port from 2005 to 2015:

- Truck Diesel Particulate Matter ("DPM") emissions have decreased from 16 tons to 0.4 tons.
- Total DPM emissions at the Oakland Seaport decreased by 76%
    - Trucks - DPM down 98%
    - Locomotives - DPM down 89%
    - Cargo handling equipment - DPM down 82%
    - Ocean going vessels - DPM down 75%
    - Harbor Craft - DPM down 53%[33]

Independent sources have also confirmed that Port-related DPM emissions have significantly decreased, confirming what the Port has found in its Emissions Inventories. In 2015 and 2016, the University of California, Berkeley published independent research studies on Port trucks.[34] The studies evaluated truck emissions before and after the State Drayage Truck Regulation requirements took effect and required drayage trucks to use diesel particulate filters and selective catalytic reduction systems. The study found that between 2009 and 2015, black carbon and particulate matter ("PM") emissions from trucks serving the Port reduced by approximately 73% and 74%, respectively.[35]

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[32] *Friends, supra; Committee for Re-Evaluation of the T-Line Loop v. San Francisco Mun. Transp. Agency*, 6 Cal. App. 5th 1237 (2016) (upholding reliance on 1998 EIR); *Citizens Against Airport Pollution v. San Jose*, 227 Cal. App. 4th 788 (2014) (upholding 8th addendum to 1997 EIR).

[33] 2015 Seaport Air Emissions Inventory, Final Report, October 2016 ("2015 Emissions Inventory"), p. 8, attached as Exhibit D.

[34] Effects of Particle Filters and Selective Catalytic Reduction on Heavy Duty Diesel Drayage Truck Emissions at the Port of Oakland Preble, et al., *Environmental Science and Technology*, June 26, 2015 ("2015 UC Berkeley Study"); Effects of Exhaust After-Treatment and Fleet Modernization on Port of Oakland Truck Emissions Following Complete Implementation of California's Drayage Truck Regulation, Draft Final Report, Preble, et al., Department of Civil and Environmental Engineering, University of California, Berkeley, November 2016 ("2016 UC Berkeley Study"), attached as Exhibit E.

[35] 2016 UC Berkeley Study, p. v.

Numerous efforts and programs have contributed to these emissions reductions at the Port, including:

- A truck management program (described later in this letter) including a $38 million grant program to upgrade and replace the oldest trucks operating at the Port and a ban on "dirty" drayage trucks years ahead of California State truck emission requirements.
- Shipping lines switching to cleaner burning, low sulfur fuel, while they are within a certain distance of land.
- A $60 million project to construct a power grid that ships can plug into at berth rather than run auxiliary diesel engines.

In addition, the Port's strategic management decisions also help to mitigate emissions and other environmental impacts of the Port's operations, including:

- Based on need, night and/or weekend operations at marine terminals, to spread out truck traffic and reduce idling.
- Appointments to pick up international cargo, further reducing congestion.
- $100 million railyard developed to bring more cargo by rail and cut truck traffic.
- Warehousing/distribution developments planned adjacent to docks to cut truck traffic on roadways outside the Port.
- Shipping lines loading more cargo on fewer ships to cut vessel traffic.
- The Port is negotiating to bring a fueling station and truck service center to the Seaport which is intended to keep trucking-related activities out of the adjoining neighborhoods.

Finally, it is important to note that the above emissions reductions were achieved over a period of time in which the Port saw an increase in container volume. In the period from 2005-2012, TEU container volumes increased by 3% while overall DPM emissions decreased by 70%. The Port is now conducting an update to its Emissions Inventory which is expected to show continued reduction in air emissions generated from Port operations.

C. Chronological History of Port Emissions Reduction Programming and Commitment to Continued Public Engagement

1. *Vision 2000 Maritime Development Program: Air Quality Mitigation Program with $9 Million for Emissions Reductions*

The Port has been working for decades to continually reduce the impacts of its operations and development on local communities. In 1997, the Port embarked on the redevelopment of the former Fleet Industrial Supply Center, Oakland ("FISCO"), in a project known as the V2K

Program. The V2K Program included developing two new marine terminals, a rail terminal, a public park, roadways, and ancillary facilities. Most of these facilities have been completed.

As part of the V2K Program, the Port established a groundbreaking Air Quality Mitigation Program ("AQMP") and committed to fund the AQMP with nearly $9 million. The V2K AQMP was guided by a Technical Advisory Committee ("TAC"). The AQMP TAC included community members (including WOEIP), industry members, Federal and State environmental agencies, and other interest groups. The AQMP TAC met regularly to discuss project updates and seek guidance on new projects and programs, like the Truck Replacement Project discussed below.

Projects funded under the AQMP included:

- **Truck Replacement Project:** The Port subsidized the retrofit of truckers' diesel truck engines with new engines meeting California emission standards for new diesel engines, or add-on exhaust treatment devices;

- **Cargo-handling Equipment:** The Port subsidized the retrofit of tenants' diesel cargo-handling equipment with new engines meeting California emission standards for new diesel engines, or add-on exhaust treatment devices; and

- **Air Quality Baseline Study:** The Port initiated an air quality and meteorological monitoring program in April 1997 to measure the levels of PM in West Oakland.[36]

2. Port Voluntarily Undertakes Emissions Inventories

Following the progress made related to the V2K Program, the Port instituted policies to monitor and evaluate emissions associated with its operations on a regular basis. Beginning in 2005, the Port engaged consultant Environ International Corporation (n/k/a Ramboll Environ) to prepare an air Emissions Inventory for its Seaport operations. A copy of the 2005 Emissions Inventory is attached hereto as Exhibit F. Although not legally required to create such an inventory, the Port voluntarily chose to prepare the air Emissions Inventory and update it periodically over subsequent years. The Port conducted subsequent air Emissions Inventories in 2012 and 2015. Copies of the 2012 and 2015 Emissions Inventories are attached hereto as Exhibits G and D, respectively. The Emission Inventories provide estimates for emissions of five air pollutants: reactive organic gas ("ROG"), carbon monoxide ("CO"), nitrogen oxides ("NOx"), PM (including diesel), and sulfur oxides ("SOx").[37]

[36] Summary Report to West Oakland Neighbors, Vision 2000 Air Quality Mitigation Program, December 2006, attached as Exhibit H.
[37] Port of Oakland 2005 Seaport Air Emissions Inventory, Environ International Corp., March 14, 2008 ("2005 Emissions Inventory"), p. ES-2.

Emissions were estimated for the five major source categories at the Port: ocean-going vessels, harbor craft, cargo handling equipment, drayage trucking, and locomotives.[38] Beginning in 2012, the Seaport Emissions Inventories also include other off-road equipment, for example from construction. The results of the Port's Emissions Inventories are published on the Port's public website. The Emissions Inventories have been a crucial tool in evaluating how the Port could reduce air emissions and determining how successful emissions reductions programs have been over the past decade. Indeed, the 2012 and 2015 Emissions Inventories have shown dramatic decreases in Port-related emissions, as discussed above.

3. *Port Cooperates with* CARB *Health Risk Assessment*

During the Port's development of the Emissions Inventory, the California Air Resources Board ("CARB") announced that it intended to conduct a health risk assessment ("HRA") of the potential health effects of DPM on the neighborhood of West Oakland. The Port worked closely and cooperatively with CARB to assist with the HRA, and adapted the Port's Emissions Inventory to align with CARB's methodologies at the time. CARB published its report, "Diesel Particulate Matter Health Risk Assessment for the West Oakland Community Preliminary Summary of Results," in 2008.[39] We will address the findings of the CARB HRA in more detail below.

4. *Port Spearheads Development and Implementation of Maritime Air Quality Improvement Plan Shaped by Local Communities and Regulatory Agencies*

During the first Emissions Inventory and the CARB HRA for West Oakland, the Port partnered with neighborhood and business representatives and air quality regulators to develop the MAQIP.[40] The MAQIP is attached hereto as Exhibit I. The MAQIP planning process involved extensive public stakeholder participation. The MAQIP process began in 2006, when discussions with community groups, regulatory agencies, and other interested parties led to the formal initiation of the Port's air quality plan and establishment of the MAQIP Task Force.

The MAQIP Task Force was comprised of 35 stakeholders, including the WOEIP, and was created to develop goals and actions to guide air quality improvement efforts at the Port.[41] Members of the MAQIP Task Force were selected through a public nomination process from community members, Port tenants, environmental advocacy groups, air quality and health agencies, and maritime-related businesses. The MAQIP Task Force had four co-chairs: the Executive Director of the Port, the Executive Officer of the Bay Area Air Quality Management

[38] 2005 Emissions Inventory, p. ES-1.
[39] Diesel Particulate Matter Health Risk Assessment for the West Oakland Community Preliminary Summary of Results, California Air Resources Board, December 2008 ("CARB HRA").
[40] Port of Oakland Maritime Air Quality Improvement Plan, Final, Approved by Board of Port Commissioners, April 2009 ("MAQIP").
[41] MAQIP, pp. 16-19.

District ("BAAQMD"), the Co-Chair of WOEIP, and the Executive Vice President of GSC Logistics Inc.[42]

The MAQIP Task Force met seven times at roughly one to two-month intervals during the plan development phase. The role of the Task Force included proposing or reviewing meeting topics, prioritizing air emissions reduction measures, deliberating on the merits of proposed actions, contributing to strategies for implementation, monitoring, and adaptive management and generally shaping plan content. The process was led by staff from a neutral facilitator, all Task Force meetings were open to the public, and comment was solicited from both Task Force and non-Task Force members. Stakeholder deliberations routinely included brainstorming sessions, break-out group exercises, and roundtable discussions following various presentations by select stakeholder groups. Port staff worked in consultation with Task Force members and other stakeholders to develop broad-based consensus on the elements of the MAQIP, although no formal voting procedure was used to decide on the final MAQIP content.[43] In short, while the Board was responsible for approving the final content of the MAQIP through the formal approval of the plan, the policy direction and content were shaped by the Port's planning partners through this consultative process – which included WOEIP as a Co-Chair.

The MAQIP Task Force identified seven guiding principles, including:

> **Promote Environmental Stewardship:** The Port of Oakland holds environmental stewardship as one of its core organizational goals. The Port is committed to ensuring that Seaport activities are carried out in an environmentally responsible manner, minimizing adverse impacts on our neighbors and the environment, and striving to improve the environmental conditions in the Seaport area for the benefit of both present and future generations;
>
> **Engage Stakeholders:** The Port of Oakland Seaport commits to actively engage and partner with its diverse stakeholder community in developing, implementing, and monitoring the MAQIP. The Port recognizes the need to especially collaborate and partner with those who are most affected by Seaport operations, including, but not limited to, labor, tenants, customers, and neighboring residents; and
>
> **Promote Environmental Justice:** The Port of Oakland seeks to prevent and address adverse impacts to communities that experience disproportionate environmental and economic effects.[44]

The MAQIP Task Force also adopted two planning goals:

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[42] MAQIP, p. 16.
[43] MAQIP, p. 17.
[44] MAQIP, pp. 19-20.

Goal 1: Reduce the adverse public health impacts of the Port of Oakland's Seaport-related air emissions at the Seaport area and in neighboring communities that are most affected by goods movement at the Seaport (in particular West Oakland) and on workers in the maritime area, as expeditiously as feasible; and

Goal 2: Reduce the adverse impacts of the Port of Oakland's Seaport-related air emissions on ambient air quality in West Oakland and more generally in the San Francisco Bay Area Air Basin, as expeditiously as feasible.[45]

The MAQIP was finalized in 2009, and it provides a master plan for the Port's long-term commitment to reducing the air quality and health risk impacts of its maritime operations. It builds upon the Port Maritime Air Quality Policy Statement ("Policy Statement"), adopted by the Board in March 2008, which sets a goal of reducing the excess community cancer health risk related to exposure to DPM emissions associated with the Port's maritime operations by 85% from 2005 to 2020, through all practicable and feasible means.[46] In the Port's Policy Statement, the Board affirmed "that it has the social responsibility to minimize exposure of neighboring residents to air pollution from Port sources and to support the rights of community, local businesses and workers to clean air and fair working conditions."[47] The Board committed to funding air emissions reductions and to adopt air emissions reductions measures prior to the dates such measures are required under State or Federal law. In addition to the significant public participation measures in the MAQIP process, the Port's Policy Statement was publicly noticed on the Board's agenda in advance of the Board meeting, and discussed at the Board's public meeting, with full opportunity for members of the public to comment. Then-Board Commissioner Margaret Gordon (co-chair of WOEIP) voted in favor of the Policy Statement, along with all other Board Commissioners.

In line with the guiding principles and planning goals established by the MAQIP Task Force, the MAQIP not only supports current and future State and local emission reduction requirements, but also enhances these requirements through early implementation goals and by pursuing emission reductions that exceed legally mandated requirements when and where feasible.

The MAQIP identified concrete and high-impact control measures and strategies the Port would undertake independently or together with its tenants to significantly reduce emissions, including:

- Early action retrofit and/or replacement of Port drayage trucks;

[45] MAQIP, p. 20.
[46] MAQIP, p. ix; Board Resolution No. 08057, adopted March 18, 2008.
[47] Board Resolution No. 08057.

- Construction of infrastructure to enable compliance with CARB's "shore power" regulation, even though the Port was not required to take any such action under the regulation;
- Design and operational efficiencies;
- Participation in pilot and verification projects for NOx and DPM reduction strategies;
- Early action construction emissions reduction;
- Support enforcement of regulations by CARB and BAAQMD through coordination with tenants; and
- Accountability, monitoring and reporting.[48]

In addition to the above strategies, the MAQIP Task Force identified 355 initiatives that had the potential to achieve emissions and risk reductions beyond regulatory requirements. The TAC reviewed and evaluated all of these initiatives; ultimately, Port staff identified a number of primary and secondary interest air quality initiatives for potential implementation.[49]

To ensure the Port's accountability in implementing its emissions reductions programs going forward, the Port committed to convene a stakeholder group to serve as a forum for sharing project information, to prepare written status reports, and to reconvene the MAQIP Task Force in five and ten years to review progress towards the plan's goals.[50] In satisfaction of this commitment, on November 19, 2013, Port staff held a public meeting to present a progress report on the MAQIP to MAQIP Task Force members and other interested members of the public; over 30 people attended this meeting. In connection with MAQIP progress reports, the Port is committed to reconvening the MAQIP Task Force.

5. Port Comprehensive Truck Management Program Bans Dirty Port Drayage Trucks Ahead of State Regulations

As part of its CTMP, the Port in 2009 adopted a ban[51] from entry into the Port of drayage trucks that fail to meet the State of California truck emission standards. This ban prohibits access to drayage trucks with 1993 or older engines as well as trucks with 1994-2003 model year engines unless equipped with a verified diesel particulate filter. In 2011, the Port modified its truck ban[52]

[48] MAQIP, p. 65.
[49] MAQIP, pp. 75-94.
[50] MAQIP, p. 70.
[51] Port Ordinance No. 4112.
[52] Port Ordinance No. 4174.

to require all drayage trucks to meet or exceed 2007 model year California or Federal emissions standards.

To help truckers transition to clean trucks ahead of the State regulatory requirements, the Port spent over $5 million to subsidize truck conversions. Overall implementation of the CTMP was estimated at the time to cost over $15 million, with Port staff costs around $1 million for the first 3 years.[53] Port staff estimates that the Port has spent more than $21 million on outside vendors for CTMP-related costs. This section describes the history and success of the Port's CTMP.

In conjunction with the MAQIP process, in 2007, the Port began work on the CTMP.[54] The CTMP was finalized in 2009 and, through certain of its components, fulfilled a key mitigation measure of the 2002 OAB EIR.[55] The CTMP is attached hereto as Exhibit J; it sets forth plans and actions for comprehensively addressing air quality, safety and security, business and operations, and community issues associated with drayage. Through adoption and implementation of the CTMP, the Port sought to identify drayage trucks serving the Seaport, support regulations to reduce emissions of air pollutants, increase safety and security domain awareness, improve operations, reduce traffic and congestion, and involve and educate all Seaport stakeholders.[56]

Similar to the process that took place to develop the MAQIP, the Port established a CTMP TAC to assist Port staff in developing the CTMP. The TAC was comprised of State and Federal regulators, marine terminal operators, trucking companies, and West Oakland residents, including the WOEIP.[57] The TAC met formally on multiple occasions and provided ideas and solutions that shaped the development of a truly comprehensive plan that incorporated a number of inter-related issues ranging from air quality to security.

The efforts made by the Port under the CTMP have resulted in significant improvements to truck traffic and air pollution in West Oakland. Key components of the CTMP include:

- **Port Registry & Truck Ban:** Only Licensed Motor Carriers ("LMCs") and trucks associated with those LMCs that have agreed to fully comply with all applicable laws and entered their information into the Port Registry database are allowed to serve the Port's Seaport facilities;

- **Clean Trucks:** The Port contributed $5 million, in addition to local, State and Federal funding, to provide grants to retrofit and/or replace trucks to meet CARB emissions standards, notably the CARB Drayage Truck and Statewide Truck and Bus Regulations.

[53] CTMP, p. 6.
[54] Port of Oakland Maritime Comprehensive Truck Management Program, A MAQIP Program, Adopted June 16, 2009 ("CTMP").
[55] Mitigation Measure 4.3-7.
[56] CTMP, p. 1.
[57] CTMP, pp. 20-22.

The Port also severely restricted the ability of "dirty" trucks from serving Port facilities, while providing truckers an opportunity to comply with clean truck standards before having to consider alternative employment to Seaport-related trucking;

- **Traffic and Congestion:** The Port participated in traffic, congestion, and parking studies, and made improvements to reduce congestion and truck idling. The Port also provides approximately 55 acres of truck parking and service facilities on Port property, which alleviates the problem of trucks parking in West Oakland; and

- **Customer Service Center:** The Port established and continues to fund and manage the Customer Service Center, which maintains the Port Registry and manages turned away trucks.[58] During the initial stage of the State's Drayage Truck Regulation, the Port translated materials into the languages representing the demographic make-up of port truckers. Additionally, the Customer Service Center continues to provide assistance in multiple languages, to facilitate the needs of the diverse port trucker community.

6. Port Actively Developing Joint City-Port Truck Management Plan

The Port is currently engaged with the City in the planning stages of developing a joint truck management plan, focused on West Oakland, the Port, and the OAB ("Truck Management Plan"). The Truck Management Plan will be developed over the next year, in a process that will involve meaningful communication and input from the West Oakland community and other interested stakeholders. The Port and the City are conducting outreach to WOEIP and numerous other West Oakland community groups to participate in the Truck Management Plan planning process. The Truck Management Plan is a key mitigation measure of the 2002 OAB EIR.[59]

As part of the Truck Management Plan process, the Port has hired a transportation engineering firm, Kittleston & Associates, Inc., to conduct a truck study that specifically looks at drayage truck parking in the West Oakland neighborhood. This was one of several truck parking surveys conducted in 2015, 2016, and 2017. In addition, on August 27, 2015, Port employees participated in the WOEIP "Yard Party" where the Port set up a table and solicited input from community members for the West Oakland truck parking study. West Oakland residents were asked to identify truck parking "hot spots" in West Oakland, and that information was collected by the Port's consultant for use in the parking survey.

The Port is committed to making the public engagement in the updated Truck Management Plan as inclusive and meaningful as possible and has begun outreach to initiate that process. The Port and the City are designing a robust public engagement process as a component of the Truck Management Plan. Pursuant to this process, Port staff are currently conducting outreach to community groups, commerce associations, elected officials and residents in West Oakland,

[58] CTMP, pp. 2-5.
[59] Mitigation Measure 4.3-7.

including the WOEIP, to solicit input on the Truck Management Plan. Under the public engagement process, the Port and the City are planning public meetings, many of which will take place in West Oakland, to engage with the public and incorporate their feedback into the plan. The public meetings will be facilitated by a professional communications consultant and include information and reports from a transportation consultant.

The joint Truck Management Plan, coupled with the Port's existing CTMP, demonstrate the decades-long Port commitment to addressing truck-related impacts comprehensively.

7. The Port Continues to Implement Emissions Reductions Programs

The above programs highlight just some of the efforts the Port has undertaken to ensure that its activities take into account the views of its neighboring communities and to design, fund, and implement programs that minimize potentially adverse effects and maximize beneficial effects on the surrounding area's health and wellbeing. The Port is proud of its track-record of public engagement and emissions reductions which is well-documented.

The Port continues to implement practices and policies that will further reduce emissions from Port operations and maintain contact and collaboration with the local community. The Port has accomplished significant emissions reductions over the past 15 years, and the Port continues to look for new and innovative ways to further reduce the impact Port operations have on the environment and local communities. One example of this continuing effort is the very recent announcement, made on August 2, 2017, that a major Port of Oakland-based trucking operator plans to test battery-powered (i.e., non-diesel) big rig technology at the Port beginning in September.[60] The Port trucking operator will conduct a three-year trial with a heavy-duty, all-electric truck as part of a statewide effort to determine the feasibility of zero-emission freight hauling. This will be the first ever test of battery-powered trucks in Northern California, and is the next logical step in the Port's effort to reduce diesel emissions with the corresponding goal of improving the local public health.

Another example of this continuing effort is an even more recent announcement, made on August 14, 2017, that the Port has commissioned a high-voltage cable-on-reel system that will connect more vessels to the Port's landside shore power grid.[61] The mobile platform can be deployed alongside any vessels thus allowing vessels with limited onboard power cables to be able to reach the Port's landside shore power grid thereby further reducing air emissions from ships.

[60] Press Release, Port of Oakland-based firm first to test battery-powered big rig, August 2, 2017, available at: http://www.portofoakland.com/press-releases/port-oakland-based-firm-first-test-battery-powered-big-rig/.

[61] Press Release, Port of Oakland OKs new high-power line to plug in more ships, August 14, 2017, available at:http://www.portofoakland.com/press-releases/port-oakland-oks-new-high-power-line-plug-ships/.

8. Emissions Reduction Grants

The Port has made numerous requests for grants related to emissions reductions in recent years. WOEIP's claims that the Port has refused to accept or apply for funding to support emissions reduction efforts is simply not true.[62] Indeed, WOEIP references a 2013 EPA grant awarded to the Port through EPA's National Clean Diesel Reduction Program.[63] In fact, the Port has completed this Clean Diesel Reduction project, and on July 11, 2017, the Port submitted to EPA its final close-out reports for that project.

Other examples of emissions reductions grants pursued and received by the Port include grants from the BAAQMD Mobile Source Incentive Fund, CARB Good Movement Emission Reductions Program ("GMERP"), federal funds administered locally by the Metropolitan Transportation Commission ("MTC"), and Transportation Investment for Generating Economic Recovery ("TIGER") administered by the U.S. DOT and Maritime Administration, all to install grid-based shore power infrastructure at the Seaport marine terminal in 2011-2014. The grant funding totaled approximately $29 million. In addition, Port tenants obtained grant funding independently to construct additional shore power infrastructure and/or reduce vessel emissions. This infrastructure project allows the Port to offer electric plug-ins for ships at berth at the Port, allowing those ships to turn off auxiliary diesel engines and reduce DPM emissions.

In 2010, the Port conducted outreach and education on the Port's implementation of shore power in an effort to secure the maximum funding from CARB's GMERP. Outreach was made to the wider community including West Oakland residents, and the community was overwhelmingly supportive of the Port's efforts to secure funding for this program. Indeed, numerous community organizations and groups, including the West Oakland Community Advisory Group, sent letters to CARB in support of the Port's efforts and asked CARB to award maximum shore power funding to the Port.

In 2016, the Port applied for California Energy Commission ("CEC") grant funding to demonstrate zero-emission hydrogen fuel cell trucks, and also supported BAAQMD's application for demonstration of zero-emission container yard equipment and trucks. In sum, the Port has sought and received numerous grants to enhance sustainability through infrastructure improvements and innovative projects to reduce emissions.

D. The Oakland Army Base Development

1. CEQA Review Process

The U.S. Army designated the OAB for closure in 1995 pursuant to the Defense Base Closure and Realignment Act of 1990. In July 2000, the City adopted and approved the

[62] *See* Complaint, p. 30.
[63] Complaint, p. 6.

Redevelopment Plan for the OAB Redevelopment Project, and established an approximately 1,730-acre redevelopment project area. The City, as the Lead Agency, prepared a Draft EIR in accordance with CEQA for the OAB Area Redevelopment Plan. The Redevelopment Plan divides the OAB into the City's Gateway Development Area (approximately 193 acres) and the Port Development Area (approximately 187 acres).

The City issued a Notice of Preparation of the Draft EIR in August 2001 and held a Planning Commission meeting to take public comments on the EIR's scope in September 2001. All public comments received during the scoping process were included and addressed in the Draft EIR.[64] The City made the Draft EIR available for review and comment by government agencies and by the general public. Copies of the Draft EIR were sent to those who provided input regarding the EIR's scope, to responsible agencies, and to those who had requested copies. In addition, copies were placed in libraries in Oakland, made available at the planning Department of the City, and on the City's web site.[65] A 45-day public EIR review and comment period occurred between April 29 and June 12, 2002. As a Responsible Agency, the Port both consulted with the City on the Draft EIR and submitted comments on it. The City conducted a public hearing to solicit comments on June 5, 2002, at the Oakland Planning Commission.[66] Numerous parties commented on the Draft EIR, and those comments were all addressed in the Response to Comments section of the Final EIR.[67]

The City issued a Response to Comments and a Final Environmental Impact Report ("Final EIR"), certified the EIR, and adopted a Final OAB Reuse Plan on July 31, 2002, for the OAB Area Redevelopment Plan.[68] Shortly thereafter, as a Responsible Agency, the Port adopted its own

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[64] Draft EIR, pp. 1-8 - 1-17; Appendix 1.

[65] Response to Comments and Final Environmental Impact Report for the OAB Area Redevelopment Plan, July 2002 ("Final EIR"), p. 1-1.

[66] Final EIR, p. 1-1.

[67] WOEIP did not comment on the 2002 EIR. WOEIP now cites, as the sole basis for its claim that community concerns were ignored, a June 11, 2002, comment made by a representative of the West Oakland Citizens Advisory Group ("WOCAG"). Complaint, p. 18, fn. 56 & 57. The Complaint claims the comment asserted 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." Complaint, p. 18. The comment, however, did not say this and did not discuss community benefits; instead, it objected that WOCAG's own plan for the OAB was not analyzed in the EIR and advocated adoption of the Gateway Adaptive Reuse/Eco-Park Alternative "although it would not meet the very high job generation goals." (See Exhibit K.) In addition to mischaracterizing the comment letter, the Complaint does not mention that detailed responses were provided in the Final EIR, including explanations of the ways in which certain WOCAG recommendations had been incorporated into the proposed plan and alternatives studied in the EIR (see pages 3-12 to 3-17 of Final EIR).

[68] Final EIR, p. 1-1.

findings, statement of overriding considerations, and mitigation program. The Final EIR was not challenged in any administrative or court proceedings.

In addition to analyzing the impacts of anticipated development on the portion of OAB designated for City ownership, the EIR analyzed the environmental impacts -- including impacts to air quality and human health risk -- of future Port cargo throughput of 4.05 million TEUs per year. The Final EIR identified numerous mitigation measures that the City and/or Port would undertake related to the OAB plan's air quality impacts, including the following:

> **Mitigation Measure 4.4-3:** The Port shall develop and implement a criteria pollutant reduction program aimed at reducing or off-setting Port-related emissions in West Oakland from its maritime and rail operations to less than significant levels, consistent with applicable Federal, State, and local air quality standards. The program shall be sufficiently funded to strive to reduce emissions from redevelopment related contributors to local West Oakland air quality, and shall continually reexamine potential reduction toward achieving less than significant impacts as new technologies emerge. The adopted program shall define measureable reductions within specific time periods.
>
> **Mitigation Measure 4.4-4:** The City and the Port shall jointly create, maintain, and fund on a fair share basis, a truck diesel emission reduction program. The program shall be sufficiently funded to strive to reduce redevelopment related contributions to local West Oakland diesel emissions to less than significant levels, consistent with applicable Federal, State, and local air quality standards. The adopted program shall define measureable reduction within specific time periods.
>
> **Mitigation Measure 5.4-1:** The City and the Port shall encourage, lobby for, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality.[69]

The Port is implementing these mitigation measures through, among other things, its MAQIP and the CTMP (including the ongoing process to develop the Truck Management Plan), and the testing of low diesel emission technologies.

In 2012, the City adopted an amended OAB Reuse Plan, supported by an Addendum to the 2002 Final EIR. The primary difference between the 2002 Reuse Plan and the 2012 Reuse Plan is a shift at the City's Gateway Development Area from office and research and development square footage to a greater amount of warehouse distribution and maritime-related logistics.[70] Other project modifications include plans to designate approximately 27.3 acres in the Gateway Development Area for recycling facilities. Notably, the recycling facilities are currently operating

[69] Draft EIR, pp. 4.4-26 – 28, 5-20.
[70] 2012 Oakland Army Base Project Initial Study / Addendum, May 2012 ("2012 EIR Addendum"), p. 4.

in the West Oakland neighborhood. In response to community concerns about the health, trucking, and noise effects of the current neighborhood-based recycling companies, the City is providing for these companies to relocate out of the West Oakland neighborhood and into the OAB property. This will remove a significant (non-Port-related) source of air pollution, truck traffic and parking, and noise from the West Oakland neighborhood. The Port has entered into a purchase and sale agreement with the City to sell to the City approximately 1.6 acres of land without which relocation of the recycling facilities would be precluded or limited.

The 2012 Oakland Army Base Initial Study concluded that none of the circumstances necessitating preparation of additional CEQA review, as specified in CEQA and the CEQA Guidelines were present[71]. In particular, the Initial Study concluded that the 2012 Project air quality impacts would be lower than those identified in the 2002 EIR, and that no further CEQA review, for example, a supplemental EIR, was required.[72] The City documented these conclusions in an Addendum to the 2002 Final EIR.

After publication of the 2002 EIR, the City of Oakland adopted Standard Conditions of Approval ("SCA") that are applicable to all development projects within the City. Many requirements of the SCA apply directly to air emission impacts, including: SCA AIR-1: Construction Management Plan; SCA AIR-2: Construction-Related Air Pollution Controls (Dust and Equipment Emissions); SCA AIR-3: Exposure to Air Pollution (Toxic Air Contaminants: Particulate Matter); and SCA TRANS-1: Parking and Transportation Demand Management.[73] These SCA requirements provide additional emissions controls and reductions beyond the mitigation measures implemented under the 2002 EIR.

In sum, the 2002 EIR and the 2012 Addendum identified mitigation measures that would greatly reduce impacts related to air quality impacts of the OAB development projects. All development projects at the OAB are required to comply with those mitigation measures.

2. *The Port's OAB Development*

Between 2003 and 2007, some portions of the OAB were transferred to City-related entities and other portions were transferred to the Port. The Port is developing the Port Development Area, either directly or in coordination with prospective Port tenants, into a logistics center ("Seaport Logistics Complex") that will include new logistics facilities (including rail-served warehouses to transload cargo), new rail yards (manifest, support, and intermodal), and related facilities. The development will facilitate the efficient movement of cargo in and out of the Port's marine terminals, improve intermodal service, and position the Port to stay competitive. The first phase of development – construction of the manifest and support rail yards – was completed in January 2017. The Port is currently finalizing negotiations with a developer to lease an approximate 27-

[71] 2012 EIR Addendum, p. 1.
[72] 2012 EIR Addendum, p. 146.
[73] 2012 EIR Addendum, p. 126-28.

acre site on which a new logistics facility would be built (by the developer), and the Port anticipates executing a lease for this parcel in Fall 2017.

Further development of the former OAB, including additional intermodal rail capacity and logistics buildings, is anticipated to be phased based on market demand. Currently, the Port anticipates that development of the entire Port Development Area will take at least ten years to complete. The Port currently does not anticipate reaching throughput of 4.05 million TEUs per year - the amount assumed and analyzed in the OAB EIR - before the year 2040.

The redevelopment of the Port Development Area of the OAB will have significant and enduring impacts on the economic success and viability of the Port. The San Francisco Bay Conservation and Development Commission ("BCDC") acknowledged the significance of the Port's OAB development in its most recent San Francisco Bay Area Seaport Plan ("Seaport Plan"). In the Seaport Plan, BCDC designated the Port's OAB property as "port priority use" property, and noted that the OAB "creates an opportunity for the Port to increase its container cargo throughput without significant Bay fill."[74]

The Port's OAB development will allow the Port to efficiently manage the distribution of goods through the Port, making the Port more profitable while also offering opportunities to lessen the Port's environmental impact. For example, the Port Development Area contains approximately 55 acres of truck parking and approximately 15 acres of servicing facilities; these facilities have reduced and will continue to reduce the amount of trucks parking and driving through West Oakland. Likewise, the Port's realignment of its rail yard will increase the movement of cargo directly to rail, thereby decreasing the need for drayage trucks.

The Port's plans to redevelop its portion of the OAB property have been part of an ongoing, open, and public process over the last fifteen years. In addition to the public CEQA process, and as with all significant Port projects and decisions, the Port's decisions related to redevelopment of the OAB were subject to full public notice and comment pursuant to the Brown Act and the Port's Sunshine Ordinance, discussed above. All major decisions were and continue to be presented to the Board for approval at public meetings, and are fully analyzed in advance in publicly-noticed Agenda Reports prepared by Port staff, which are posted on the Port's public website.

For example, the decision to start the process to issue a request for qualifications, seeking a qualified party to enter into a long-term lease for the operation, maintenance and development of the Port's OAB property, was proposed in Board Agenda Report No. M-4, presented at a public Board meeting on December 2, 2008. The Agenda Report explained the background of the OAB development project and identified how the project conformed to the EIR. The associated Resolution Number 08254 was voted on by the Board of Port Commissioners in the December 2,

[74] San Francisco Bay Area Seaport Plan, San Francisco Bay Conservation and Development Commission and Metropolitan Transportation Commission, April, 18, 1996 as amended through January 2012.

2008, public meeting.[75] WOEIP co-chair, Margaret Gordon, was a Port Commissioner at the time this OAB proposal was presented to and voted on by the Board, and Commissioner Gordon voted for this proposal.

Thus, the public had ample notice and opportunity to comment on this decision as well as on the Port's other development plans and proposals for the OAB. Additionally, Port staff facilitated public participation on the June 30, 2009 "Proposal Interview Panel" by including the Chairperson of the West Oakland Community Advisory Group, Mr. George Bolton, on the selection panel. A live viewing or simulcast of the session for members of the public to attend was also part of the public participation.

Additionally, the Port is currently engaged in a collaborative process with community groups in West Oakland to develop a jobs policy and community agreement related to the first logistics development on the Port Development Area of the OAB. The Port held over 18 working sessions in 2016 to develop an agreement that would enhance the Port's local hire policy, provide financial support for job readiness, and create a community advisory group. The Port has been working cooperatively on these agreements with the Oakland Works Coalition, of which WOEIP is a member, and the Revive Oakland Coalition, a broad coalition representing 30 community based organizations.

E. Air Quality in West Oakland

As discussed above, the Port has worked on numerous projects explicitly designed to decrease Port-related emissions that might impact West Oakland for many years. In 2008, CARB finalized its HRA for West Oakland, specifically analyzing health effects from Port and non-Port DPM emissions on residents of West Oakland.[76] As mentioned above, the Port fully cooperated in the development of the CARB HRA and supplied data to CARB from the Port's Emissions Inventory. The CARB HRA found that the West Oakland community is exposed to DPM ambient concentrations at higher levels than background in the Bay Area.[77] Due to exposure to higher DPM in the ambient air, the CARB HRA concluded that the West Oakland community had an increased estimated lifetime potential cancer risk.

The CARB HRA determined that 80% of the increased cancer risk was due to non-Port and non-railroad operations, while 4% of the increased cancer risk was due to railroad operations and only 16% was due to Port-related operations.[78] In fact, according to the CARB

[75] Board of Port Commissioners, City of Oakland, Resolution No. 08254, Dec. 2, 2008.
[76] CARB HRA, p. 1.
[77] CARB HRA, p.2.
[78] CARB HRA, p. 25.

HRA, the largest contributors of DPM pollution impacting West Oakland are on-road heavy-duty trucks not associated with Port operations.[79]

CARB has not updated the HRA since its publication in 2008. As discussed above, the Port's DPM emissions have dropped significantly since the HRA was conducted. Although CARB has not updated the 2008 CARB HRA, air quality data in West Oakland have been collected over the past several years. Beginning in 2013, the City began collecting air quality data at the OAB and in West Oakland.[80] The BAAQMD also collects air quality data from a monitor in West Oakland. The data from these monitors show that while there were some periods whose emissions exceeded EPA's 24-hour $PM_{2.5}$ (fine particulate matter) standard, the ambient air concentrations at these monitors was below the EPA standard for the majority of the time over the past several years.[81]

In addition, researchers from the Environmental Defense Fund ("EDF"), working with the University of Texas at Austin, Google Earth Outreach, and Aclima, have measured and charted air quality in Oakland using Google Street View mapping cars equipped with mobile air monitors.[82] The 2017 EDF study does not evaluate health impacts from the air quality and does not determine what air pollution might be associated with the Port versus other sources. The data collected in this project does provide a snapshot of air quality in West Oakland, and indicates the heaviest concentrations of air pollutants are present along transportation corridors (interstate highways) and near industrial facilities (concrete supply company, metals recycling business).[83] The Port understands that the City and EDF, along with other regulatory agencies, continue to collect air quality data in West Oakland.

F. The Port Maintains Strong Civil Rights and Anti-Discrimination Policies

The Port requires that its staff, customers, and tenants abide by all Federal, State, and local civil rights statutes and internal Port anti-discrimination policies. The Port maintains an Equal Opportunity Policy to promote, facilitate, and encourage the fullest possible participation by all persons, including women and minorities, in the activities of the Port.[84] The Port's Equal Opportunity Policy applies to Port personnel, public works contracts, and tenants leasing and businesses operating on Port property. In addition, the Port has a policy requiring reasonable accommodation for individuals with disabilities and discrimination complaint procedures. Under these policies, any employee who believes she has been the subject of discrimination can contact

[79] CARB HRA, p. 2.
[80] Oakland Global Air Quality Web Portal (available at: http://ngem.com/OAB_AQM/).
[81] Oakland Global Air Quality Web Portal.
[82] See EDF website, available at: https://www.edf.org/airqualitymaps.
[83] *See* Environ. Sci. Technol., *High-Resolution Air Pollution Mapping with Google Street View Cars: Exploiting Big Data*, J. Apte et al., 2017, 51, 6999–7008, available at: http://pubs.acs.org/doi/pdf/10.1021/acs.est.7b00891.
[84] Port of Oakland Policy No. AP 450, Equal Opportunity, attached hereto as Exhibit L.

the Port's Office of Equal Opportunity ("OEO"). The OEO will investigate the claim of discrimination under procedures detailed in the Port's policy.

Additionally, contracts issued by the Port contain standard provisions prohibiting discrimination by bidders, contractors, subcontractors, licensees, lessees, and permittees. Contract provisions specifically prohibit discrimination in violation of Title VI of the Civil Rights Act and related regulations. For example, the standard language in Port Professional Service Agreements ("PSAs") with certain types of vendors contains the following:

> The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Similar language is found in the wide range of agreements the Port enters on a regular basis. This language and these policies are further evidence of the Port's commitment to equal opportunity and prohibiting discrimination in its operations.

G. WOEIP Mischaracterizes the Port's Public Engagement and Air Emissions Reductions

As the Port has demonstrated above, it has engaged in an open and public process to expand or modify operations while simultaneously significantly reducing air emissions associated with Port operations. The facts alleged by WOEIP in its Complaint regarding the Port's public participation and air emissions are largely inaccurate or misleading.[85] WOEIP alleges that "most of the pollution burden West Oakland residents shoulder directly results from the activities taking place at and around the Port and OAB."[86] However, as discussed in the previous section, the CARB HRA, which WOEIP relies on to substantiate adverse health impacts, clearly states that as of 2005, 80% of DPM emissions impacting West Oakland come from on-road heavy-duty trucks NOT associated with Port operations.[87] Thus, contrary to WOEIP's claims, "most of the pollution" impacting West Oakland comes from sources other than the Port.

[85] While the Port is addressing and rebutting certain allegations made by WOEIP, it has not responded to every statement made in the Complaint. The Port's failure to rebut any specific statement should not be deemed acceptance of that statement. Furthermore, many of WOEIP's allegations relate solely to the City, and the Port is not responding to those City-specific statements.
[86] Complaint, p. 13.
[87] CARB HRA, p. 25.

Furthermore, WOEIP's claims completely ignore the fact that while the CARB HRA used data from 2005, as of 2015, the Port has reduced aggregate DPM emissions from Port sources by 76 percent from 2005 levels – from 261 tons emitted in 2005 to 63 tons emitted in 2015.[88] Thus, the Port's contribution to air quality impacts in West Oakland is even lower today than it was in 2005, and is certainly not the source of "most of the pollution" in West Oakland. This further puts into question WOEIP's claim that "[f]urther expansions of the Port's activities will...further [elevate] the amount of diesel particulate matter in the air throughout West Oakland."[89]

Additionally, WOEIP often lumps together the City and the Port, implying that many decisions regarding the OAB expansion involved both entities. For example, WOEIP alleges that "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."[90] In fact, the Port has no involvement with the Gateway or Oakland Global Logistics Center development projects. Including the Port in this allegation is misleading and inappropriate.

Finally, many of the "Less Discriminatory Alternatives" sought by WOEIP have already been implemented by the Port or are underway.[91] WOEIP alleges that the Port has refused to engage the community in a meaningful process by which to receive and incorporate community input regarding continued expansion of the Port's activities.[92] Specifically, and as directed to the Port, WOEIP alleges that the Port has: (1) refused to develop a meaningful emissions reduction plan for activities at the Port and OAB; (2) failed to produce or require a comprehensive truck management plan; and (3) refused to mitigate the negative air quality and health impacts caused by increase in truck traffic to and from the Port and the OAB.

These allegations are directly refuted by the facts laid out above. In fact, the Port has robust public engagement policies at all levels of decision making; these policies allow for and in many cases require public participation and input above and beyond any statutory requirements. As described above, the Port organized numerous stakeholder task forces to guide development of both the MAQIP and the CTMP. Currently, the City and the Port are collaborating on, and seeking to organize, similar stakeholder groups to develop a joint Truck Management Plan to address quality of life impacts that might be caused by truck operations resulting from operations at the facilities developed at the OAB. Likewise, and as acknowledged by WOEIP and other community organizations, the Port has implemented and funded numerous emission mitigation projects that have and will continue to have a significant positive impact on the air quality and related public health in West Oakland.

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[88] 2015 Emissions Inventory, Final Report, p.8.
[89] Complaint, p. 14.
[90] Complaint, p. 21.
[91] Complaint, pp. 28-30.
[92] Complaint, p. 28.

III. LEGAL ANALYSIS

WOEIP alleges that the Port has violated Title VI and the associated DOT and EPA civil rights regulations, because the Port did not have a meaningful public participation process to address the adverse impacts of the Port's expansion of activities, which resulted in a disproportionate impact on the communities of color in West Oakland, and the Port has failed to implement less discriminatory alternatives.[93] This allegation is flatly refuted by the facts above.

In the Acceptance Letter, DOT and EPA state that their investigation will focus on:

(1) whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the OAB subjects the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964; and

(2) whether the City's and Port's methods, including their public participation process, for approving and authorizing new development and expanded activities at the Port of Oakland and the OAB subject the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI.[94]

As indicated in the Executive Summary above, with respect to the first prong of the EPA-DOT investigation, the Port was not involved in the City's approval of a construction management plan or permission for groundbreaking on the Northeast Gateway development project.[95] Accordingly, the Port will focus its legal analysis on the second prong of DOT's and EPA's investigative focus: the public participation process.

As the facts described above make clear, the Port has developed a meaningful process with robust procedures in place to involve the public in a wide spectrum of activities at the Port. In fact, the public generally, and WOEIP specifically, have been deeply engaged for decades in the Port's development projects and the Port's air emissions reduction efforts. The Port has not discriminated against the communities of color in West Oakland, nor do its public engagement policies related to development or activities have a disparate negative impact on those communities.

The Port's development activities are necessary and integral to the Port's institutional mission. The Port, including the Port's expanded development at the OAB, are located on Port priority property and necessarily have to remain in that water-adjacent location. Due to the location

[93] Complaint, pp. 26-30.
[94] Acceptance Letter, p. 2.
[95] *See* October 4, 2016, approval from the City.

constraints of the Port's operations, no less-impactful alternative exists, beyond the significant efforts the Port has already undertaken to reduce emissions related to its operations.

A. Title VI Background

Title VI provides that "[n]o 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. § 2000d; *see also* 49 C.F.R. § 21.5(a); 40 C.F.R. § 7.30. Discrimination under Title VI can take the form of intentional discrimination or discrimination through disparate impacts. DOT and EPA regulations provide specific prohibitions on: (1) the use of criteria or methods of administering a program or activity which have the effect of subjecting individuals to discrimination based on their race, color, national origin or sex; and (2) choosing a site or location of a facility that has the purpose or effect of subjecting individuals to discrimination under any program or activity on the basis of race, color, national origin or sex. 49 C.F.R. § 21.5(b)(2) and (3); 40 C.F.R. § 7.35(a) and (b).

In situations where allegations of discrimination are based on disproportionate or disparate impacts, Courts and agencies look to a three-part test to determine whether a recipient of Federal funding has violated Title VI: (1) Does the adverse effect of the policy or practice disproportionately affect members of a group identified by race, color, or national origin? (2) If so, can the recipient demonstrate the existence of a substantial legitimate justification for the policy or practice? (3) Is there an alternative that would achieve the same legitimate objective but with less of a discriminatory effect? *Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1407 (1993). Causation between the recipient's policy or practice and the alleged disproportionate impact must be present to prove a disparate impact claim, just as in a direct discrimination investigation. *Id.* Thus, a Title VI disparate impact claim will fail "if the evidence tends to show that even had the [recipient] not engaged in the challenged practice, the same disparate impact would nonetheless have existed." *Id.*

B. The Port Has Not Discriminated Against the Communities of Color in West Oakland

The Port's receipt of Federal funding from DOT and EPA makes it subject to the requirements of Title VI because it is receiving "Federal financial assistance." 42 U.S.C. § 2000d. The Port takes seriously its obligations under Title VI and has complied with its mandate. In short, the Port has not discriminated against communities of color in West Oakland, and a straightforward evaluation of the facts and circumstances surrounding the Port's methods for approving its operational and development projects demonstrates that the Port has, in fact, actively and consistently included WOEIP and other local community groups in the decision making processes for its development, air quality, and truck management programs.

1. Disparate Impact

The first step in evaluating whether a recipient of Federal funds impermissibly discriminated against a protected group based on the disparate impacts of its actions is to identify the specific policy or practice at issue. *Elston*, 997 F.2d at 1407. Here, DOT and EPA have identified the Port's practices at issues as: the Port's methods, including their public participation process, for approving and authorizing new development and expanded activities at the Port and OAB.

Next, and most crucially, DOT and EPA must evaluate: (1) whether there is actual adversity or harm to West Oakland residents; (2) whether that harm is disproportionately impacting communities of color; and (3) whether the Port has caused that disproportionate harm. *See New York City Envtl. Justice All. v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000) (plaintiffs must "allege a causal connection between a facially neutral policy and a disproportionate and adverse impact on minorities.")

The Port acknowledges that the CARB HRA provides some factual support for WOEIP's claims that West Oakland residents (who are predominantly minorities) are harmed by poor air quality, which causes health impacts at a disproportionate rate compared to other communities in the Bay Area. However, this does not prove that the Port's methods for approving new development and activities are the cause of that poor air quality. The speculative chain of causation implied in the Complaint between the Port's public participation methods and air quality in West Oakland is simply too tenuous on its face. **Moreover, the CARB HRA establishes that the Port is not the primary cause of those health impacts**. In fact, on-road heavy duty diesel trucks, not associated with the Port, are responsible for the vast majority of the DPM pollution in West Oakland. Indeed, due to the Port's ongoing emissions reductions efforts which were crafted in collaboration with WOEIP and other West Oakland community members, DPM emissions from Port-related operations have decreased from 261 tons in 2005 (the data used in the CARB HRA) to 63 tons in 2015.

Thus, **regardless** of the Port's public participation methods, and even if the Port ceased all operations at its Seaport and at the OAB, West Oakland residents would still have air quality impacts from industrial business and on-road heavy-duty trucks traveling on the highways surrounding the community. Because the primary cause of air pollution in West Oakland is sources not related to the Port, there is no causal link between the Port's public participation methods and the alleged disproportionate health impact in West Oakland. *See Elston*, 997 F.2d at 1407.

In sum, there is a fatal lack of causation in WOEIP's Complaint. Even if DOT and EPA find that there is a disparate negative health impact on communities of color in West Oakland, the Port is not the primary cause of that disparate impact, nor is the Port's public participation process. Accordingly, the Port cannot be held liable under Title VI.

2. *Legitimate Justification*

As discussed above in the previous section, the Port's activities and expansion practices do not cause a disproportionate adverse impact on West Oakland residents. Nevertheless, the Port separately notes that it has a substantial legitimate justification for its operations and development practices and is duty bound by the Charter and the Tidelands Trust to promote navigation and commerce.

The Port is a crucial part of the local, State, and national economy. As discussed above, the Port of Oakland was established "[t]o promote and more definitely insure the comprehensive and adequate development of the Port of Oakland through continuity of control, management and operation."[96] The Port has the obligation to establish, equip, and operate its maritime operations and to update or modify its operations as the requirements of commerce, shipping, and navigation may demand.[97] In light of those obligations, the Port is continually looking for ways to grow to meet the needs of commerce, while necessarily improving its cargo handling efficiency and reducing its environmental impact.

Indeed, the Port has expanded operations and increased the volume of cargo traveling through the Port, while at the same time drastically reducing the emissions associated with Port activities. Recent development projects at FISCO and the OAB are necessary to meet the Port's legitimate needs to expand and modernize its operations. The Port is a water-dependent use, and is limited in the land it can use for development. Under the BCDC Seaport Plan, Port property, including the Port's OAB property, are designated as a "Port Priority" Area. Utilizing this property to provide modern rail and logistics facilities is legitimate, important, and integral to the Port's institutional mission and duty. *Elston*, 997 F.2d at 1413.

3. *Less Discriminatory Alternatives*

The Port has engaged in a thoughtful, transparent, and publicly accessible process to minimize the environmental impacts of its activities and development. In light of the water-dependent nature of the Port's operations, and the meaningful public process the Port engaged in to reduce its environmental impacts, there is no less discriminatory alternative available. *Elston*, 997 F.2d at 1407, 1413 (Title VI requires recipients to implement a less discriminatory alternative if it is feasible and meets their legitimate objectives).

WOEIP identifies several items that it believes are "Less Discriminatory Alternatives" that the City and/or the Port should implement.[98] However, as explained in detail above, the Port has already undertaken the planning, public engagement, and emissions reductions sought by WOEIP. WOEIP and other community groups have been intimately involved in the Port's AQMP, MAQIP,

[96] Article VII, Section 700 of the Charter.
[97] Article VII, Section 706(2) of the Charter.
[98] Complaint, pp. 28-30.

CTMP, and development of mitigation measures specific to the OAB under the EIR. In addition, the City and the Port are beginning the process to include robust public engagement in the joint City-Port Truck Management Plan that will address truck traffic and emissions at the Port and the OAB.

The remaining claims of the WOEIP in their proposed "Less Discriminatory Alternatives" are simply not true. WOEIP claims that the Port has failed to develop a meaningful emissions reductions plan, failed to develop a comprehensive truck management plan, and failed to mitigate the negative air quality impacts in West Oakland. As detailed above, WOEIP and other community groups were involved with the Port in planning related to all of those activities – with significant emissions reductions as a result.

In sum, WOEIP has not, and cannot, point to any less discriminatory alternatives that the Port has not already engaged in. As such, WOEIP's assertions fail.

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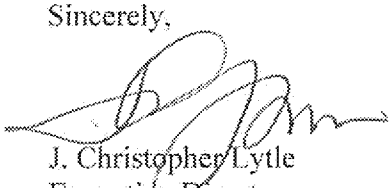
The Port reiterates its commitment to environmental stewardship and its willingness to cooperate with this investigation. The Port is confident that DOT and EPA will find that it has not discriminated against communities of color in West Oakland in violation of Title VI. To the contrary, the Port has a demonstrated and acclaimed track record in public participation processes that are an integral part of the Port's decision making. As the record described herein shows, the Port utilizes all its decision making methods, including public participation, to promote the economic use of its public tidelands on behalf of increasing jobs, employment, public health, and improved quality of life for the Port's neighboring communities, the City of Oakland, and the entire region.

Please let us know if you need anything further from the Port to assist in your investigation.

Sincerely,



J. Christopher Lytle
Executive Director

Enclosures: 1) CD of Exhibits; and 2) List of Exhibits Provided on the Enclosed CD and Additional Materials Available Online

cc: Board of Port Commissioners
Joan Story, President
Cestra Butner, First Vice President
Andreas Culver, Second Vice President

Michael Colbruno, Commissioner
Earl Hamlin, Commissioner
Arabella Martinez, Commissioner
Alan Yee, Commissioner

Danny Wan, Port Attorney

City of Oakland
The Honorable Mayor Libby Schaaf
Barbara Parker, City Attorney
Sabrina Landreth, City Administrator

Exhibits Provided on the Enclosed CD

Exhibit	Title	Date	Page
A	Northeast Gateway development project approval from the City of Oakland	10/4/2016	2
B	Port Ordinance No. 4265: Ordinance Approval and Adopting Rules and Requirements for Noticing, Agendizing and Posting of Board of Port Commissioners Meetings, Assuring Public Access and Participation and Providing Cure and Correction of Non-Compliance with Open Meeting Laws ("Sunshine Ordinance")	12/12/2013	3
C	The Economic Import of the Port of Oakland – 2010, Martin Associates ("Economic Impact Report")	4/18/2011	6
D	2015 Emissions Inventory	October 2016	11, 13
E	Effects of Exhaust After-Treatment and Fleet Modernization on Port of Oakland Truck Emissions Following Complete Implementation of California's Drayage Truck Regulation, Draft Final Report, Preble, et al., Department of Civil and Environmental Engineering, University of California, Berkeley ("2016 UC Berkeley Study")	November 2016	11
F	2005 Emissions Inventory	3/12/2008	13
G	2012 Emissions Inventory	11/5/2013	13
H	Summary Report to West Oakland Neighbors, Vision 2000 Air Quality Mitigation Program	December 2006	13
I	Maritime Air Quality Improvement Plan ("MAQIP")	April 2009	14
J	Comprehensive Truck Management Program ("CTMP")	June 16, 2009	18
K	WOCAG Comment on the Draft EIR for the OAB Redevelopment Plan	June 11, 2002	22
L	Port of Oakland Policy No. AP 450-452, Equal Opportunity	April 2000	27

Additional Materials Available Online

- Press Release, Port Allocates $2.7 Million for Shore Power & Innovative Energy Study, April 4, 2011
    - http://www.portofoakland.com/press-releases/press-release-223/)

- Charter of the City of Oakland
  - https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=THCHOA

- Chapter 516, Statutes of 1919
  - http://www.slc.ca.gov/Programs/Granted_Lands/G01_Alameda/G01-05_City_of_Oakland/S1919_Ch516%20.pdf

- Port of Oakland Strategic Plan, Fiscal Years 2011-2015
  - http://www.portofoakland.com/files/pdf/about/strategicPlan2011-2015.pdf

- Port of Oakland Comprehensive Annual Financial Report for the Years Ended June 30, 2016 and 2015
  - http://www.govwiki.info/pdfs/Special%20District/CA%20Port%20of%20Oakland%202016.pdf

- U.S. EPA, A Ports Primer for Communities, Section 6.4 Case Studies: Job and Benefits, published July 2016
  - https://www.epa.gov/ports-initiative/ports-primer-64-case-studies-job-and-benefits#oakland).

- Port of Oakland Website
  - http://www.portofoakland.com/

- California Public Resources Code
  - https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=2.6.&article=&goUp=Y

- Title 14. California Code of Regulations, CEQA Guidelines
  - http://resources.ca.gov/ceqa/guidelines/art1.html
  - http://resources.ca.gov/ceqa/guidelines/art11.html
  - http://resources.ca.gov/ceqa/guidelines/art13.html
  - http://resources.ca.gov/ceqa/guidelines/art20.html

- Effects of Particle Filters and Selective Catalytic Reduction on Heavy Duty Diesel Drayage Truck Emissions at the Port of Oakland, Preble, et al., *Environmental Science and Technology*, June 26, 2015
  - http://pubs.acs.org/doi/abs/10.1021/acs.est.5b01117

- Diesel Particulate Matter Health Risk Assessment for the West Oakland Community Preliminary Summary of Results, California Air Resources Board, December 2008
  - https://www.arb.ca.gov/ch/communities/ra/westoakland/westoakland.htm

- Board of Port Commissioners Public Agenda Reports, Ordinances, Resolutions and Minutes
    - http://www.portofoakland.com/port/board-of-commissioners/board-meetings/archive/

- Oakland Army Base CEQA/EIR Documents
    - http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157

- Press Release, Port of Oakland-based firm first to test battery-powered big rig, August 2, 2017
    - http://www.portofoakland.com/press-releases/port-oakland-based-firm-first-test-battery-powered-big-rig/

- Press Release, Port of Oakland OKs new high-power line to plug in more ships, August 14, 2017
    - http://www.portofoakland.com/press-releases/port-oakland-oks-new-high-power-line-plug-ships/

- San Francisco Bay Area Seaport Plan, San Francisco Bay Conservation and Development Commission and Metropolitan Transportation Commission, April, 18, 1996 as amended through January 2012
    - http://www.bcdc.ca.gov/seaport/seaport.pdf

- Oakland Global Air Quality Web Portal
    - http://ngem.com/OAB_AQM/

- EDF air quality monitoring website
    - https://www.edf.org/airqualitymaps

- Environ. Sci. Technol., *High-Resolution Air Pollution Mapping with Google Street View Cars: Exploiting Big Data*, J. Apte et al., 2017, 51, 6999–7008
    - http://pubs.acs.org/doi/pdf/10.1021/acs.est.7b00891

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 8/17/2017 6:24:06 PM
To: McGowan, Patricia [PMcGowan@oaklandnet.com]
Subject: RE: Agenda and Information for OAB Stakeholder meeting August 23, 2017

Ah ha, thank you....

From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Thursday, August 17, 2017 11:20 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Agenda and Information for OAB Stakeholder meeting August 23, 2017

Hi Richard,
It's the attachment called "response to comments".

Patricia

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

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From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Thursday, August 17, 2017 10:08 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Subject: FW: Agenda and Information for OAB Stakeholder meeting August 23, 2017

Patricia – could you clarify which of the attachments is the "memo which summarizes some of the key components of this Plan" mentioned in your note below ?

Thanks

Richard

From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, August 16, 2017 3:52 PM

Personal Address / Ex. 6

Personal Address / Ex. 6

Subject: Agenda and Information for OAB Stakeholder meeting August 23, 2017

Hello OAB Stakeholders,

Attached please find the agenda for the Stakeholder meeting next week. I have also attached the AQ plan which was distributed for public review on August 4, 2017 (attached herein just for convenience since it's the same one you received via e-mail on August 4) and a memo which summarizes some of the key components of this Plan. Some of you have e-mailed with questions about the Plan and I apologize for my delayed or lack of response; I was out on vacation. I hope this e-mail and the attachments will respond to your questions.

I'd would also like to provide some context about the draft air quality plan which was distributed for public review on August 4, 2017.

This is the third air quality plan that we have reviewed. The first was in 2013 and it was for the construction of the new roads, utilities and general infrastructure including upper Maritime Road, Burma Road, the road out to the future East Bay Regional Park (Gateway Park) etc. The second was for the construction of the first Prologis building on the Northeast Gateway site. And now this is the third one, and it will be used to guide the construction of the remaining two Prologis sites, called the Southeast Gateway and the New Central Gateway. There is a site plan on page 2 of the Plan showing the location of these sites.

Each time the plans have started with the City's list of conditions related to improving air quality during construction and the list of recommendations from the BAAQMD in the CEQA Guidelines. Then the applicant prepared a plan based on these lists of specific actions and additional air quality measures which the applicant proposed. At that point, the plans were released for public review, per the MM PO-1, and comments were received from yourselves: the agencies, the WOEIP and other stakeholders. The City and the applicant then worked on the plans again, sometimes with meetings with the agencies, e-mails, discussions, etc. And then another version, or versions, of the plan were submitted for the City to consider.

The Plans were enhanced by adding more measures to reduce emissions from construction equipment and reduce air quality impacts during construction. The comments of the agencies and the stakeholders were considered, studied and evaluated, and revised Plans were ultimately approved by the City Administrator.

Now we have the third such Plan to reduce emissions and air quality impacts during the construction of remaining two Prologis sites. The applicant submitted the Plan to the City in March 2017. Knowing that the agencies and stakeholders have already done a lot of work giving comments on the past two such Plans, the City undertook more staff work on this Plan before we started the official public review per MM PO-1. Staff worked on an administrative draft Plan with the applicant, and then had a staff-to-staff working session on the administrative draft in May. Discussions and comments from that meeting were subsequently considered and studied by the applicant and City staff. And now a Plan has been submitted which is ready for the official public review period, as outlined in MM PO-1.

So as to facilitate your review of this Plan, I have attached a table which shows the comments/recommendations resulting from the staff-to-staff review, and how the Plan has incorporated the recommendations, or a response as to why it is difficult or infeasible to do so. Hopefully this will make your review of the Plan easier.

We will discuss this Plan at next week's Quarterly Stakeholder meeting (August 23, 2017). Prologis will describe the Plan, how it has been enhanced based on past input, and we can discuss its specifics. We hope this will be a good working session.

I have attached the Plan to this e-mail, for your ease. It is the same Plan you received as an attachment to the Notice of Availability of this Plan, sent via e-mail of August 4, 2017. I have also attached a table which might help your review of the Plan. Along with the agenda, attached herein, this is all we have to distribute prior to the meeting. The report on air quality monitors is available at http://ngem.com/OAB_AQM/.

I hope this description helps and I hope you will be able to come to the Stakeholder meeting on Aug. 23.

Patricia

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/19/2017 7:37:48 PM
To: Temple, Kurt [Temple.Kurt@epa.gov]; Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: Recent events re Port/OAB: Oakland T6 Complaint

Kurt and Ryan

Deliberative Process / Ex. 5

Richard

-----Original Message-----
From: Temple, Kurt
Sent: Wednesday, July 19, 2017 8:52 AM
To: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Rivera, Yvette (OST) <yvette.rivera@dot.gov>
Cc: Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Ferguson, Selina (OST) <Selina.Ferguson@dot.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>
Subject: RE: Oakland T6 Complaint

Ryan and Yvette: Thanks for your assistance in getting the acceptance letters out yesterday, and to you Ryan, for dropping agreeing to personally them off at our office late in the day. Now that we have sent them, we should get the teams together for that next conversation about next steps, such as investigative plan, laboring oars, etc. Please let us know when is a good time to have the conversation and we will gather our Region 9 and ECRCO team. Look forward to talking further.

Thanks again.

Kurt T. Temple
Senior Advisor
External Civil Rights Compliance Office
EPA Office of General Counsel
1200 Pennsylvania Avenue, NW
Room 2524B
Washington, D.C. 20460
202-564-7299

-----Original Message-----
From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 6:06 PM
To: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Rivera, Yvette (OST) <yvette.rivera@dot.gov>
Cc: Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Ferguson, Selina (OST) <Selina.Ferguson@dot.gov>; Temple, Kurt <Temple.Kurt@epa.gov>
Subject: RE: Oakland T6 Complaint
Importance: High

Deliberative Process / Ex. 5

-----Original Message-----
From: Temple, Kurt

Sent: Tuesday, July 18, 2017 3:34 PM
To: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>
Cc: Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Ferguson, Selina (OST) <Selina.Ferguson@dot.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Rivera, Yvette (OST) <yvette.rivera@dot.gov>
Subject: RE: Oakland T6 Complaint

Ryan: Sorry for the delay. Please see attached and feel free to add your cc's if any.

Kurt

-----Original Message-----
From: Temple, Kurt
Sent: Tuesday, July 18, 2017 10:54 AM
To: 'Rivera, Yvette (OST)' <yvette.rivera@dot.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <olone.mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Ferguson, Selina (OST) <Selina.Ferguson@dot.gov>
Subject: RE: Oakland T6 Complaint

Yvette: Attached are the most recent drafts of the joint acceptance letters for your review and approval. We added some clarifying edits to the draft you sent forward last week. You will see those changes highlighted in the text. Also, DOT needs to insert its file number into the subject line. Please let me know if you have any questions about what we have done, or if you're ready to exchange signatures on final drafts. Thanks for your help.

Kurt T. Temple
Senior Advisor
External Civil Rights Compliance Office
EPA Office of General Counsel
1200 Pennsylvania Avenue, NW
Room 2524B
Washington, D.C. 20460
202-564-7299

-----Original Message-----
From: Rivera, Yvette (OST) [mailto:yvette.rivera@dot.gov]
Sent: Thursday, July 13, 2017 3:49 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>
Cc: Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Ferguson, Selina (OST) <Selina.Ferguson@dot.gov>
Subject: RE: Oakland T6 Complaint

Dear Lily,

We have an approved version of the OAB letter. Please see the attached. If you have no objections, we can execute the letter and get the original to you for signature tomorrow. Thank you!

Yvette

-----Original Message-----
From: Dorka, Lilian [mailto:Dorka.Lilian@epa.gov]
Sent: Thursday, July 13, 2017 12:29 PM
To: Rivera, Yvette (OST) <yvette.rivera@dot.gov>; Temple, Kurt <Temple.Kurt@epa.gov>
Cc: Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>
Subject: RE: Oakland T6 Complaint

Hi Yvette, just following up on this. Thanks! Lily

-----Original Message-----
From: Rivera, Yvette (OST) [mailto:yvette.rivera@dot.gov]
Sent: Friday, July 7, 2017 2:51 PM

To: Temple, Kurt <Temple.Kurt@epa.gov>
Cc: Goerke, Ariadne <Goerke.Ariadne@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>
Subject: RE: Oakland T6 Complaint

Thank you Kurt. We will get right on it. Hoping that we can respond by Monday or Tuesday. Again, thank you. Have a nice weekend! Yvette

-----Original Message-----
From: Temple, Kurt [mailto:Temple.Kurt@epa.gov]
Sent: Friday, July 07, 2017 2:13 PM
To: Rivera, Yvette (OST) <yvette.rivera@dot.gov>
Cc: Goerke, Ariadne <Goerke.Ariadne@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>
Subject: Oakland T6 Complaint

Hello Yvette. Thanks for the good conversation yesterday regarding the Oakland T6 matter. As we promised on the call, I have attached for DOT's review draft joint acceptance letters to complainant and recipients. In drafting these letters, we utilized the format that we cleared in the joint DOT/EPA Brandywine matter. Let us know if DOT has any edits, comments or concerns. We look forward to issuing these letters soon. Please give me a call if you need anything.

Sincerely,

Kurt T. Temple
Senior Advisor
External Civil Rights Compliance Office
EPA Office of General Counsel
1200 Pennsylvania Avenue, NW
Room 2524B
Washington, D.C. 20460
202-564-7299

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

ALAMEDA COUNTY
Pauline Russo Cutter
Scott Haggerty
Rebecca Kaplan
Nate Miley

CONTRA COSTA COUNTY
John Gioia
David Hudson
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Karen Mitchoff
Mark Ross

MARIN COUNTY
Katie Rice
(Secretary)

NAPA COUNTY
Brad Wagenknecht

SAN FRANCISCO COUNTY
Edwin M. Lee
Hillary Ronen
Jeff Sheehy

SAN MATEO COUNTY
David Canepa
Carole Groom
Doug Kim

SANTA CLARA COUNTY
Margaret Abe-Koga
Cindy Chavez
Liz Kniss
(Chair)
Rod G. Sinks

SOLANO COUNTY
Pete Sanchez
James Spering

SONOMA COUNTY
Teresa Barrett
Shirlee Zane

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

Connect with the
Bay Area Air District:

November 3, 2017

Joan H. Story
President, Board of Port Commissioners
Port of Oakland
30 Water Street
Oakland, CA 94607

Subject: **Ordinance and Resolution to approve Lease with CenterPoint-Oakland Development I, LLC for a Transload and Distribution Facility on the Former Oakland Army Base**

Dear Ms. Story and Members of the Board of Port Commissioners (Board):

The Bay Area Air Quality Management District (Air District) has reviewed Agenda item 5.1 on your November 9, 2017 meeting and is requesting that the Board:

- Delay approval of any resolution or ordinance on this item until the Port of Oakland (Port) has developed and funded the emission reduction programs (in concert with the City of Oakland (City)) identified by the former Oakland Army Base (OAB) Environmental Impact Report (EIR) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP); and

- Developed criteria via a public process to determine when low emission equipment or strategies are "readily available" or "cost effective."

As currently drafted, Agenda item 5.1 seeks to authorize the Port of Oakland (Port) Executive Director to enter a ground lease with CenterPoint-Oakland Development I, LLC, (the Developer) for the design, construction, finance, operation, and maintenance of a transload and distribution facility (Project). The proposed Project seeks to build a 440,800-square foot facility with approximately 140 dock doors, and parking for 365 autos and 70 trailers for warehouse, storage, other maritime trade and logistics uses. The proposed location is approximately 27 acres at the former Oakland Army Base (OAB) land the Port has named the Seaport Logistics Complex.

As stated in the Board's Agenda Report, this and any project on the former OAB is required to comply with the OAB Environmental Impact Report (EIR) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP). As you may recall, the SCA/MMRP was adopted by the Oakland City Council (City) and the Port to mitigate the significant health and air quality impacts expected to occur in the West Oakland community and impacts to regional air quality resulting from the build out of the OAB. However, many the SCA/MMRPs require the City and the Port to develop emission reduction programs that have not been developed, such as:

- MM 4.4-3a: "The Port shall develop and implement a criteria pollutant reduction program aimed at reducing or off-setting Port-related emissions in West Oakland from its maritime and rail operations to less than significant levels..."

- MM 4.4-4 "The City and the Port shall jointly create, maintain and fund on a fair share basis, a truck diesel emission reduction program. The program shall be sufficiently funded to strive to reduce redevelopment related contributions to local West Oakland diesel emissions to less than significant levels ...."

- MM 4.4-5: "Major developers shall fund on a fair share basis BAAQMD – recommended feasible Transportation Control Measures (TCMs) for reducing vehicle emissions from commercial, institutional, and industrial operations, as well as all CAP [Clean Air Plan] TCMs the BAAQMD has identified as appropriate for local implementation ...."

- MM 4.4-6: "...the City and Port shall implement sustainable development policies and strategies related to new development design and construction..."

- MM 5.4-1: "The City and the Port shall encourage, lobby, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality..."

- MM GCC-1: "The project applicant shall retain a qualified air quality consultant to develop a Greenhouse Gas (GHG) Reduction Plan for City review and approval. The applicant shall implement the approved GHG Reduction Plan..."

- Some of the mitigation measures include language that would require emission reduction actions only if low emission equipment or strategies are "readily available" or "cost effective".

To date, neither the City nor the Port has developed or funded the emission reduction programs identified above or developed any criteria to determine when low emission equipment or strategies are "readily available" or "cost effective." The Air District recommends that the Port develop the emission reduction programs and guidance identified above in a forum that seeks public input prior to acting on this Project. The Air District believes that any resolution adopted by the Board relative to this project should include clear language and direction to staff and the proposed tenants/operators that ensures the maximum use of zero and near zero emission equipment at the time of building permit issuance, and requires upgrades into the future as fully zero emissions equipment options become available.

To assist the Board, City and Port in determining what is "readily available" or "cost effective," the Air District has attached its draft "BAAQMD Emissions Reductions Actions for the Port of Oakland/Former Oakland Army Base," (August 2017) document. The Air District is currently finalizing this document in consultation with both Port and City staff and expects some minor changes to it based on those discussions. However, the technology suggestions in this document

have been reviewed by the California Air Resources Board and represent what the Air District believes to be most protective of community health and air quality relative to equipment that is currently and reasonably available.

West Oakland remains the most disproportionately impacted community in the Bay Area due in part to its proximity to the Port. Since 2001, the Air District has invested over 80 million dollars of public funds to reduce diesel particulate matter (DPM) emissions from Port truck, maritime and rail operations and over $50 million to reduce emissions on adjacent highways. In 2018, the Air District projects another approximately $70 million dollars in incentive funds will be available for the purchase of zero and near zero emission equipment and technologies that could be used at the Port and OAB. The Air District stands ready to assist current and prospective tenants/operators at the Port and OAB in taking advantage of these funds.

However, these incentives alone cannot address the air quality related health issues in the West Oakland community. It is important that the Board play a leadership role in reducing the impacts of the Port's operations by directing its staff to honor the spirit and letter of the mitigation measures required in the SCA/MMRP. This includes specifying requirements for zero and near zero equipment and operations as part of new leases and ordinances.

Air District staff is available to assist the Board or Port staff with questions about these comments. If you have any questions, please contact Alison Kirk, Senior Planner, at (415) 749-5169 or akirk@baaqmd.gov.

Sincerely,

Damian Breen
Deputy Air Pollution Control Officer

Attachment: BAAQMD Emissions Reductions Actions for the Port of Oakland/Former Oakland Army Base – Draft Document (August 2017)

cc: BAAQMD Director Pauline Russo Cutter
BAAQMD Director Scott Haggerty
BAAQMD Director Rebecca Kaplan
BAAQMD Director Nate Miley
Cynthia Marvin, California Air Resources Board
Claudia Cappio, City of Oakland
Richard Grow, EPA
Matt Lakin, EPA
Ben Machol, EPA

November 8, 2017

Joan H. Story
President, Board of Port Commissioners
Port of Oakland
30 Water Street
Oakland, CA 94607

Subject: **Ordinance and Resolution to approve Lease with CenterPoint-Oakland Development I, LLC for a Transload and Distribution Facility on the Former Oakland Army Base**

Dear Ms. Story and Members of the Board of Port Commissioners,

These comments are submitted on behalf of the signatories below to request that the Board of Port Commissioners ("Board") delay approval of the lease with CenterPoint-Oakland Development I, LLC ("Developer") until the Board and Port of Oakland ("Port") ensure that the Developer will take all possible steps to minimize air pollution impacts and to be a good neighbor to surrounding communities.

The Board should delay action on this item until the Port has completed a public process on the environmental and public health impacts of this facility. The Port held a series of public meetings regarding this project, but those meetings focused on jobs. West Oakland Environmental Indicators Project requested that the Port include environmental issues in these meetings and Port staff told West Oakland Environmental Indicators Project that environmental issues would be addressed later. Yet, the environmental and public health impacts never were addressed and this proposal reflects that oversight. This dismissal of community requests to provide input on environmental concerns is part of a disturbing pattern highlighted in the April 4, 2017 Title VI complaint filed with the U.S. Department of Transportation and U.S. Environmental Protection Agency (see Attachment).

As the Bay Area Air Quality Management District ("District") noted in its November 3, 2017 letter to the Board, the proposal does not comply with many of the criteria in the Oakland Army

Base's Environmental Impact Report Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP). The Agenda Report for this item states that the Developer will comply with the SCA/MMRP, but the Port has not taken any action yet to fulfill the SCA/MMRP's requirements. We agree with the comments submitted by the District and urge the Board to heed the District's recommendations regarding the SCA/MMRP.

In addition, the Agenda Report does not include all of the mitigation requirements that were included in the City of Oakland's ("City's") agreement with Prologis for its lease at the former Oakland Army Base. For example, the Prologis agreement requires Prologis to limit idling to three minutes and to use "zero and near-zero emission equipment at the Project Site to the extent that it is readily available in the San Francisco Bay Area."[1] At the very least, the Port should require the Developer to meet the same requirements that Prologis has committed to achieve.

The Board should ensure that its ordinance and resolution, if adopted, clearly state that the Developer must utilize zero and near zero emission technology[2] everywhere possible. To achieve the directives in the SCA/MMRP, the Port also will need to fund emission reduction programs at the Port and in the communities the Port impacts. The Board should work with the District and the California Air Resources Board to facilitate the widespread adoption of zero and near zero emission technologies throughout the former Oakland Army Base and in impacted communities.

To reduce emissions and improve air quality in impacted communities, the Port must adopt a different approach to planning for construction and operation of facilities at the former Oakland Army Base. The Port proposes to continue its pattern of treating the construction and operation phases as two distinct entities, even though facility design can affect emissions associated with facility operation. The Port should require developers to construct and design facilities to maximize emission reduction potential and facilitate the use of zero and near zero emission technologies during the operation phase.

Using zero and near zero emission vehicles and equipment at the Oakland Army Base is critically important due to the impact the development will have on West Oakland and communities all along the freeways that serve the Port. West Oakland is a community of color that faces disproportionate environmental impacts, which are caused in part by pollution generated at or associated with the Port (see Attachment, pp. 9-21). Other communities along freeways serving the Port (such as the I-880 corridor) also experience disproportionate impacts due in part to the truck traffic moving through their communities to the Port. Approving this lease without a public process and without clear instructions to use zero and near zero emission technologies during construction and operation will lock in years of unnecessary, dangerous emissions from the use of combustion fuel technologies where zero and near zero emission alternatives are available.

The Port has an opportunity here to send a message to the community: including more stringent emission reduction requirements for the Developer would signal that the Port intends to start

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[1] Prologis Oakland Global Logistics Center. "Diesel Emissions Reduction and Air Quality Plan for Construction of CE-2: Southeast Gateway Parcel, CC-1: New Central Gateway Parcel," p. 7 (August 13, 2017).
[2] We define "near zero emission" technologies to include technologies that allow vehicles and equipment to operate fully zero-emissions for some period of time (such as hybrid electric vehicles).

making real changes that benefit the health and wellbeing of West Oakland residents. Allowing the lease to proceed as-is sends a far different message. We urge the Port to delay action on this item and to revise the ordinance and resolution so that they set clear and stringent emission reduction requirements for the Developer.

Thank you for the opportunity to comment.

Sincerely,

Adenike Adeyeye
Senior Research and Policy Analyst
Earthjustice

Margaret Gordon and Brian Beveridge
Directors
West Oakland Environmental Indicators Project

Luis Amezcua
Chair
Sierra Club, Northern Alameda County Group

Rev. Earl W. Koteen
Sunflower Alliance

Kevin D. Hamilton, RRT, CEO
Central California Asthma Collaborative

Frank Gallo
Ditching Dirty Diesel Collaborative

Jimmy O'Dea
Senior Vehicles Analyst
Union of Concerned Scientists

Bill Magavern
Policy Director
Coalition for Clean Air

Bradley Angel
Executive Director
Greenaction for Health and Environmental Justice

Joel Ervice
Associate Director
Regional Asthma Management and Prevention

Taylor Thomas
Research & Policy Analyst
East Yard Communities for Environmental Justice

Attachment: Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (April 4, 2017).

Cc: Ryan Fitzpatrick, U.S. Department of Transportation
Velveta Golightly-Howell, U.S Environmental Protection Agency (EPA)
Richard Grow, U.S. Environmental Protection Agency (EPA)
Yana Garcia, California Environmental Protection Agency

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ATTACHMENT

Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
(April 4, 2017)

By electronic and certified U.S .mail

April 4, 2017

Attn: Ryan Fitzpatrick
Lead Civil Rights Analyst, Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave., S.E.
Washington, D.C. 20590
ryan.fitzpatrick@dot.gov

Attn: Velveta Golightly-Howell
Director, Office of Civil Rights
United States Environmental Protection Agency
U.S. EPA Office of Civil Rights (Mail Code 1201A)
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Attn: Daria Neil
Deputy Chief, Federal Coordination and Compliance Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Daria.neal@usdoj.gov

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

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[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 . . . .").

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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).

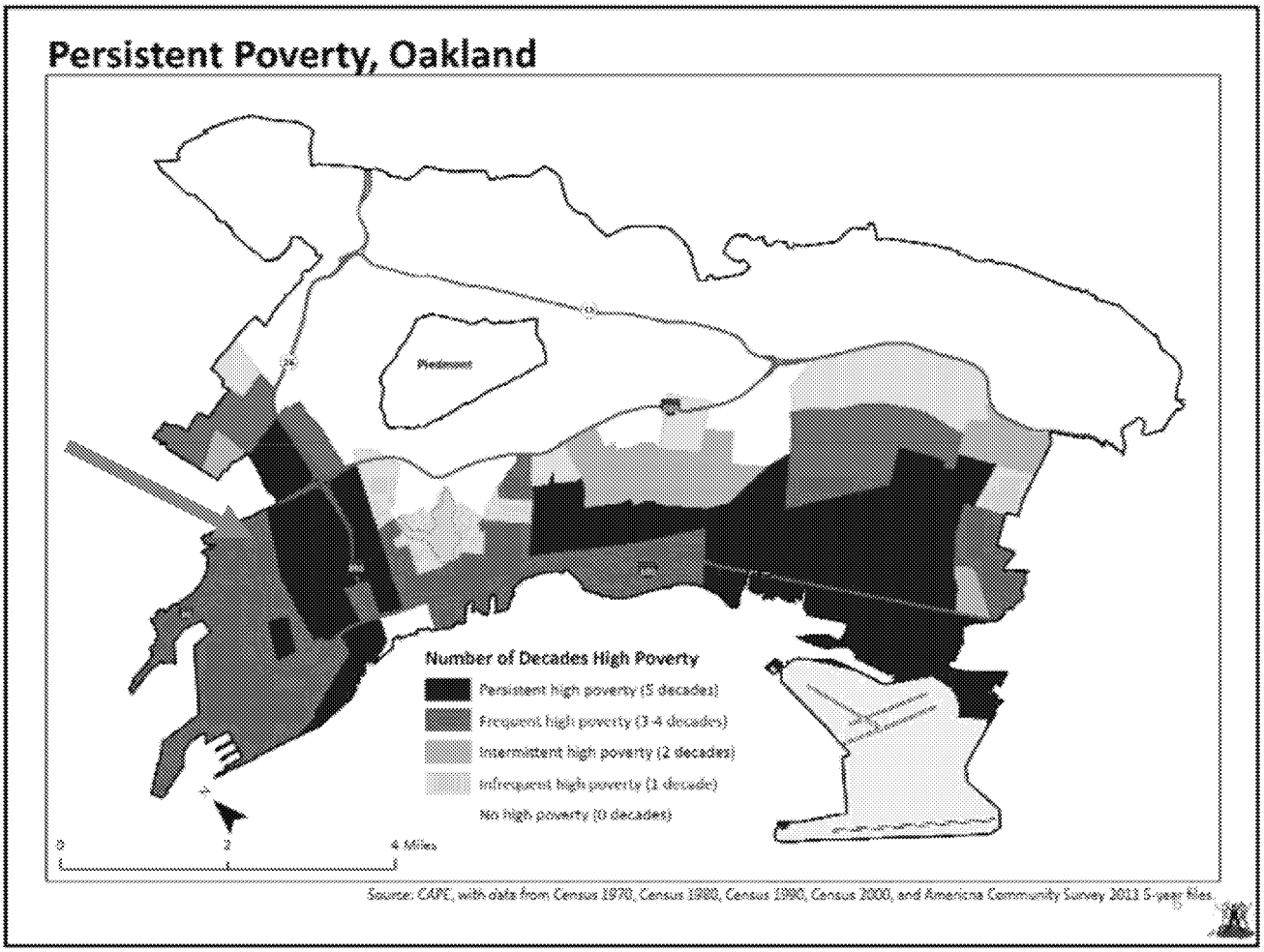

Figure 1 Map of areas of persistent poverty in Oakland (with arrow pointing to West Oakland).[24]

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]

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[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.

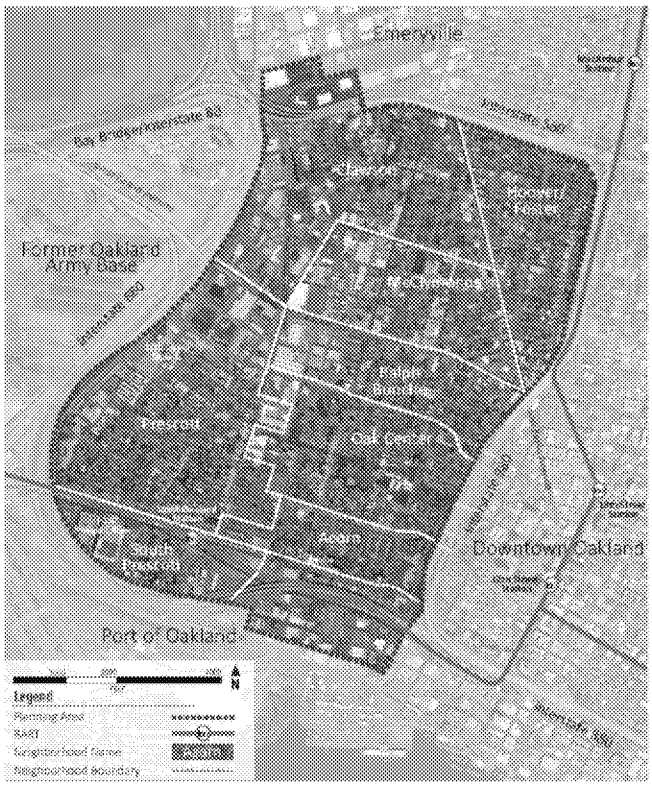

Figure 2 Map of the community of West Oakland.[27]

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.

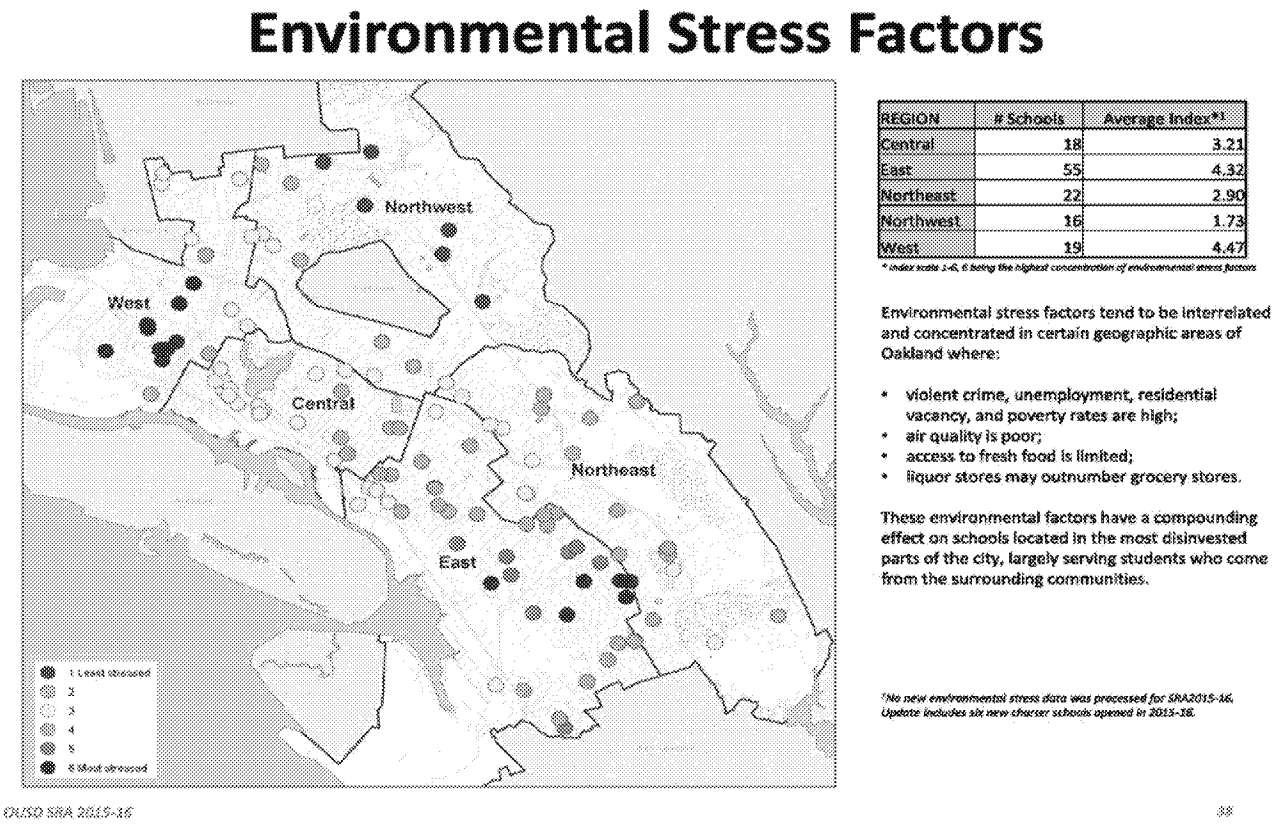

Figure 3 Environmental stress factors by school.

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).

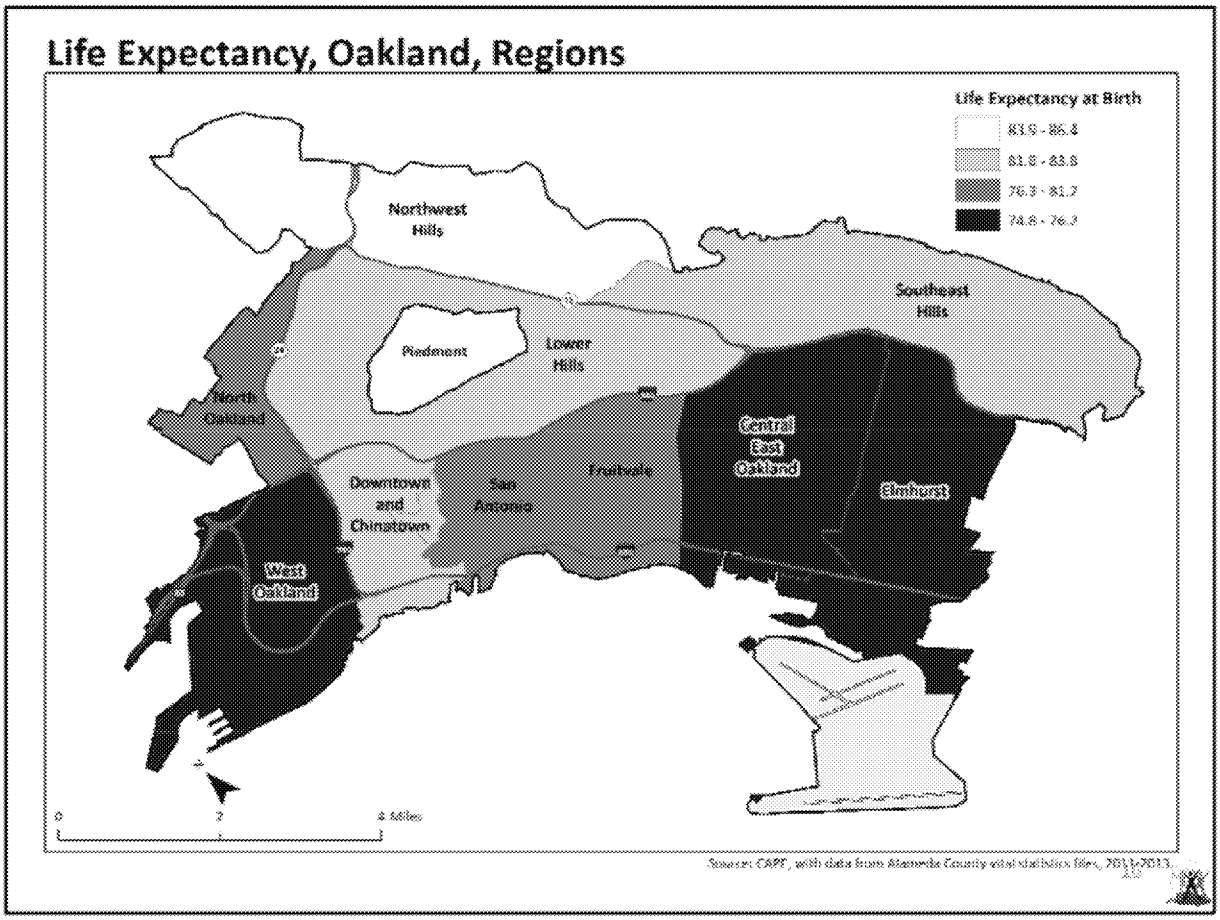

Figure 4 Life expectancies in Oakland's communities.[39]

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.

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[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]

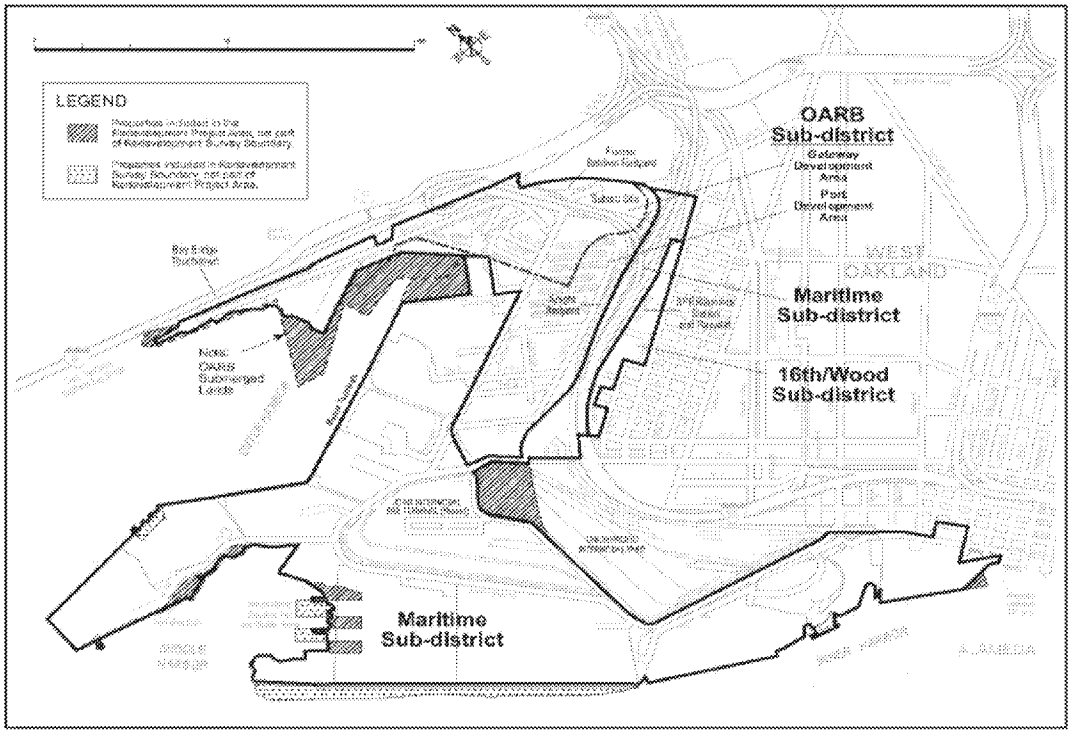

Figure 5 Oakland Army Base Redevelopment Area Sub-Districts, April 2002[52]

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

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[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]

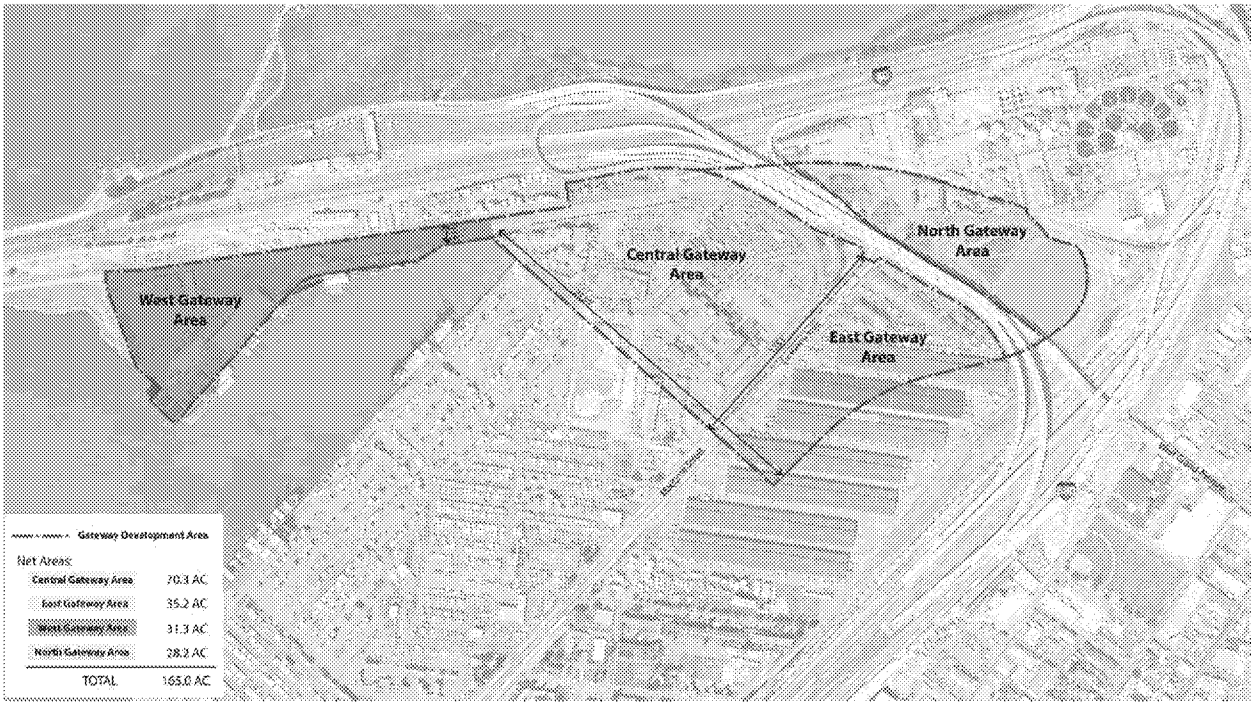

Figure 6 Gateway Development Area.[62]

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[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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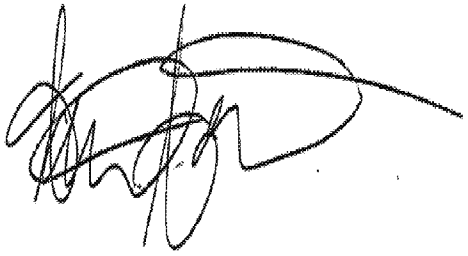
Complainant further requests that the City and Port be brought into compliance by: (a) requiring the City to withdraw its approvals of the Gateway construction management plans unless and until the City conducts a full review of the construction and long-term operation of all of the Gateway areas, and 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,

Yana Garcia
Paul Cort
Attorneys for West Oakland Environmental Indicators Project



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Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 8/17/2017 5:14:51 PM
To: McGowan, Patricia [PMcGowan@oaklandnet.com]
Subject: Further follow-up: Question on CTMP

Greetings Patricia

Following up on my query last week, below, yesterday our agency received correspondence from the Port including the following statement:

"The Port is currently engaged with the City in the planning stages of developing a joint truck management plan, focused on West Oakland, the Port, and the OAB ("Truck Management Plan"). The Truck Management Plan will be developed over the next year, in a process that will involve meaningful communication and input from the West Oakland community and other interested stakeholders. The Port and the City are conducting outreach to WOEIP and numerous other West Oakland community groups to participate in the Truck Management Plan planning process."

We are not only an "interested stakeholder" in the upcoming process but were active participants in the 2007-2009 CTMP effort. Please include me to the extent you are able in outreach and discussions of this upcoming effort. In addition, I would still appreciate some sort of catch-up discussion per my earlier note.

Thanks again

Richard Grow
US EPA
Region 9
(415) 947-4104

From: Grow, Richard
Sent: Wednesday, August 09, 2017 12:16 PM
To: 'McGowan, Patricia' <PMcGowan@oaklandnet.com>
Subject: Question on CTMP

Patricia

I'm hearing that you are starting up a comprehensive truck management plan initiative. Could you let me know if my understanding is correct and, if so, how can I bet get informed on this effort ?

Thanks

Richard Grow
US EPA
Region 9
(415) 947-4104

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 8/17/2017 5:07:55 PM
To: McGowan, Patricia [PMcGowan@oaklandnet.com]
Subject: FW: Agenda and Information for OAB Stakeholder meeting August 23, 2017
Attachments: Agenda Aug 23 2017 Stakeholder Meeting.pdf; Construction AQ Plan v2 08 03 17.pdf; Response to Comments on Admin Draft Const AQ Plan SE and Central GW.pdf

Patricia – could you clarify which of the attachments is the "memo which summarizes some of the key components of this Plan" mentioned in your note below ?

Thanks

Richard

From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, August 16, 2017 3:52 PM

Personal Address / Ex. 6

Subject: Agenda and Information for OAB Stakeholder meeting August 23, 2017

Hello OAB Stakeholders,

Attached please find the agenda for the Stakeholder meeting next week. I have also attached the AQ plan which was distributed for public review on August 4, 2017 (attached herein just for convenience since it's the same one you received via e-mail on August 4) and a memo which summarizes some of the key components of this Plan. Some of you have e-mailed with questions about the Plan and I apologize for my delayed or lack of response; I was out on vacation. I hope this e-mail and the attachments will respond to your questions.

I'd would also like to provide some context about the draft air quality plan which was distributed for public review on August 4, 2017.

This is the third air quality plan that we have reviewed. The first was in 2013 and it was for the construction of the new roads, utilities and general infrastructure including upper Maritime Road, Burma Road, the road out to the future East Bay Regional Park (Gateway Park) etc. The second was for the construction of the first Prologis building on the Northeast Gateway site. And now this is the third one, and it will be used to guide the construction of the remaining two Prologis sites, called the Southeast Gateway and the New Central Gateway. There is a site plan on page 2 of the Plan showing the location of these sites.

Each time the plans have started with the City's list of conditions related to improving air quality during construction and the list of recommendations from the BAAQMD in the CEQA Guidelines. Then the applicant prepared a plan based on these lists of specific actions and additional air quality measures which the applicant proposed. At that point, the plans were released for public review, per the MM PO-1, and comments were received from yourselves: the agencies, the WOEIP and other stakeholders. The City and the applicant then worked on the plans again, sometimes with meetings with the agencies, e-mails, discussions, etc. And then another version, or versions, of the plan were submitted for the City to consider.

The Plans were enhanced by adding more measures to reduce emissions from construction equipment and reduce air quality impacts during construction. The comments of the agencies and the stakeholders were considered, studied and evaluated, and revised Plans were ultimately approved by the City Administrator.

Now we have the third such Plan to reduce emissions and air quality impacts during the construction of remaining two Prologis sites. The applicant submitted the Plan to the City in March 2017. Knowing that the agencies and stakeholders have already done a lot of work giving comments on the past two such Plans, the City undertook more staff work on this Plan before we started the official public review per MM PO-1. Staff worked on an administrative draft Plan with the applicant, and then had a staff-to-staff working session on the administrative draft in May. Discussions and comments from that meeting were subsequently considered and studied by the applicant and City staff. And now a Plan has been submitted which is ready for the official public review period, as outlined in MM PO-1.

So as to facilitate your review of this Plan, I have attached a table which shows the comments/recommendations resulting from the staff-to-staff review, and how the Plan has incorporated the recommendations, or a response as to why it is difficult or infeasible to do so. Hopefully this will make your review of the Plan easier.

We will discuss this Plan at next week's Quarterly Stakeholder meeting (August 23, 2017). Prologis will describe the Plan, how it has been enhanced based on past input, and we can discuss its specifics. We hope this will be a good working session.

I have attached the Plan to this e-mail, for your ease. It is the same Plan you received as an attachment to the Notice of Availability of this Plan, sent via e-mail of August 4, 2017. I have also attached a table which might help your review of the Plan. Along with the agenda, attached herein, this is all we have to distribute prior to the meeting. The report on air quality monitors is available at http://ngem.com/OAB_AQM/.

I hope this description helps and I hope you will be able to come to the Stakeholder meeting on Aug. 23.

Patricia

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

OAB Stakeholder Meeting

Wednesday Aug. 23, 2017 11am – 1pm
Oakland City Hall, Hearing Room 4
1 Frank H. Ogawa Plaza, Oakland CA 94612

Agenda

A. Report on air quality monitors: first two quarters of 2017

B. Update by Prologis on their projects

   a. Update on construction of NE Gateway building: Shell completion, Aug. 2017. Tenant(s) not yet finalized. AQ plans for operations not yet ready to review.

   b. Update on compliance with the approved AQ Plan for Construction of NE Gateway.

   c. Description of what's planned for the Southeast and New Central Gateway sites.

C. Overview of the process for AQ planning

   a. Our goal is to make the stakeholder meetings informative and productive; to have effective discussions and thereby develop plans and programs which result in reducing the air quality impacts related to the construction and operation of buildings at the City's portion of the OAB.

   b. Implementation of Mitigation Measure PO-1

   c. We have a draft plan to work on, so let's do that.

D. Diesel Reduction and AQ Plan for Construction of the Southeast and New Central Gateway sites

   a. Prologis will describe the draft Plan, summarizing its key components and how the draft Plan considered and/or responded to comments received on the previous such Plans, and on the administrative draft of this Plan.

E. Information that the truck management plan public engagement will kick off in September, 2017 with a public meeting. Time and place to be announced.

To: Staff of the Air Quality Agencies and Stakeholders

From: Patricia McGowan, City of Oakland Environmental Coordinator for the OAB

Date: August 15, 2017

Subject: Comments from City staff and Public Agency staff regarding the Administrative Draft Construction AQ Plan for CE-2 (SE Gateway) and CC-1 (New Central Gateway)

On May 9, 2017 a meeting was held with staff of the City of Oakland and staff of the BAAQMD, CARB, EPA and Alameda Co. Public Health Department to review the administrative draft of the Construction Air Quality Plan for the SE Gateway and New Central Gateway sites, dated May 1, 2017. The meeting was held to review and discuss the administrative draft of the Plan with the intention of doing more staff work on this Plan prior to the official 17-day public review period outlined in the SCA/MMRP. Our intention was, and is, to work together at a staff level on an administrative draft so that the Plan can be as thorough as possible before the official public review of the Plan.

I forwarded the comments/discussion/recommendations from that meeting to Prologis who considered the comments and incorporated many of them into their Plan. The comments and the revisions made to their Plan, dated August 3, 2017 are summarized in the table below.

I hope this will help with your review of the Plan.

Section number from the administrative draft Plan (dated May 1, 2017)	**Comment/Recommendation from the May 9th staff working meeting**	**Revision made and included in Plan or explanation provided by applicant** (the Plan is dated August 3, 2017)
3.1.h & i	Reduce the allowable idling time to less than 5 minutes?	Idling time will be reduced from 5 minutes (CARB standard) to 3 minutes.
3.1.u	Why is the on-site access road not 100'?	50 feet is stated in the CA Storm water Association Best Management Practices. Fifty feet can accommodate one semi-truck or two concrete pumping trucks. Fifty feet, in combination with 3.2 c and d regarding clean wheels and street sweeping will address the intention of soil and mud not being tracked offsite.
3.3a	Ensure enforcement of the Tier 3 and 4 requirements. Restrict off-road diesel equipment to Tier 4.	The bid documents will include the air quality plan (once it is approved) and will thus specify that all subcontractors must use only tier 3 or 4 equipment. Prologis is thereby targeting contractors who have this type of equipment. Plan will specify: if the subcontractor has the tier 4 equipment in their fleet, then it is the tier 4 equipment that must be used on this

Section number from the administrative draft Plan (dated May 1, 2017)	**Comment/Recommendation from the May 9th staff working meeting**	**Revision made and included in Plan or explanation provided by applicant** (the Plan is dated August 3, 2017)
		construction site. Additionally, if the contractor needs to use rental equipment, the contractor shall contact three equipment rental companies in the SF BayArea. If tier 4 rental equipment is not available, tier 3 can be used. Additionally, the Plan specifies that the two pieces of equipment that will be used for the most construction hours must be tier 4. (With this, even if tier 3 equipment is on the site, the machines being used for the most number of construction hours will be tier 4.)
3.3e	No diesel generators on the job site	Prologis stated that they must have the ability to use generators in cases such as if PG& E has not yet provided power to the site upon arrival of the construction trailer. They stated that the use of diesel generators is very minimal and are used only when required. (3.3f)
3.3d	Regarding use of electric tools, tighten up what "to the extent feasible means".	Revised text: All scissor lifts and small tools will be electric. Regarding boom lifts, Prologis stated that boom lifts don't exist in electric equipment at the size needed for these construction sites. (3.3e)
3.3f and 3.3g	Did the City enforce this?	A maintenance log is kept and it is available upon request. This was added to the Plan. (3.3g)
General	a. The admin. draft Plan regulates off-road equipment but does not address on-road diesel trucks service the construction site. b. Construction trucks coming to the site (On-Road diesel trucks): ARB staff would like these to be 2010 engine year or newer, whereas the ARB regulation for On-Road diesel trucks is 2007 engine year or newer.	The Plan doesn't yet include this, but Section 3.3j could state that: All contractors will be bound by contract to comply with the CARB regulation for On-Road diesel trucks and the requirements of the Periodic Smoke Inspection Program (PSIP). The trucks delivering construction materials and construction equipment to the site(s) are all independent truckers who are not hired by the general contractor so Prologis states that such a requirement imposed by them on the general contractor/sub contractors would be unenforceable and unrealistic. Such trucks must be registered with ARB and therefore are required to follow all ARB regulations.

Section number from the administrative draft Plan (dated May 1, 2017)	**Comment/Recommendation from the May 9th staff working meeting**	**Revision made and included in Plan or explanation provided by applicant** (the Plan is dated August 3, 2017)
	c. Look at 3.7d. In addition to the off-road equipment, do you keep a log of the trucks coming to the site? 3.7d implies all vehicles, on and off road, coming to the site. What are you doing on this so far? Is it working?	Prologis will reply.
3.3c	Bio-diesel fuel; add a new point below 3.3c regarding encouraging the use of bio-diesel fuel.	Prologis found out from the general contractor that the use of bio diesel fuel in equipment designed to use diesel fuel voids the manufacturer's warranty. Based on voiding the warranty, Prologis does not feel it is realistic to require the contractors or owners of the construction equipment to take that risk. 3.3d encourages the use of equipment that was designed to use alternative fuels.
General	Complaint log	There is a complaint log and for the building currently under construction (CE-1). To date, no complaints have been received.

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/16/2018 8:07:28 PM
To: gnudd@baaqmd.gov; hhilken@baaqmd.gov
Subject: Port to EIP re cochairs mtg: MAQIP engagement criteria

Greg & Henry

FYI re exchange between EIP and Port below. Any info on this mornings "co-chairs" meeting would be appreciated. We are speaking with CONCUR/Port tomorrow morning and plan to emphasize need for IWG and revisit of 2009 evaluation, IF the task force is top be reconvened. Still tracking 2016 recommendations following up on 2009 evaluation, same consultants both times, convinced there are some substantive recommendations that deserve attention.

Richard Grow
US EPA, R9
(415) 947-4104

From: Richard Sinkoff [rsinkoff@portoakland.com]
Sent: Tuesday, January 16, 2018 11:53 AM
To: Brian Beveridge; Scott McCreary; Chris Lytle
Cc: Margaret Gordon; Grow, Richard; David Vintze; Lee, Anna, Public Health, CAPE; Amy Tharpe; Laura Arreola
Subject: RE: MAQIP engagement criteria

Good morning, Brian,
Thank you for your e-mail. I am sorry that WOEIP elected to not join the conversation this morning; however, we do hear your concerns.
The Port is keenly interested in WOEIP's engagement and I trust that we can find common ground.
I will reach out to you by phone this afternoon. We are concurrently reviewing the engagement criteria that WOEIP presented to the Port last week.

Are you available this afternoon for a chat?

Best,

Richard

From: Brian Beveridge [ma Personal Address / Ex. 6
Sent: Monday, January 15, 2018 7:16 PM
To: Richard Sinkoff <rsinkoff@portoakland.com>; Scott McCreary <scott@concurinc.net>; Chris Lytle <clytle@portoakland.com>
Cc: Margaret Gordon Personal Address / Ex. 6 Richard Grow <grow.richard@epa.gov>; David Vintze <DVintze@baaqmd.gov>; Lee, Anna, Public Health, CAPE <Anna.Lee@acgov.org>
Subject: MAQIP engagement criteria

Hello Richard and Scott
Unfortunately I will not be attending the interview co-chairs meeting on Tuesday, Jan 16. At our meeting on Monday, Jan 8, I presented a set of engagement criteria and requested that the Port address the issues listed. Perhaps a week was not enough time, but it makes little sense for us as representatives of the community to enter into yet another unilateral planning process with the Port.

Our attendance without a reply to our concerns and expectations would imply that we are satisfied with the process that has been initiated by the Port. Adding the stakeholders after the fact is unacceptable. The Port now wants to rush to judgement on many issues critical to the health of our West Oakland neighbors, all for the sake of meeting a last minute budget deadline. This work could have been undertaken months ago.

This delay, the self-imposed urgency, speaks volumes about the Port's real commitment to true action in the MAQIP Update. It appears that the purpose of this exercise is to get public money while making no real financial or policy commitment by the Port. This is all to familiar.

If the Port administration wishes to meet and discuss real community engagement, we are willing, but this process strikes us as being for appearance sake only and that is not in our interest.

Sincerely, Brian Beveridge

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 11/2/2017 6:42:31 PM
To: Zimpfer, Amy [Zimpfer.Amy@epa.gov]
Subject: RE: Port of Oakland press release: City, Port of Oakland work with neighbors to get trucks on track

Deliberative Process / Ex. 5

From: Zimpfer, Amy
Sent: Thursday, November 02, 2017 10:52 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: Fwd: Port of Oakland press release: City, Port of Oakland work with neighbors to get trucks on track

What do you know about this?

Amy Zimpfer, Associate Director
USEPA, Region 9, Air Division
zimpfer.amy@epa.gov
+1 415.947.4146

Sent from my iPhone

Begin forwarded message:

> **From:** "Port of Oakland" <portofoakland@public.govdelivery.com>
> **Date:** November 2, 2017 at 8:03:40 AM PDT
> **To:** zimpfer.amy@epa.gov
> **Subject: Port of Oakland press release: City, Port of Oakland work with neighbors to get trucks on track**
> **Reply-To:** portofoakland@public.govdelivery.com

PORT OF OAKLAND

90 YEARS OF PUBLIC SERVICE
FEBRUARY 12, 1927–FEBRUARY 12, 2017

PRESS RELEASE

FOR IMMEDIATE RELEASE

City, Port of Oakland work with neighbors to get trucks on track

New plan due in 2018 would address trucking in West Oakland

Oakland, Calif. – Nov. 2, 2017: City and Port of Oakland officials are meeting with neighbors to hear concerns about big rig traffic on streets in West Oakland. The agencies say they anticipate a new West Oakland Truck Management Plan by the fall of 2018 that will address trucking problems in the area. The goal: steer heavy truck traffic away from West Oakland residences bordering the Port.

"This will be a plan that relies on community input to address truck circulation and parking," said Patricia McGowan, Senior Planner for the City of Oakland Planning and Building Department. "We want trucks to be less disruptive by controlling where they drive and park."

Officials spoke last month at the first of five community workshops in West Oakland to be conducted by the City and Port. About 100 people attended to provide their views on diesel-powered semis hauling cargo containers near their homes and businesses. Among the concerns:

- Safety;
- Lack of truck route signs;
- Diesel exhaust; and
- Big rigs parked overnight in residential neighborhoods.

About 3,000 trucks daily transport containers in Oakland, said Richard Sinkoff, the Port's Environmental Programs and Planning Director. Most of that traffic sticks to Port roads or nearby freeways, he said. But truckers in search of fuel, food or repairs, sometimes detour through nearby West Oakland.

The City designated truck routes around the area in 2005, said Ms. McGowan. But not every driver stays on track, she pointed out. The new plan will specify where trucks can drive and park. It will also strengthen enforcement of truck restrictions.

The City and Port are conducting workshops to find out what else needs to be in the plan. "That's why we are holding the public meetings and encouraging public input," said Ms. McGowan. "We want the community to come together with the City and the Port to develop a plan that addresses their concerns."

The City and Port said they are already taking steps to steer freight-haulers away from residential neighborhoods. Truck service centers are planned at the Port and at an adjacent City development so that drivers won't have to venture into West Oakland for fuel, food and other services. Overnight truck parking spaces are being added, too.

About the Port of Oakland

The Port of Oakland oversees the Oakland seaport, Oakland International Airport, and 20 miles of waterfront including Jack London Square. Together with its business partners, the Port supports more than 73,000 jobs in the region and nearly 827,000 jobs across the United States. Connect with the Port of Oakland and Oakland International Airport through Facebook, or with the Port on Twitter, YouTube, and at www.portofoakland.com.

Media Contacts:
Mike Zampa
Communications Director
Port of Oakland

(510) 627-1565
mzampa@portoakland.com

Marilyn Sandifur
Port Spokesperson
Port of Oakland
(510) 627-1193
msandifur@portoakland.com

###

PORT OF OAKLAND

Questions? Contact Us

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This email was sent to zimpfer.amy@epa.gov, on behalf of Port of Oakland · 530 Water Street · Oakland, CA 94607 · 510-627-1100

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/7/2017 5:26:26 PM
To: vmt_3@msn.com
Subject: Fw: Cit science at ground zero: Env. Defense Fund explanation/discussion of air quality data for Oakland
Attachments: EDF AQ press release final.pdf; EDF AQ cover letter to Mayor Schaaf.pdf; Untitled Attachment

Vernice - I saw OEJ was poking around on citizen science in port communities. The exchange below described recent doings Ms. Margaret's community. Richard

---

From: Grow, Richard
Sent: Friday, July 7, 2017 10:20 AM
To: Buzzelle, Stanley
Cc: Reyes, Deldi
Subject: Cit science at ground zero: Env. Defense Fund explanation/discussion of air quality data for Oakland

Deliberative Process / Ex. 5

Richard

From: Grow, Richard
Sent: Saturday, July 1, 2017 1:08 PM
To: Reyes, Deldi; BANDROWSKI, MIKE; Vallano, Dena; Davidson, Ken
Subject: Fw: Env. Defense Fund explanation/discussion of air quality data for Oakland

Deldi, Mike and a few others

The Oakland City Planning department is hosting a presentation by EDF on the West Oakland monitoring study on Monday 7/10 11-12 at City Hall. Not exactly a public event but WOEIP has asked me to attend and I'm sure it would be fine if 2-3 others from our office wanted to joint. Given the players, the discussion as to the implications of the study may be interesting. Clips and correspondence attached and linked. Pls let me know if you plan to attend. Thx

Richard

Where Oakland City Hall, 3rd floor ConfRoom - Building Bridges

map

Calendar Patricia McGowan

Source Env. Defense Fund explanation/discussion of air quality data for Oakland

Description It is being rescheduled for Monday July 10, 11am at Oakland City Hall, Building Bridges Conference room, third floor (same floor as the Mayor's office). Fern U. from the Environmental Defense Fund will explain the air quality data that was collected for West Oakland and downtown Oakland. The attached outlook item contains the links to the data for your use and reference before the meeting. Thank you and I hope to see you can attend. Patricia McGowan City of Oakland 510-238-3588

From: Margaret Gordon **Personal Address / Ex. 6**
Sent: Friday, June 30, 2017 12:22 PM
To: Grow, Richard
Subject: Fwd: Env. Defense Fund explanation/discussion of air quality data for Oakland

OK Richard,

Here are some early press coverage so far, FYI:

https://www.google.com/amp/s/amp.cnn.com/money/2017/06/05/technology/google-street-view-edf-air-quality-oakland/index.html

http://www.wired.co.uk/article/air-pollution-maps-carbon-emissions

---

Air pollution map reveals pollution in London, UK and ...

www.wired.co.uk

Causes of air pollution is highlighted on hyper-local pollution maps, interactive maps by the Tomorrow project and the Air Quality Index

---

https://www.wired.com/2017/06/race-pollution-sensing-tech-oakland/

And a feature on Google blog (Google has been a partner on this project):
https://blog.google/products/maps/lets-clear-air-mapping-our-environment-our-health/

Ms.M

--

Ms. Margaret Gordon/Co-Director
West Oakland Environmental Indicators Project
349 Mandela Parkway
Oakland, CA 94607
Personal Address / Ex. 6 rect line
www.woeip.org

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 11/14/2017 11:12:57 PM
To: Reyes, Deldi [Reyes.Deldi@epa.gov]
Subject: Thursday talk with ECRCO re W.O.: Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9
Attachments: City and Port Joint Proposed Informal Resolution Agreement.pdf; City and Port DRAFT Informal Resolution Agreement REDLINE to EPA DOT Draft.pdf; CLEAN Port Draft Informal Resolution Agreement.docx

Deldi – just saw that Kurt's invite to meet/talk Thursday (8:30) didn't go to you. Alexis says she'll join for the first half hour so we can meet on 19. Into the soup.

Richard

From: Temple, Kurt
Sent: Monday, November 13, 2017 9:10 AM
To: Rhines, Dale <rhines.dale@epa.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>
Subject: FW: Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9

Hello. Following up on the email I just sent to DOT. Would it be possible for the EPA team to meet and discuss this Thursday? Please let me know if that will or will not work.

Thanks,

Kurt

From: Dorka, Lilian
Sent: Sunday, November 12, 2017 4:15 PM
To: Temple, Kurt <Temple.Kurt@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Yvette Rivera <yvette.rivera@dot.gov>; ryan.fitzpatrick@dot.gov
Subject: Fwd: Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9

Sent from my iPhone

Begin forwarded message:

> **From:** "Michele Heffes" <mheffes@portoakland.com>
> **To:** "charles.james@dot.gov" <charles.james@dot.gov>, "Dorka, Lilian" <Dorka.Lilian@epa.gov>
> **Cc:** "Parker, Barbara" <BParker@oaklandcityattorney.org>, "Bee, Maria" <MBee@oaklandcityattorney.org>, "Cappio, Claudia (CCappio@oaklandnet.com)" <CCappio@oaklandnet.com>, "Danny Wan" <dwan@portoakland.com>, "Michele Heffes" <mheffes@portoakland.com>, "Chris Lytle" <clytle@portoakland.com>, "Michele Heffes" <mheffes@portoakland.com>, "Smith, Jamie" <JSmith@OaklandCityAttorney.org>, "Laurice Henry-Ross" <lhenry@portoakland.com>
> **Subject: Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9**

Dear Ms. Dorka and Mr. James:

Attached please find a November 10, 2017, letter (including the 2 referenced attachments) from Oakland City Attorney, Barbara J. Parker, and Port Attorney, Danny Wan, concerning the above-referenced matter. Hard copies will be sent via First Class Mail. Please let me know if you have any questions.

Michele

Michele Heffes
Assistant Port Attorney
Port Attorney's Office
530 Water Street
Oakland, CA 94607
Phone: (510) 627-1348
mheffes@portoakland.com

ATTORNEY-CLIENT PRIVILEGED

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Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/16/2018 8:01:59 PM
To: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: EIP-Port exchange: MAQIP engagement criteria

Deliberative Process / Ex. 5

From: Richard Sinkoff [rsinkoff@portoakland.com]
Sent: Tuesday, January 16, 2018 11:53 AM
To: Brian Beveridge; Scott McCreary; Chris Lytle
Cc: Margaret Gordon; Grow, Richard; David Vintze; Lee, Anna, Public Health, CAPE; Amy Tharpe; Laura Arreola
Subject: RE: MAQIP engagement criteria

Good morning, Brian,
Thank you for your e-mail. I am sorry that WOEIP elected to not join the conversation this morning; however, we do hear your concerns.
The Port is keenly interested in WOEIP's engagement and I trust that we can find common ground.
I will reach out to you by phone this afternoon. We are concurrently reviewing the engagement criteria that WOEIP presented to the Port last week.

Are you available this afternoon for a chat?

Best,

Richard

From: Brian Beveridge [mailto: **Personal Address / Ex. 6**
Sent: Monday, January 15, 2018 7:16 PM
To: Richard Sinkoff <rsinkoff@portoakland.com>; Scott McCreary <scott@concurinc.net>; Chris Lytle <clytle@portoakland.com>
Cc: Margaret Gordon **Personal Address / Ex. 6** Richard Grow <grow.richard@epa.gov>; David Vintze <DVintze@baaqmd.gov>; Lee, Anna, Public Health, CAPE <Anna.Lee@acgov.org>
Subject: MAQIP engagement criteria

Hello Richard and Scott
Unfortunately I will not be attending the interview co-chairs meeting on Tuesday, Jan 16. At our meeting on Monday, Jan 8, I presented a set of engagement criteria and requested that the Port address the issues listed. Perhaps a week was not enough time, but it makes little sense for us as representatives of the community to enter into yet another unilateral planning process with the Port.

Our attendance without a reply to our concerns and expectations would imply that we are satisfied with the process that has been initiated by the Port. Adding the stakeholders after the fact is unacceptable. The Port now wants to rush to judgement on many issues critical to the health of our West Oakland neighbors, all for the sake of meeting a last minute budget deadline. This work could have been undertaken months ago.

This delay, the self-imposed urgency, speaks volumes about the Port's real commitment to true action in the MAQIP Update. It appears that the purpose of this exercise is to get public money while making no real financial or policy commitment by the Port. This is all to familiar.

If the Port administration wishes to meet and discuss real community engagement, we are willing, but this process strikes us as being for appearance sake only and that is not in our interest.

Sincerely, Brian Beveridge

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/16/2018 6:44:05 PM
To: Yura, Elizabeth@ARB [eyura@arb.ca.gov]; Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]; Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]
Subject: RE: RSVP: Availability for interagency call about MAQIP

Hi Elizabeth, welcome back. I think this will be held off on for now pending our own (EPA) call tomorrow with CONCUR in which we plan to raise the IWG, Viveka Chen evaluation and other issues, and also to see what becomes of today's planned "co-chairs" meeting which Brian informed the Port last night WOEIP would not be attending due to the Port's not responding to the WOEIP criteria presented to Sinkoff et al a week ago yesterday. Hopefully if the TF is to proceed, the Port will see that the proper sequencing of things will provide adequate time for the IWG to regroup.

Richard

From: Yura, Elizabeth@ARB [eyura@arb.ca.gov]
Sent: Tuesday, January 16, 2018 10:22 AM
To: Lee, Anna, Public Health, OOD; Grow, Richard; Marvin, Cynthia@ARB
Subject: RE: RSVP: Availability for interagency call about MAQIP

Hi all, I'm back from DC and finally have access to my email again (CARB server migration late last week totally cut off my access! Errrrr).

I can do a call today around 3:15 (I have a quick meeting at 3pm I need to attend), or tomorrow at 9am. Let me know if either of those work!

Elizabeth Yura
Chief, Freight Activity Branch
California Air Resources Board
Direct: (916) 322-8277
Branch Line: (916) 323-4327
Elizabeth.Yura@arb.ca.gov

-----Original Message-----
From: Lee, Anna, Public Health, OOD [mailto:Anna.Lee@acgov.org]
Sent: Friday, January 12, 2018 8:51 PM
To: Grow, Richard <Grow.Richard@epa.gov>; Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>
Subject: RE: RSVP: Availability for interagency call about MAQIP

Thanks Richard. CONCUR's response to the rushed timeline is that Richard Sinkoff is pushing for a process (3 meetings over the next 3 months) to get advice before he submits for some grant applications and that the scope to be around reviewing the strategies to get to the last ~10% of emissions reduction to achieve the 85% by 2020. They also said that they hadn't seen the Viveka report until a couple days ago and were surprised that they weren't interviewed for it. But they have it and will forward it. I told them I don't get why they need to convene the whole MAQIP structure and process right now. So much has changed (updated health thresholds, new air monitoring studies) and we're so close to 2020 that they're better off committing to a new stronger goal, coordinating with other planning processes like AB 617 process. I also brought up that given there's a lot of mistrust from the past process, that the Port's going to have to really show how they're going to be transparent and accountable to the community for them to stay at the table. That's going to be hard when things are moving so quickly.

Didn't hear that Jean retired! She was the MAQIP rep, right? Too bad we're losing that institutional memory.

Anna Lee
Local Policy Coordinator
Alameda County Public Health Department
1000 Broadway, Suite 500
Oakland, CA 94607
anna.lee@acgov.org | Phone: (510) 267-8019 _____
From: Grow, Richard [Grow.Richard@epa.gov]
Sent: Friday, January 12, 2018 7:33 AM
To: Lee, Anna, Public Health, OOD; Marvin, Cynthia@ARB; Yura, Elizabeth@ARB
Subject: RE: RSVP: Availability for interagency call about MAQIP

Anna - Thanks, still juggling dates. Some questions we plan to explore in our "interview" with CONCUR; no way is this just us being "surveyed":

- What's the rush ?
- if "reconvene" (their project description), EIP again as co-chair ?

- co-chairs involved in (1) defining project, (2) setting schedule, (3) setting agenda ?
- when/where will there be open discussion of 2009 evaluation ? (we don't want this just one on one, needs open discussion)
- Can we see 2016 report by Viveka/Anuja ? (Scott mentioned it in an email to EIP) ?
- Status of response to EIP criteria (provided to Port/CONCUR on 1/8) ?
- We see a role for IWG; has that been considered, provided for ? Is ther time for us to regroup the IWG ? if not, why not ?
- etc.

Overall the questions go to how deep, serious or meaningful is this upcoming exercise ? If it is truly substantive, why not take time, design and do it right ? If not, why bother with a TF ?

Meeting with BAAQMD this aft on AB617, maybe learn more about their thoughts on MAQIP (Greg Nudd, replacing Jean who retired, designated by Jack B as their rep on TF.)

Richard

From: Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]
Sent: Thursday, January 11, 2018 8:58 PM
To: Marvin, Cynthia@ARB; Grow, Richard; Yura, Elizabeth@ARB
Subject: RE: RSVP: Availability for interagency call about MAQIP

Hi everyone,

Happy New Year! I can talk Tuesday, 3-4pm and Wednesday 9-10 or 11-12. There's a chance I can talk Tuesday before 11am, but I'm still waiting to hear back about another meetings, so I want to hold that time for now. By the way, Dr. Davis and I are talking to Concur tomorrow at 3pm. I haven't received an invitation for 1/26 either.

Thanks
Anna

Anna Lee
Local Policy Coordinator
Alameda County Public Health Department
1000 Broadway, Suite 500
Oakland, CA 94607
anna.lee@acgov.org | Phone: (510) 267-8019

From: Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]
Sent: Thursday, January 11, 2018 5:00 PM
To: Grow, Richard; Yura, Elizabeth@ARB; Lee, Anna, Public Health, OOD
Subject: RE: RSVP: Availability for interagency call about MAQIP

I am totally booked during your times, but Liz may have a bit more flexibility. She's in DC and may need more time than usual to respond.
Cyn

PS, Hi Anna, happy new year!

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Thursday, January 11, 2018 3:29 PM
To: Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>; 'Lee, Anna, Public Health, CAPE' <Anna.Lee@acgov.org>
Subject: RSVP: Availability for interagency call about MAQIP

Cynthia, Elizabeth and Anna

We have just responded to the Port/CONCUR invite to join this round of the MAQIP task force, but also told them we are talking with the agencies who made up the IWG on the previous MAQIP effort and may need time to have those discussions, which may impede their planned first (of three) meetings set for January 26 (for which we have not seen an invitation). I've heard back from Jack B that he agrees there should be an IWG again this time and it should have some discussion before the MAQIP TF is convened. He also identified Greg Nudd as the main rep on the TF, though Jack intends to act as one of the co-chairs of the TF, as BAAQMD (and EIP) did last time.

This note is to see whether you are available for a first rather informal conversation next Tuesday or Wednesday at any of the times listed below. For now we see the IWG as including only the environmental/health agencies (ie not the City or Port) meaning CARB, BAAQMD, ACPHD and EPA. Attaching EIP conditions as of Monday when presented to Port and the current CONCUR project description.

Times:

Tuesday 1/16: 10-12, 1-2, 3-4
Wednesday 1/17: 9-10, 11-12

If none of these work we may have to consider Thursday morning, but sooner would be good.

Thanks

Richard

Personal Matters / Ex. 6

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:23:00 PM
To: Maier, Brent [Maier.Brent@epa.gov]; Nazmi, Niloufar [Nazmi.Niloufar@epa.gov]
CC: Adams, Elizabeth [Adams.Elizabeth@epa.gov]; Lakin, Matt [Lakin.Matthew@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: Desk statement: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - RECIPIENTS - 7-18-2017.pdf; REACTIVE DESK STATEMENT - Acceptance for Investigation - Oakland City and Port complaint 7-18-17.docx

Importance: High

Please forward the desk statement to whomever is appropriate within our office if they don't already have it. Thx

Richard

Personal Matters / Ex. 6

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 4:07 PM
To: Grantham, Nancy
Cc: Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin; Albores, Richard
Subject: FW: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Hi Nancy,

Wanted to let you know that today we issued the attached Letter of Acceptance, accepted this complaint for investigation. The complaint was filed with EPA's ECRCO as well as DOT's Departmental Office of Civil Rights and we have issued a joint letter. We anticipate that this acceptance for investigation might generate some press. In anticipation of this, we have prepared the attached Reactive Desk Statement for use in responding to press.

Thanks very much for your help and please let me know if you have any questions.

Lily

(PS: we have shared the Reactive Desk Statement with DOT-DOCR which they will use as well I responding to press.)

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 6:52 PM
To: 'officeofthemayor@oaklandnet.com' <officeofthemayor@oaklandnet.com>; 'colbruno@portcommissioner.com' <colbruno@portcommissioner.com>
Cc: Rivera, Yvette (OST) <yvette.rivera@dot.gov>; 'Charles.james@dot.gov' <Charles.james@dot.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <olone.mary@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler,

Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Harrison, Brenda <Harrison.Brenda@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Importance: High

Dear Mayor Schaaf and Mr. Colbruno:

I am writing on behalf of the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), to notify you that, per the attached Letter of Acceptance, the agencies have accepted for investigation the above-referenced civil rights complaint. The attached Letter of Acceptance has also been mailed to you via certified mail. Please let us know if you have any questions.

Sincerely,

Lilian S. Dorka

Lilian Sotolongo Dorka, Esq.
Director, External Civil Rights Compliance Office
EPA, Office of General Counsel
202-564-9649
WJC-N Room 2450

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

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

July 18, 2017

The Honorable Libby Schaaf
Mayor, City of Oakland
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Michael Colbruno
President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, CA 94607

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

Dear Mayor Schaaf and Mr. Colbruno:

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

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

have determined that the complaint meets the jurisdictional requirements of both Agencies, and therefore the complaint will be jointly investigated.

Accordingly, the investigation will focus on:

1. Whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the Oakland Army Base subjects the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

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

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

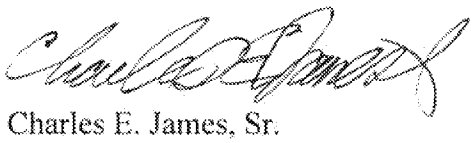
This does not foreclose resolution of matters raised in the complaint through informal resolution, including alternative dispute resolution (ADR). Both DOT's and EPA's nondiscrimination regulations provide that DOCR and ECRCO will attempt to resolve complaints informally whenever possible. 49 C.F.R.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

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights

protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with DOCR and ECRCO.

Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's DOCR, or Ericka Farrell, Case Manager in EPA's ECRCO, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Farrell can be reached at (202) 564-0717, or farrell.ericka@epa.gov.

Sincerely,



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

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:14:22 PM
To: Kaplan, Rebecca [RKaplan@oaklandnet.com]
CC: Sheng Thao [sthao@oaklandnet.com]
Subject: Fw: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - COMPLAINANTS - 7-18-2017.pdf

Importance: High

Letter to complainants

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 3:58 PM
To: ygarcia@earthjustice.org; pcort@earthjustice.org; Aadeyeye@earthjustice.org
Cc: Rivera, Yvette (OST); Charles.james@dot.gov; Jang, Deeana (OST); Fitzpatrick, Ryan (OST); Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin
Subject: RE: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

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

I am writing on behalf of the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), to notify you that, per the attached Letter of Acceptance, the agencies have accepted for investigation the above-referenced civil rights complaint. The attached Letter of Acceptance has also been mailed to you via certified mail. Please let us know if you have any questions.

Sincerely,

Lilian S. Dorka

Lilian Sotolongo Dorka, Esq.
Director, External Civil Rights Compliance Office
EPA, Office of General Counsel
202-564-9649
WJC-N Room 2450

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

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

July 18, 2017

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

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

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

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Accordingly, the investigation will focus on:

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

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

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

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

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

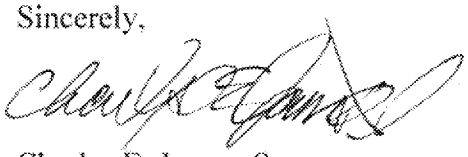
No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual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

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

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

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

Sincerely,



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

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:13:40 PM
To: Kaplan, Rebecca [RKaplan@oaklandnet.com]
CC: Sheng Thao [sthao@oaklandnet.com]
Subject: Fw: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - RECIPIENTS - 7-18-2017.pdf

Importance: High

Rebecca

Separate letter to complainants to follow.

Richard

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 3:52 PM
To: officeofthemayor@oaklandnet.com; colbruno@portcommissioner.com
Cc: Rivera, Yvette (OST); Charles.james@dot.gov; Jang, Deeana (OST); Fitzpatrick, Ryan (OST); Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin
Subject: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

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Lilian S. Dorka

Lilian Sotolongo Dorka, Esq.
Director, External Civil Rights Compliance Office
EPA, Office of General Counsel
202-564-9649
WJC-N Room 2450

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

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

July 18, 2017

The Honorable Libby Schaaf
Mayor, City of Oakland
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Michael Colbruno
President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, CA 94607

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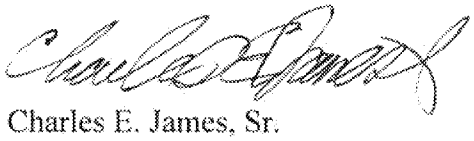
Sincerely,



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

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/16/2018 4:56:32 AM
To: Brian Beveridge Personal Address / Ex. 6
Subject: RE: Networking: MAQIP engagement criteria

Hi. Don't need you to carry the load on IWG, just thought it might give you one more question to pose to those rushing along in case there is an attempt to cast EIP as the problem holding things up. It's up to the IWG to defend itself and I'm guessing we will. With the T6 complaint still unresolved I feel it is important that our agency not participate in any empty exercises. Thanks

From: Brian Beveridge Personal Address / Ex. 6
Sent: Monday, January 15, 2018 8:49 PM
To: Grow, Richard
Subject: Re: Networking: MAQIP engagement criteria

Hey
Anna was on this email, but I will include ARB in he future. The "response" issue is about how they are willing to suggest change, which I don't really expect to hear much proactively. But, Chris Lytle may be desparate enough about his budget, and the appearance of equity, to actually come to the table.
We'll see what happens next.

The IAW is a good thing. I didn't know we needed to be the ones to make it happen. Will take it under advisement and see what we can do.
Thanks, Brian

On Jan 15, 2018 8:26 PM, "Grow, Richard" <Grow.Richard@epa.gov<mailto:Grow.Richard@epa.gov>> wrote:
Brian

Thanks for sharing this. In order to keep the agencies informed of your views pls also be copying Greg Nudd (replaced Jean R.) and Cynthia and Elizabeth at ARB, Anna at County Health. I forarded your note below to all but Anna, didn't have her email address with.

I believe the agencies will be insisting on a reconvening of the IWG prior to any reconvening of the task force, though no one has flatly stated that at this point (our "interview" is Weds morning and that's our current pla based on discussions with the other agencies). In the meantime I think it's fair for you to ask CONCUR/Port "what about the IWG ?" etc.

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Finally, to state the obvious but sometimes lost amidst the verbiage, what we need to hear from the Port vis a vis these evaluations and recommendations is not simply their "response" but more specifically, what CHANGES are being made.

Be well....

Richard G.

From: Brian Beveridge Personal Address / Ex. 6 om<mailto Personal Address / Ex. 6
Sent: Monday, January 15, 2018 7:16 PM
To: rsinkoff@portoakland.com<mailto:rsinkoff@portoakland.com>; Scott McCreary; Chris Lytle
Cc: Margaret Gordon; Grow, Richard; David Vintze; Lee, Anna, Public Health, CAPE
Subject: MAQIP engagement criteria

Hello Richard and Scott
Unfortunately I will not be attending the interview co-chairs meeting on Tuesday, Jan 16. At our meeting on Monday, Jan 8, I presented a set of engagement criteria and requested that the Port address the issues listed. Perhaps a week was not enough time, but it makes little sense for us as representatives of the community to enter into yet another unilateral planning process with the Port.

Our attendance without a reply to our concerns and expectations would imply that we are satisfied with the process that has been initiated by the Port. Adding the stakeholders after the fact is unacceptable. The Port now wants to rush to judgement on many issues critical to the health of our West Oakland neighbors, all for the sake of meeting a last minute budget deadline. This work could have been undertaken months ago.

This delay, the self-imposed urgency, speaks volumes about the Port's real commitment to true action in the MAQIP Update. It appears that the purpose of this exercise is to get public money while making no real financial or policy commitment by the Port. This is all to familiar.

If the Port administration wishes to meet and discuss real community engagement, we are willing, but this process strikes us as being for appearance sake only and that is not in our interest.

Sincerely, Brian Beveridge

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:12:02 PM
To: lschaaf@oaklandnet.com
Subject: Fw: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - RECIPIENTS - 7-18-2017.pdf

Importance: High

Mayor Schaaf - Sending this to you at this address in case the one used by HQ ("officeofthemayor...") doesn't reach you. Be well.

Richard Grow
US EPA
Region 9
(415) 947-4104

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 3:52 PM
To: officeofthemayor@oaklandnet.com; colbruno@portcommissioner.com
Cc: Rivera, Yvette (OST); Charles.james@dot.gov; Jang, Deeana (OST); Fitzpatrick, Ryan (OST); Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin
Subject: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Dear Mayor Schaaf and Mr. Colbruno:

I am writing on behalf of the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), to notify you that, per the attached Letter of Acceptance, the agencies have accepted for investigation the above-referenced civil rights complaint. The attached Letter of Acceptance has also been mailed to you via certified mail. Please let us know if you have any questions.

Sincerely,

Lilian S. Dorka

Lilian Sotolongo Dorka, Esq.
Director, External Civil Rights Compliance Office
EPA, Office of General Counsel
202-564-9649
WJC-N Room 2450

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

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

July 18, 2017

The Honorable Libby Schaaf
Mayor, City of Oakland
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Michael Colbruno
President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, CA 94607

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

Dear Mayor Schaaf and Mr. Colbruno:

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

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

have determined that the complaint meets the jurisdictional requirements of both Agencies, and therefore the complaint will be jointly investigated.

Accordingly, the investigation will focus on:

1. Whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the Oakland Army Base subjects the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

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

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

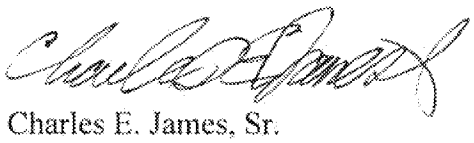
This does not foreclose resolution of matters raised in the complaint through informal resolution, including alternative dispute resolution (ADR). Both DOT's and EPA's nondiscrimination regulations provide that DOCR and ECRCO will attempt to resolve complaints informally whenever possible. 49 C.F.R.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

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights

protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with DOCR and ECRCO.

Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's DOCR, or Ericka Farrell, Case Manager in EPA's ECRCO, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Farrell can be reached at (202) 564-0717, or farrell.ericka@epa.gov.

Sincerely,



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

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:07:46 PM
To: Adams, Elizabeth [Adams.Elizabeth@epa.gov]; Lakin, Matt [Lakin.Matthew@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; LUEHE, DOUGLAS [luehe.douglas@epa.gov]; Miller, Amy [Miller.Amy@epa.gov]
CC: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Reyes, Deldi [Reyes.Deldi@epa.gov]; Israels, Ken [Israels.Ken@epa.gov]
Subject: Ltr to complainants: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - COMPLAINANTS - 7-18-2017.pdf

Importance: High

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 3:58 PM
To: ygarcia@earthjustice.org; pcort@earthjustice.org; Aadeyeye@earthjustice.org
Cc: Rivera, Yvette (OST); Charles.james@dot.gov; Jang, Deeana (OST); Fitzpatrick, Ryan (OST); Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin
Subject: RE: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

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

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202-564-9649
WJC-N Room 2450

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

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

July 18, 2017

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

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

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

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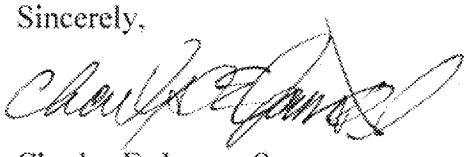

Charles E. James, Sr.
Director
Office of the Secretary of Transportation
Departmental Office of Civil Rights
U.S. Department of Transportation

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

002339 2020-10-29

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/16/2018 4:26:33 AM
To: Personal Address / Ex. 6
Subject: Networking: MAQIP engagement criteria

Brian

Thanks for sharing this. In order to keep the agencies informed of your views pls also be copying Greg Nudd (replaced Jean R.) and Cynthia and Elizabeth at ARB, Anna at County Health. I forarded your note below to all but Anna, didn't have her email address with.

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Richard G.

From: Brian Beveridge Personal Address / Ex. 6
Sent: Monday, January 15, 2018 7:16 PM
To: rsinkoff@portoakland.com; Scott McCreary; Chris Lytle
Cc: Margaret Gordon; Grow, Richard; David Vintze; Lee, Anna, Public Health, CAPE
Subject: MAQIP engagement criteria

Hello Richard and Scott
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Sincerely, Brian Beveridge

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/16/2018 4:18:07 AM
To: gnudd@baaqmd.gov; hhilken@baaqmd.gov; cynthia.marvin@arb.ca.gov; elizabeth.yura@arb.ca.gov
Subject: EIP not attending co-chairs mtg: MAQIP engagement criteria

FYI below re EIP position. Our own (EPA) interview with CONCUR is this Wednesday morning and our current plan is to insist, if there is to be a reconvening of the task force, first we need time for the IWG to regroup. We also feel topic #1 needs to be the Port's response and changes following the 2009 evaluation report. I have also confirmed that a subsequent 2016 report by the same consultants provided further recommendations that do not appear to have been accepted by the Port. Whether or not this is accurate, there needs to be discussion of the 2016 recommendations.

Richard Grow

From: Brian Beveridge Personal Address / Ex. 6
Sent: Monday, January 15, 2018 7:16 PM
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Cc: Margaret Gordon; Grow, Richard; David Vintze; Lee, Anna, Public Health, CAPE
Subject: MAQIP engagement criteria

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Sincerely, Brian Beveridge

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/16/2018 12:07:45 AM
To: Viveka Chen [viveka@igc.org]; Anuja Mendirat Personal Address / Ex. 6
Subject: RE: Question on Port work and reconvening MAQIP
Attachments: MAQIP Update Proj Description Working Draft Dec15.pdf; Engagement Criteria EIP Jan2018.docx

Viveka and Anuja

This is all very helpful. If I hadn't been hearing from Ms. Margaret and Brian neither my agency nor I'd guess any of the others would have heard anything about the reconvening until the staff told the Port Commission about it at the Dec15 meeting, and then again nothing until the Port contacted our agency by email a couple Fridays ago (January 5), asking to have their contractor (CONCUR) interview us in prep for a reconvened task force on January 26. I'm attaching the project description CONCUR distributed with their request There had been occasional noises about reconvening over the years and each time WOEIP and I agreed that the starting point for any thing would be the 2009 evaluation.

Meanwhile Ms. Margaret and Brian had put off their own interview, finally agreeing to one last Monday (Jan8), at which they presented the attached "criteria" for their involvement. And this past week after a quick round robin check in with BAAQMD, CARB and the County, the agencies have pretty much agreed that our own starting point will be, if there is to be a reconvening, first a reconvening of our own interagency workgroup, and then a discussion, as a group, of the 2009 evaluation, meaning not only the Port's "response" to the issues raised in it, but specifically what will be different. Since Scott mentioned your 2016 (?) report and recommendations, we're pressing to do likewise with that. The more general issue is understood rather bluntly as one of either do this right and meaningfully or please don't waste our time. My own sense is that a main reason there has been a rush to wrap up a truck plan and MAQIP update is the EPA and DOT's acceptance of a formal Title VI (Civil Rights Act) complaint filed against the Port by EIP (with EarthJustice) last April, the resolution of which could impose specific performance criteria, both substantive and procedural, on both the City and Port. For now attempts to reach a negotiated settlement have not reached agreement, the energy being devoted on that front being far exceeded by the flurry of activity we see on, for instance, the MAQIP and truck plan.

This may provide some context for the activity or lack thereof which you have observed. I'm still a fan of the Title VI process, or at least it's potential, since it goes to the real issue of discriminatory impacts and what can be done about them, and there's a fair amount of guidance and precedence to inform how to get to real resolution. Since April we have had a joint federal team including HQ offices of EPA, DOT and DOJ, with our office as "technical lead", dealing with the complaint. Of course there remains the fact that we feds ultimately report to the President, but for now the shared interest on all sides for professing some belief that resolution of the complaint is progressing has kept the negotiations, such as they are, uninterfered with. I'd be glad to talk anytime if there is interest.

Richard

From: Viveka Chen [viveka@igc.org]
Sent: Monday, January 15, 2018 2:27 PM
To: Anuja Mendiratta
Cc: Grow, Richard
Subject: Re: Question on Port work and reconvening MAQIP

Hi Anuja (and happy new year!)

Sorry to hear that they repeated a pattern that has happened in past efforts to revive community engagement.

Viveka

On Jan 15, 2018, at 2:19 PM, Anuja Mendiratta <anujamendiratta@yahoo.com<mailto:anujamendiratta@yahoo.com>> wrote:

Dear Richard and Viveka,

Viveka, thank you for sharing the context and outcomes of the process we engaged with the Port's Social Responsibility Division (SRD) in below.

Richard, Viveka's account pretty much covers what transpired. I was retrained beyond the scooping process and production of our recommendations report (post January 2016) to assist the SRD with the implantation of our recommendations, which included transparency about the process, outcomes and commitments by the Port and a report back session with those who participated in the scoping process. Unfortunately, to the best of my knowledge, despite my advocacy and persistence on this matter, SRD/the Port did not move forward with the implementation and communication next steps that Viveka and I recommended and which they retained me to provide support on. To be honest, I do not know or understand exactly what happened or why this process has seemed to stall out.

happy to discuss further as helpful.
best,
Anuja

--
Anuja Mendiratta, MES
Philanthropic + Nonprofit Consulting

~ Please consider the environment and human well-being before printing this e-mail ~

On Jan 5, 2018, at 12:47 PM, Viveka Chen <viveka@igc.org<mailto:viveka@igc.org>> wrote:

Hi Richard

Nice to hear from you. Appreciate a little news about what is happening with the Port.

Sorry to be slow in responding. I am still on winter break and spending time with my in-laws in Puerto Rico.

I had a look back at the 2009 evaluation report to remind myself of the flow of my work with the Port. The contract work left the Port with the evaluation and also a scenario for how to implement the recommendations which included launching a Maritime Stakeholder Group. As Scott describes, there was no implementation follow-up of note by the the Port.

In 2014 Margaret reached out to me to be the consultant working with Amy Tharpe on stakeholder outreach to revitalize the Port's approach to Community Stakeholder Engagement (CSE) especially given the opportunity of some receptivity on the part of the new Director Chris Lytle. I did not have sufficient confidence in any new stakeholder outreach work resulting in outcomes to lead this work, but Anuja Mendiratta was willing to lead it and I played a supporting role to provide historical context/memory, share some of the outreach work, and strategize with Anuja on recommendations. As consultants we produced an updated report given to Amy Tharpe and a recommendation that there be transparent communication with stakeholders regarding what the Port would do to revitalize its CSE (to report back on what the Port did with this most recent wave of Port-solicited stakeholder input). We as consultants were not in a position to distribute our January 2016 final report externally as it was produced for the Port internally. Anuja might have a better sense of what actually happened with that work and whether it was ever shared externally (if Amy and Laura in Social Engagement informed Anuja of that). Laura over at SE might be able to give you a sense of what happened with that work. Our consultant recommendations did advise the Port to create a CSE plan with accountabilities and budget and to have that plan formally approved by the Board of Commissioners and shared internally and externally with an emphasis of the ED setting an expectation of accountability to the plan by Port Directors. It might also be useful to share that our stakeholder outreach found that there was NOT a common call for a single broad stakeholder forum (which people thought might be too broad as to be able to accomplish much), but rather a more common theme was interest in more topic specific groupings to work on moving practical solutions. There were 4 topic areas of interest that emerged (shared below). It sounds like from Scott that the Port has convened one of these, a "Port Jobs & Workforce Development Stakeholder Working Group."

I hope this is useful Richard.

1. Jobs and Workforce Development: As a multiple generation regional employer, how can the Port help shape an agenda for community benefits and the cultivation of quality jobs?

2. Environment, Air Quality and Community Groups: Environmental and community concerns continue to be of paramount focus for regional stakeholders.

3. Economic Impact Stakeholders: As a local, regional and state level economic driver, the Port could provide leadership by developing an ongoing forum with its economic impact stakeholders.

4. Operations, Logistics and Security: As the Port strive to be competitive, it could benefit from focus on operations, technology, logistics and security concerns relevant to goods movement in and out of the Port and the Airport.

Sincerely,
Viveka

On Dec 27, 2017, at 6:27 PM, Grow, Richard <Grow.Richard@epa.gov<mailto:Grow.Richard@epa.gov>> wrote:

Viveka

Greetings, it's been a while. As the Port heads into convening a sort of follow on to the MAQIP, perhaps coincidentally related to being subject to a Civil Rights Act Title VI complaint, many of us have questions about whether the Port has truly dealt with the many critiques captured in your 2009 evaluation, which many of us are also rereading. Ms. Margaret asked Scott at Concur about this, to which he replied per below. I hope you and I can talk soon, but would also be curious whether the contract work referred to resulted in any sort of a product and, if so, whether it would or should be available to stakeholders such as Ms. Margaret, myself and others. I'd also be glad to provide background on how the Title VI issues are being dealt with.

Question: How Viveka's Chen 2009 evaluation is being inserted to the process and agenda.

Scott's response: In the years immediately following Viveka Chen's 2009 evaluation, due to challenging financial circumstances, the specific recommendation to convene a port maritime stakeholder group was not implemented. Since that time, the Port has undertaken several different efforts and has used a variety of formats to foster community engagement. The Port also entered into a second contract in 2016 with Viveka Chen and Anuja Mendiratta to gain the benefit of their expertise and insight, and has implemented several advisory groups and fora in response to these recommendations. One of those is the newly formed "Port Jobs & Workforce Development Stakeholder Working Group" to support the monitoring of employer performance at the Seaport Logistics Complex. Going forward, the Port stands ready to hear other advice and suggestions on public involvement.

I hope you are well

Richard
office: (415) 947-4104
cell Personal Address / Ex. 6

WEST OAKLAND ENVIRONMENTAL INDICATORS PROJECT

To: Richard Sinkoff, Port of Oakland
Scott McCreary, Concur

Jan. 08, 2018

Criteria for Community Participation in the 2018 Port of Oakland update of the Maritime Air Quality Improvement Plan

- The process is open and public. All stakeholder contributions are gathered, aggregated by the facilitators, and published as public documents, accompanied by the Port's responses.
- At least one member of WOEIP and one other informed community leader sits as Co-Chair of the Task Force. Among the duties of the co-chairs are approval of stakeholders, plan scope, agendas, notes, outcomes and sign-off approval of the final plan.
- The facilitators lead a public review of the Viveka Chen study of the original MAQIP process, and the subsequent report, and the Port addresses the issues raised by the original participants.
- Regulatory agencies participate in the Task Force, including, USEPA, USDOT, CARB, BAAQMD, ACPHD.
- Agency and WOEIP recommendations for effective planning documents are acknowledged and incorporated into the plan update. Incorporation requires documented consideration, adoption and implementation of best available technologies, considering measures adopted at other ports and goods movement communities, and implementation of innovative technologies supported by public funding, clearly measurable outcomes, and defined future actions through and Action Plan with clear implementation and continuing assessment of progress.
- Funding support for resident participation. Including child care and language translation services if needed by participants. Community resident content experts should be paid for their consultation comparable to other staff and consultants to the project via direct stipends or vendor contracts.

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Project Description – Dec 15 Working Draft

Port of Oakland Maritime Air Quality Improvement Plan Update-Task Force

The Port plans to reconvene the Maritime Air Quality Task Force (Task Force) for its 2018 MAQIP Update. This will follow up on the Task Force work in 2007 and the November 2013 Progress Report Meeting. The Task Force will work closely with the Port of Oakland's staff and technical consultants to review the Ports' strategies, compliance success and progress to date, and to make recommendations on forward-looking strategies towards fulfillment of the 2020 MAQIP goals and beyond in light of the current regulatory setting.

The Task Force will be re-convened by the Environmental Programs & Planning Department of the Port of Oakland. Task Force meetings will be open to the public and will provide a structure for observers to submit comments. Meetings will be agenda-driven and the primary deliberations will be among the Task Force members. Facilitation will be provided by CONCUR Inc., a neutral non-partisan environmental mediation firm based in the East Bay.

Charge of the Task Force

The Task Force will be asked to develop recommendations to the Port Board of Commissioners on the project-level commitments to be made by the Port towards its 2020 energy goals. Like other steps in the MAQIP process, this is consistent with the approach of a consultative planning process. Comments and advice voiced by the Task Force will be documented and provided to the Board of Port Commissioners.

The Task Force will provide a forum to:

- Build shared knowledge of Port Maritime emissions and changes to the regional air quality setting since 2015;
- Inform participants on progress, strategies, compliance success and new technologies to support MAQIP Diesel Particulate Matter (DPM) and criteria air pollutants goals;
- Identify emissions reduction measures which are commercially available, feasible and cost effective;
- Discuss technology options, partnerships and grant funding opportunities and considerations in support of Year 2020 goals and beyond (i.e., to year 2030);

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- Provide input to the Port on criteria and elements of the proposed Advanced Technology Program ("ATP") to promote State of California Year 2030 GHG reduction goals;

- Discuss and build support for recommended measures for consideration by the Board of Port Commissioners in early Summer 2018.

Impetus for the MAQIP Update Task Force

The MAQIP states that the Port will reconvene the MAQIP Task Force or a successor group "in about ten years, about two years before the 2020 planning horizon, for another review of progress, strategies, compliance success and new technologies." (11.3, p. 114)

Consistent with this guidance, the Port is reconvening the MAQIP Task Force to provide feedback on the Port's project-level commitments to identify emissions reduction measures and foster advanced technology to further DPM and GHG emissions reductions. The focus of stakeholder involvement at this stage is at the Master Plan level, to ensure that the design of specific programs is consistent with the planning guidance of the MAQIP.

Task Force Membership and Structure

The Task Force will meet in two or three half-day meetings in January - April 2018. Following the first meeting, it will be determined whether one or two additional meetings are needed. Meeting deliberations will be recorded in key outcomes memoranda and recommendations will be forwarded by Port staff to the Board of Port Commissioners.

Task Force membership will be the original MAQIP Task Force membership, and will include appropriate successors to the original members and any additional stakeholders as applicable. Members will represent: customers (maritime tenants and other maritime related businesses), government (regulatory, policymakers and interagency) and community (residential, environmental advocacy, local business and other special interest groups), and any additional stakeholders as applicable. The groups should represent a comprehensive stakeholder forum where the Port can effectively inform its community and engage with its multiple stakeholders on Port Maritime projects.

Criteria for Task Force Member Selection

The Task Force will be structured to include balanced representation of public agency, labor, business, neighborhood, and conservation interests.

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Individual members of the Task Force will be recruited based on these attributes:

- Currently working in the Port of Oakland's Maritime Operations area or residing or working in West Oakland (defined geographically as the "3-freeway area" bounded by 880, 980 and 580). Individuals from non-profits, government agencies, businesses, churches, and private organizations that conduct their work in West Oakland but are not based in West Oakland will also be considered.
- Able to bring first-hand knowledge and perspective to bear on Port of Oakland Maritime Air Quality Planning.
- Able to consider local air quality near the Port of Oakland Maritime operations in the context of the broader regulatory framework and goods movement system.
- Willing to express fundamental interests (as opposed to fixed positions) and to clearly convey the interests of one or more stakeholder groups.
- Capable of working collaboratively, seeking to integrate the interests of a broad range of constituencies.
- Committed to completing all aspects of the charge of the Task Force
- Able to meet at mutually convenient times.

The MAQIP Update will be composed to achieve a diversity of stakeholder perspectives, expertise and direct experience related to the Port's maritime emissions.

Background

In March 2008, the Port of Oakland committed to achieving an 85% reduction in seaport-related diesel health risk by 2020 from a 2005 baseline. To support this goal, the Port developed the MAQIP through a comprehensive public stakeholder participation process led by Port staff with the assistance of CONCUR, Inc. a Berkeley-based consultancy skilled in facilitating complex environmental agreements and plans. The original MAQIP Task Force of 35 stakeholders represented community members, Port tenants, environmental advocacy groups, air quality and health agencies, and maritime-related businesses. The MAQIP planning process was consultative in nature. The MAQIP represents a twelve-year emissions reduction framework (from Year 2009 through the Year 2020) focused on improving public health in West Oakland.

A key tool to track implementation of the MAQIP is the seaport emissions inventory. As a baseline, the Port prepared a comprehensive inventory of pollutant emissions from Port-related ships, harbor craft, cargo-handling equipment, trucks and locomotives in 2005. As new emissions control technologies are introduced in response to regulations and other initiatives taken by the Port, Port business

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partners, or other groups, the Port has tracked the resulting emissions reductions with respect to the MAQIP goals through quantitative updates to the baseline emissions inventory.

In 2013, the Port convened a MAQIP Progress Report Meeting to fulfill its commitment to report out on MAQIP implementation progress and to compare the results to the 2012 interim goals and to review likely progress toward the 2020 goals. In this meeting, we reported that we were meeting our air quality commitment, implementing projects, and making better-than-expected progress in achieving the MAQIP goals set in 2009. Key improvements were implemented via the Comprehensive Truck Management Program (CTMP), terminal improvements to create greater efficiency, and the Shore Power Program.

The 2015 Emissions Inventory Update indicated that the Port was on track to meet the clean air commitment the Port made in 2008. Total seaport Diesel Particulate Matter (DPM) emissions are down by -76% with cargo-handling equipment down by -82%, ocean going vessel emissions down by -75% and drayage truck emissions down by -98%. This progress is significant; however, there remains important work ahead to achieve the -85% goal.

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/13/2018 5:32:16 AM
To: Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]; Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]; Yura, Elizabeth@ARB [eyura@arb.ca.gov]
Subject: Next: RSVP: Availability for interagency call about MAQIP

Anna - Thanks for the update. We had a good talk with BAAQMD managers this aft at their offices, where we were meeting on something else (AB617), and they confirmed what Jack had written me, after which we got into more detail. I'm not sure how this will be expressed but basically we're going to insist on the IWG having time to meet and talk before any regrouping of the task force. Out of those discussions we may have our own conditions for participating, at a minimum (my guess) being a full discussion of Viveka's report (s) and what's being done differently to address those problems. But the underlying issue, again, not sure how this will be framed, is that a rushed cursory process is not worth the TF's time, and if they want a more meaningful process that is worth our time, they need to go about it differently. We (EPA) have agreed to a CONCUR discussion Wednesday morning and plan to go into it with our own questions, but our one minimum condition (for now) is to insist on having time for the iWG to regroup before any reconvening. For a number of reasons, among them the unresolved civil rights complaint hanging over the City and Port, we need to not participate in anything resembling a sham process.

It would be helpful if you could confirm, even informally, whether the County would be willing to participate in an IWG if it meets, and also whether you feel the County would be supportive of a position of insisting that the IWG have time to meet before any reconvening of the task force. Any thoughts or suggestions welcome.

Thanks

Richard

From: Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]
Sent: Friday, January 12, 2018 8:51 PM
To: Grow, Richard; Marvin, Cynthia@ARB; Yura, Elizabeth@ARB
Subject: RE: RSVP: Availability for interagency call about MAQIP

Thanks Richard. CONCUR's response to the rushed timeline is that Richard Sinkoff is pushing for a process (3 meetings over the next 3 months) to get advice before he submits for some grant applications and that the scope to be around reviewing the strategies to get to the last ~10% of emissions reduction to achieve the 85% by 2020. They also said that they hadn't seen the Viveka report until a couple days ago and were surprised that they weren't interviewed for it. But they have it and will forward it. I told them I don't get why they need to convene the whole MAQIP structure and process right now. So much has changed (updated health thresholds, new air monitoring studies) and we're so close to 2020 that they're better off committing to a new stronger goal, coordinating with other planning processes like AB 617 process. I also brought up that given there's a lot of mistrust from the past process, that the Port's going to have to really show how they're going to be transparent and accountable to the community for them to stay at the table. That's going to be hard when things are moving so quickly.

Didn't hear that Jean retired! She was the MAQIP rep, right? Too bad we're losing that institutional memory.

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From: Grow, Richard [Grow.Richard@epa.gov]
Sent: Friday, January 12, 2018 7:33 AM
To: Lee, Anna, Public Health, OOD; Marvin, Cynthia@ARB; Yura, Elizabeth@ARB
Subject: RE: RSVP: Availability for interagency call about MAQIP

Anna - Thanks, still juggling dates. Some questions we plan to explore in our "interview" with CONCUR; no way is this just us being "surveyed":

- What's the rush ?
- if "reconvene" (their project description), EIP again as co-chair ?
- co-chairs involved in (1) defining project, (2) setting schedule, (3) setting agenda ?
- when/where will there be open discussion of 2009 evaluation ? (we don't want this just one on one, needs open discussion)
- Can we see 2016 report by Viveka/Anuja ? (Scott mentioned it in an email to EIP) ?
- Status of response to EIP criteria (provided to Port/CONCUR on 1/8) ?

- We see a role for IWG; has that been considered, provided for ? Is ther time for us to regroup the IWG ? if not, why not ?
- etc.

Overall the questions go to how deep, serious or meaningful is this upcoming exercise ? If it is truly substantive, why not take time, design and do it right ? If not, why bother with a TF ?

Meeting with BAAQMD this aft on AB617, maybe learn more about their thoughts on MAQIP (Greg Nudd, replacing Jean who retired, designated by Jack B as their rep on TF.)

Richard

From: Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]
Sent: Thursday, January 11, 2018 8:58 PM
To: Marvin, Cynthia@ARB; Grow, Richard; Yura, Elizabeth@ARB
Subject: RE: RSVP: Availability for interagency call about MAQIP

Hi everyone,

Happy New Year! I can talk Tuesday, 3-4pm and Wednesday 9-10 or 11-12. There's a chance I can talk Tuesday before 11am, but I'm still waiting to hear back about another meetings, so I want to hold that time for now. By the way, Dr. Davis and I are talking to Concur tomorrow at 3pm. I haven't received an invitation for 1/26 either.

Thanks
Anna

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From: Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]
Sent: Thursday, January 11, 2018 5:00 PM
To: Grow, Richard; Yura, Elizabeth@ARB; Lee, Anna, Public Health, OOD
Subject: RE: RSVP: Availability for interagency call about MAQIP

I am totally booked during your times, but Liz may have a bit more flexibility. She's in DC and may need more time than usual to respond.
Cyn

PS, Hi Anna, happy new year!

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Thursday, January 11, 2018 3:29 PM
To: Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>; 'Lee, Anna, Public Health, CAPE' <Anna.Lee@acgov.org>
Subject: RSVP: Availability for interagency call about MAQIP

Cynthia, Elizabeth and Anna

We have just responded to the Port/CONCUR invite to join this round of the MAQIP task force, but also told them we are talking with the agencies who made up the IWG on the previous MAQIP effort and may need time to have those discussions, which may impede their planned first (of three) meetings set for January 26 (for which we have not seen an invitation). I've heard back from Jack B that he agrees there should be an IWG again this time and it should have some discussion before the MAQIP TF is convened. He also identified Greg Nudd as the main rep on the TF, though Jack intends to act as one of the co-chairs of the TF, as BAAQMD (and EIP) did last time.

This note is to see whether you are available for a first rather informal conversation next Tuesday or Wednesday at any of the times listed below. For now we see the IWG as including only the environmental/health agencies (ie not the City or Port) meaning CARB, BAAQMD, ACPHD and EPA. Attaching EIP conditions as of Monday when presented to Port and the current CONCUR project description.

Times:

Tuesday 1/16: 10-12, 1-2, 3-4
Wednesday 1/17: 9-10, 11-12

If none of these work we may have to consider Thursday morning, but sooner would be good.

Thanks
Richard

Personal Matters / Ex. 6

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/24/2018 8:48:02 PM
To: Machol, Ben [Machol.Ben@epa.gov]; McDaniel, Penelope [MCDANIEL.PENELOPE@EPA.GOV]; Donez, Francisco [Donez.Francisco@epa.gov]
Subject: W.O. update

Ben, Penny and Francisco

Just wanted to let you know there is a lot going on on the West Oakland Port/City front, but on the other hand nothing brewing that needs your immediate attention, but on the third hand wanted to let you know I am available to provide an update anytime.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/24/2018 5:56:56 PM
To: Donez, Francisco [Donez.Francisco@epa.gov]
CC: Reyes, Deldi [Reyes.Deldi@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Machol, Ben [Machol.Ben@epa.gov]; Buzzelle, Stanley [Buzzelle.Stanley@epa.gov]
Subject: RE: COAL: Port developers sue Calif. city over ban on shipments

Deliberative Process / Ex. 5

From: Donez, Francisco
Sent: Wednesday, January 24, 2018 9:46 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Reyes, Deldi <Reyes.Deldi@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Machol, Ben <Machol.Ben@epa.gov>; Buzzelle, Stanley <Buzzelle.Stanley@epa.gov>
Subject: FW: COAL: Port developers sue Calif. city over ban on shipments

Richard and all – FYI, in case you hadn't seen this yet.

From: MIKULIN, JOHN
Sent: Friday, January 19, 2018 3:50 PM
To: Donez, Francisco <Donez.Francisco@epa.gov>; McDaniel, Penelope <MCDANIEL.PENELOPE@EPA.GOV>
Subject: FW: COAL: Port developers sue Calif. city over ban on shipments

FYI

From: mikulin.john [mailto:email_this@eenews.net]
Sent: Friday, January 19, 2018 3:21 PM
To: MIKULIN, JOHN <MIKULIN.JOHN@EPA.GOV>; jmikulin@gmail.com
Subject: From Greenwire -- COAL: Port developers sue Calif. city over ban on shipments

This Greenwire story was sent to you by: mikulin.john@epa.gov

Personal message: https://www.eenews.net/greenwire/2018/01/19/stories/1060071419

GREENWIRE
AN E&E NEWS PUBLICATION

COAL

Port developers sue Calif. city over ban on shipments

Published: Friday, January 19, 2018

A lawsuit is targeting Oakland over a health study that led the California city to ban coal shipments out of a proposed port on the San Francisco Bay.

Bowie Resource Partners LLC, a Utah coal company that wants to ship coal through the proposed deepwater terminal, is financing the federal lawsuit brought by port developers.

The suit charges that the city's study is error-filled and relies on irrelevant research. For example, studies considered by the city looked at dust emissions from subbituminous coal from the Powder River Basin in Wyoming and Montana; however, Utah coal is bituminous.

The powdery Wyoming coal has higher emission rates, according to testimony from one of the coal company's experts.

Developers also testified that city officials underestimated port processes to limit emissions.

The suit was filed by Phil Tagami, a Northern California development tycoon, claiming his $250 million terminal was illegally blocked. Bowie had been contracted to build the loading terminal. Bowie also owns Utah's three most prolific coal mines.

The company is reimbursing Tagami for legal fees.

U.S. District Judge Vince Chhabria will consider whether the city used "substantial evidence" to determine coal's danger to workers and residents.

The city is expected to testify on coal's public health dangers, as well as the developers' efforts to hide and downplay coal's role in the terminal.

The terminal has sparked significant local opposition (Brian Maffly, ***Salt Lake Tribune***, Jan. 18). **— NB**

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Oakland Seaport Facilities

Siting or expanding seaport facilities, in, or near, communities already highly impacted by diesel pollution, carries a responsibility to build and operate a state-of-the-art facility with emissions as close to zero as technologically possible. Future port projects should include emerging zero emission technology for the trucks, locomotives, ship, tug boats, transport refrigeration units and support equipment that may serve, or operate, at ports. The City of Oakland (City) and Port of Oakland (Port) should take advantage of the planned construction and operational expansion to introduce changes that will lay the foundation for this technology and reduce regional emissions, minimize criteria pollutants and toxic air contaminants as well as the localized health risk from the Port's current and future operations. All projects should require the use of the cleanest technologies, support and encourage the development and demonstration of advanced technologies, with the ultimate goal of requiring the use of zero and near-zero emission technologies as soon as they are available. This requirement for the cleanest equipment is consistent with the City and the Port commitments made in the 2010 document, *A Bold Vision: Redeveloping the Former Oakland Army Base* ("*A Bold Vision*") and the 2009 *Maritime Air Quality Improvement Plan* (MAQIP).

The following actions need to be taken to ensure that Port operations or construction activities do not increase cumulative air quality impacts now or in the future.

1. <u>Port-Wide Actions</u>

   1.1. Require that all tenants and onsite construction contractors comply with and monitor compliance with all applicable air quality regulations for heavy duty-diesel trucks, including the Air Resources Board's (ARB) Tractor-Trailer Greenhouse Gas Reduction Regulation, Period Smoke Inspection Program, Off-Road Regulation, and Statewide Truck and Bus Regulation. To document compliance, require that fleets provide ARB Certificates of Compliance for the equipment regulations and copies of annual smoke test results.

   1.2. Incorporate contractual language into tenant lease agreements to ensure that tenants comply with all applicable air quality regulations, are using the cleanest technologies for their equipment (in both construction and operations) and understand their responsibilities of building and maintaining a green facility as well as compliance with diesel regulations.

   1.3. Require that the cleanest possible construction practices and equipment are utilized. This should include eliminating idling of diesel powered equipment, requiring the use of zero and near-zero emission equipment and tools to the greatest extent feasible, and providing the necessary infrastructure, like electric hookups, to support that equipment.

   1.4. Implement and plan accordingly for the necessary infrastructure to support zero emission and near-zero emission technology vehicles and equipment at

the Port. This includes physical, energy, and fueling infrastructure for construction equipment, on-site vehicles, and equipment, and medium-heavy and heavy-heavy duty trucks. ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm.

At a minimum, both the Port and City should adopt targets for electric raceway circuit installation as part of initial facility construction. This will ensure sufficient electrical power is available for EV charging at sites under development and minimizes future costs to install infrastructure for zero and near zero emissions vehicles.

1.5. Develop a Sustainable Leasing Program whereby the Port and City shall work with tenants to develop and implement a policy incentive-based sustainable leasing program to attract the cleanest ships, ships that utilize shore power, zero and near-zero technologies, and otherwise incorporate technological and operational practices that reduce freight related emissions.

1.6. Require tenants to use cleaner technologies over time as they become available and feasible. This can be accomplished by requiring tenants to develop an annual Technology Review Program to identify any new emissions-reduction technologies that may reduce emissions at the Port, including the feasibility of zero and near-zero emissions technologies for heavy-duty trucks, yard equipment, tugs, vessels, and bulk handling equipment. If the technology review demonstrates the new technology will be effective in reducing emissions and the Port or City determines that installation or use of the technology is feasible, the tenant shall implement such technology within 12 months of the Port or City's determination (see Appendix A for examples of possible Technology Review Program projects).

1.7. Ensure existing and future tenants are compliant now and in the future with ARB's Transport Refrigeration Regulation. If not already implemented, incorporate operating practices that eliminate the amount of time that a transport refrigeration system powered by a fossil-fueled internal combustion engine can operate utilizing the combustion system at the Port. Furthermore, plan and design cold storage facilities that incorporate zero emission all-electric plug-in transport refrigeration systems, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration sufficient to meet Port growth.

1.8. Require the use of cargo handling equipment (CHE), including yard trucks, handlers, gantry cranes, fork lifts, that is the cleanest available technology (LPG/LNG, renewable diesel, electric, hydrogen, electric hybrid) and use zero and near- zero emission technology for equipment that is commercially

available now and in the future, as more zero-emission equipment becomes commercially available, as committed to in *A Bold Vision*. ARB's Technology Assessment: Mobile Cargo Handling Equipment, provides information on current and projected development of CHE, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/che_tech_report.pdf. Additionally, tenants should be required to demonstrate how their yard lay out maximizes their ability to use zero emissions equipment such as electric rail mounted gantry cranes.

1.9. Require the use of commercial harbor craft (CHC) technologies that exceed the Tier 2 or 3 requirements of CARB's CHC Regulation. There are some zero and near- zero emissions technology for equipment that is commercially available now, and additional projects are underway demonstrating the capability of CHC to achieve emission lower than Tier 4 marine and off-road emission standards. Some of these solutions may require retrofit with aftermarket emission control devices. ARB's Technology Assessment: Commercial Harbor Craft, provides information on current and projected development of CHC, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/draft_chc_technology_assessment.pdf.

1.10. Require that all medium-heavy and heavy-heavy duty on-road and yard trucks, including any alternative fuel vehicles, meet or exceed the 2010 emission standards. Support the deployment of zero and near-zero technologies including utilizing zero emission (such as battery electric or fuel cell electric) forklifts, electrified rail mounted gantry cranes, and battery electric and hybrid electric medium-duty trucks to the fullest extent feasible. At a minimum, all forklifts should be required to meet a zero emission standard. As it becomes available, require that medium-heavy and heavy-heavy duty trucks traveling within 100 miles of the site use zero and near-zero technology and require that yard trucks with similar duty cycles (less than hundred miles daily) convert to zero and near-zero technology. ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm.

1.11. During all construction activities, require that off-road construction equipment meet Tier 4 engine standards, if not available, require equipment that meets Tier 3 engine standards. Tenants shall keep a list of available equipment and submit to the Port or City upon request.

1.12. Require that all on-site service vehicles, light-duty vehicles and equipment (operational and during construction activities), and property maintenance

equipment use zero emission technology and, if zero-emission technology is unavailable, that all vehicles and equipment meet the cleanest applicable emission standard.

1.13. Require that all projects include a robust traffic plan that moves truck traffic away from residents reducing truck traffic in neighborhoods, reduces and enforces truck speeds to reduce exposure to noise and increase safety, and discourages new development near truck routes. Coordinate and consult with the West Oakland community on site-wide truck traffic circulation.

1.14. Properly integrate truck parking, terminal parking, security systems, electronic gates systems, and other freight transport infrastructure to maximize achievable efficiencies.

1.15. Require future project design plans include operational support to demonstrate and deploy zero and near-zero emission freight equipment.

1.16. Require ships that enter the Port area pay emissions-based berthing fees or other user fees. The fees shall be used to reduce emissions and exposure in West Oakland.

1.17. Require that ocean-going vessels comply with fuel requirements for both the California Ocean-Going Vessel Regulation and the North American Emission Control Area Requirements.

1.18. Provide support (logistical and financial) for demonstration projects to encourage the use of alternative and/or advanced technologies. ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source and port equipment technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm.

1.19. Utilize concepts to enhance community engagement as outlined in the U.S. Environmental Protection Agency Draft Environmental Justice Primer for Ports, "The Good Neighbor Guide to Building Partnerships and Social Equity released in July 2016. This document provides a road map to assess current community engagement and outlines strategies to assist the City and the Port to enhance neighboring community relationships. The document can be found at https://www.epa.gov/ports-initiative/draft-environmental-justice-primer-ports

1.20. Utilize grant funding from Federal, State and local programs to reduce air pollution emissions and health risk from diesel exhaust. Incorporate a collaborative process between tenants and the Port and/or the City to apply for funding to support zero-emission freight related diesel equipment technologies.

1.21. Require that all recycling facilities and metal melting facilities that include re-

melting furnaces for the melting of alloys, within the Port, the OAB project area, and within 1,000 feet of the West Oakland community meet the best available control technology (BACT) standards as defined by the BAAQMD.

2. Former OAB – Both City of Oakland and Port Owned Areas

Below are measures that will help the City and Port meet the requirements of the Oakland Army Base 2013 Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCA/MM). *Note:* the City and Port must reduce emissions at the OAB property *beyond* what is required by CARB regulations to meet the requirements of the SCA/MM. These measures also are consistent with measures in the *Maritime Air Quality Improvement Plan* (MAQIP), A Bold Vision, the City of Oakland's Standard Condition of Approval, and air quality mitigation measures in the Environmental Impact Report for 2013 *Plan Bay Area*. When measures are adapted from specific sources, these sources are noted in parenthesis.

The City and Port shall implement all measures listed under Item 1 Port-Wide Activities as applicable, and in addition shall implement the following measures:

2.1. All trucks shall be prohibited from idling more than two minutes when loading and unloading, staging or when not in active use for extended periods of time. Exemptions from the two-minute idling rule would be allowed when required for safety or when equipment is in use. (Plan Bay Area)

2.2. An appointment/ITS system shall be implemented that minimizes truck idling and queuing for the movement of containers.

2.3. Prior to implementation of zero-emission harbor craft described in Item 1.9 above:

2.3.1. Prior to 2023, all CHC accessing the new OAB port facilities will meet USEPA Tier 4 standards (or cleaner) for both propulsion and auxiliary engines, or or zero emissions technologies such as: batteries, shorepower, or hydrogen fuel cell.

2.3.2. NOx emissions can be controlled with selective catalytic reduction systems. For example, implement emission reduction control measures to replace tugboat engines with low NOx technology (for example, through the expansion of the existing cargo handling equipment re-powering and retrofitting program, part of the Berths 55-58 Project air quality mitigation program).

2.4. All the mobile cargo handling equipment will be electric equipment. (MAQIP) The Air District suggest this be broadened to allow for other zero emissions fuels

(Hydrogen) and for near zero emissions equipment in the event that full zero emissions equipment in not commercially available.

2.5. Buildings shall meet LEED Platinum certification standards. All buildings shall provide sources of energy. Solar, wind, mechanical, tidal or solar generated hydrogen systems will be investigated to determine their feasibility.

2.6. The developer shall be required to plant trees and/or vegetation throughout the OAB. Trees that are best suited to trapping PM shall be planted, including one or more of the following: Pine (Pinus nigra var. maritima), Cypress (X Cupressocyparis leylandii), Hybrid popular (Populus deltoids X trichocarpa), and Redwoods (Sequoia sempervirens). (Plan Bay Area)

2.8. All existing land uses serving sensitive receptors within 1,000 feet of the Project boundaries shall be equipped with HEPA air filtration systems rated MERV 13 or better. The Port and City will establish a fund and contribute on a fair share basis to the cost of installing and maintaining the MERV 13 systems and provide educational materials to owners and occupants explaining how to maximize the benefits of these systems.

2.9. Consistent with SCA/MM 4.4-5, when redevelopment activity generates more than 20,000 square feet of employment-generating land uses, or generates 100 or more local jobs, the City, Port and developers will fund on a fair share basis Transportation Control Measures (TCMs) for reducing vehicle emissions from commercial, institutional, and industrial operations. See SCA/MM 4.4-5 for a full list of TCMS and include the following:

2.10. Commute Benefits Program

2.10.1 To design and implement a Commute Benefits Program, the City, Port, and private developers need to form a committee and assign a representative to the committee. Committee representatives will include two West Oakland community members, an employee representative, and a representative from the Port and from the City. (Note that all employers with 50 or more full-time employees in the Bay Area are subject to the Bay Area Commuter Benefits Program [BAAQMD regulation 14, Rule 1]. For more information, please see https://commuterbenefits.511.org)

2.10.2 Design and locate buildings to facilitate transit access, e.g., locate building entrances near transit stops, and eliminate building setbacks. Construct transit facilities such as bus turnouts/bus bulbs, benches, shelters, and improving transit bus service to the area. Provide on-site services, such as cafeterias, banks, dry cleaners, and convenience market so that employees can walk to these services. Include bicycle and pedestrian facilities in the design.

2.10.3 Transit, Bicycle and Pedestrian Access: Include sidewalks, multi-use paths and bike lanes in the project design. Provide secure, weather-protected bicycle parking for employees, Provide showers and lockers for employees bicycling or walking to work. Provide safe, direct access for bicyclists to adjacent bicycle routes. Provide direct, safe, attractive pedestrian access from project to transit stops and adjacent development.

2.10.4 Mange Travel Demand and Provide Transit Service: Encourage OAB tenants to use carpools, vanpools, and public transit by providing incentives. Provide a shuttle to and from the West Oakland BART station. Establish mid-day shuttle service for worksite to food service establishments/commercial areas. Provide preferential parking for carpool and vanpool vehicles. Implement parking fees for single occupancy vehicle commuters.

2.11. New Stationary Sources

2.11.1 On the OAB property, new stationary sources that are added as part of the project must reduce emissions beyond what is required by CARB and BAAQMD, whenever possible. For example, the cleanest available stand-by diesel generators and portable generators will be required. The City and Port shall fund this on a fair share basis.

3. Former OAB -City of Oakland Owned Areas

West Gateway Bulk Terminal (Marine Terminal and Rail Expansion)

3.1. Implement all applicable site-wide actions based on specific operations in this subject area.

3.2. Specify the public review release date and expected content for each of the remaining Subject Plans for this project, subject to Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans). It is expected that the remaining Subject Plans will be released in a timeframe that will allow for meaningful public review and response by the City of Oakland, or project developer, prior to when they are scheduled according to the approved SCA/MM. The list of Subject Plans can be found on page 46 in SCA/MM at http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak042281.pdf

3.3. Require that berths providing shore power now or in the future, can accommodate changes to vessel sizes and various berthing configurations. The ARB At-Berth Regulation currently requires 80% compliance of ocean going vessels by 2020. Vessel operations should meet 100 percent shore power compliance rate for all vessels or incorporate other technologies, such as emissions capture and control systems, to maximize emission reductions from

all vessels in advance of the regulation. ARB's Sustainable Freight: Pathways to Zero and Near-Zero Emissions Discussion Document has identified the development and proposal of amendments to the At-Berth that could expand the regulation to include smaller fleets and/or additional vessel types to the current At Berth Regulation. Additionally, hybrid technologies have shown success at achieving emission reductions in certain tugs based on duty, engine size, and location and should be incorporated into operations, where possible.

Accelerate the turnover of line-haul locomotives servicing the Port to Tier 4 line-haul, ARB proposed Tier 5, or Zero emissions locomotives as expeditiously as possible, with the goal of 95 percent of operations to be performed at a minimum Tier 4 standard by 2023In addition establish standards that require:

3.4.1. All diesel switch engines to have 15-minute idling limit devices installed and operational; and to use emulsified fuels or other equivalently clean alternative diesel fuel.

3.4.2. No non-essential idling. Class 1 helper locomotives will be turned off while on OAB properties. If, for safety reasons, helper locomotives need to be on then they will meet similar control requirements as line haul locomotives.

3.4. The Port, Union Pacific (UP) Railway, and/or BNSF Railway should commit to providing co-funding, facility access, and operational support for the development and demonstration of interstate line-haul locomotive technology with zero-emission capability. This would include, but is not limited to, a hybrid-electric locomotive with all electric capability. ARB's Technology Assessment: Freight Locomotives, provides information on current and projected development of freight locomotives, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/freight_locomotives_tech_report.pdf

3.5. Incorporate conditions into lease agreements with BNSF and/or UP to ensure that switch locomotives meet a minimum Tier 4 emissions level by 2023.

3.6. Phase in the replacement of diesel powered switcher locomotives with electric rail car movers, within the Port or City owned rail properties.

Prologis East and Central Gateway (Ambient Transload/Warehouse/Truck Services)

3.7. Implement all applicable site-wide actions based on specific operations in this subject area.

North Gateway (Recycling and Rail Right Of Way Expansion)

3.8. Implement all applicable site-wide actions based on specific operations in this subject area.

4. Former OAB Port of Oakland Owned Areas

Central Gateway (Ambient Transload/Warehouse/Rail Yard /Port Logistics/Warfs)

4.1. Implement all applicable site-wide actions based on specific operations in this subject area.

4.2. Specify the public review release date and expected content for each of the remaining Subject Plans for this project, subject to Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans). It is expected that the remaining Subject Plans will be released in a timeframe that will allow for meaningful public review and response by the City of Oakland, or project developer, prior to when they are scheduled per the SCA/MM. The list of Subject Plans can be found on page 46 in SCA/MM at http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak042281.pdf.

5. Port of Oakland (Non-Former OAB Areas)

Cool Ports Oakland, LLC (Temperature Controlled Transload/Warehouse/Rail Expansion)

5.1. Implement all applicable site-wide actions based on specific operations in this subject area.

5.2. Ensure existing and future tenants are compliant now and in the future with ARB's Transport Refrigeration Regulation. Incorporate operating practices that eliminate the amount of time that a transport refrigeration system powered by a fossil-fueled internal combustion engine can operate utilizing the combustion system while at the Port. Require the use of zero emission all-electric plug-in transport refrigeration systems and ensure the design plan includes the necessary infrastructure. ARB's Technology Assessment: Transport Refrigerators, provides information on the current and projected development for transport refrigerators, including current and anticipated costs at widespread deployment. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/tru_07292015.pdf.

5.3. Accelerate the turnover of line-haul locomotives servicing the Port to Tier 4, ARB proposed Tier 5, or Zero emissions locomotives as expeditiously as possible, with the goal of 95 percent of operations to be performed at a minimum Tier 4 standard by 2023 Furthermore, the Port, Union Pacific (UP) Railway, and/or BNSF Railway should commit to providing co-funding, facility access, and operational support for the development and demonstration of

interstate line-haul locomotive technology with zero-emission capability. This would include, but is not limited to, a hybrid-electric locomotive with all electric capability. ARB's Technology Assessment: Freight Locomotives, provides information on current and projected development of freight locomotives, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/freight_locomotives_tech_report.pdf.

5.4. Incorporate conditions into lease agreements with BNSF and/or UP to ensure that switch locomotives meet a minimum Tier 4 emissions level by 2023..

5.5. Phase in the replacement of diesel powered switcher locomotives with electric rail car movers, within the Port or City owned rail properties.

5.6. Plan and design for the necessary infrastructure to ensure 100 percent, plug-in equipped, to accommodate future growth volumes of TRU's or expansion of this area.

5.7. Implement a policy that limits the amount of time that a transport refrigeration system powered by a fossil-fueled internal combustion engine can operate utilizing the combustion system while on Site.

5.8. Encourage the use of zero emission all-electric plug-in refrigeration systems, hydrogen fuel cell and cryogenic transport refrigeration systems.

5.9.

Port Terminal/Maritime Operations (Inner, Middle, Outer Harbors, and Seventh Street)

5.10. Implement all applicable site-wide actions based on specific operations in this subject area.

5.11. Accelerate the turnover of line-haul locomotives servicing the Port to Tier 4, ARB proposed Tier 5, or Zero emissions locomotives as expeditiously as possible, with the goal of 95 percent of operations to be performed at a minimum Tier 4 standard by 2023 Furthermore, the Port, Union Pacific (UP) Railway, and/or BNSF Railway should commit to providing co-funding, facility access, and operational support for the development and demonstration of interstate line-haul locomotive technology with zero-emission capability. This would include, but is not limited to, a hybrid-electric locomotive with all electric capability. ARB's Technology Assessment: Freight Locomotives, provides information on current and projected development of freight locomotives, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/freight_locomotives_tech_repor

t.pdf.

Incorporate conditions into lease agreements with BNSF and/or UP to ensure that switch locomotives meet a minimum Tier 4 emissions level by 2023.

5.12. Phase in the replacement of diesel powered switcher locomotives with electric rail car movers, within the Port or City owned rail properties.

5.13. Require that berths providing shore power now or in the future, can accommodate changes to vessel sizes and various berthing configurations. The ARB At-Berth Regulation currently requires 80% compliance of ocean going vessels by 2020. Vessel operations should meet 100 percent shore power compliance rate for all vessels or incorporate other technologies, such as emissions capture and control systems, to maximize emission reductions from all vessels in advance of the regulation. ARB's Sustainable Freight: Pathways to Zero and Near-Zero Emissions Discussion Document has identified the development and proposal of amendments to the At-Berth that could expand the regulation to include smaller fleets and/or additional vessel types to the current At Berth Regulation. Additionally, hybrid technologies have shown success at achieving emission reductions in certain tugs based on duty, engine size, and location and should be incorporated into operations, where possible.

Appendix A

Technology Review Program

Development of a Technology Review Program is consistent with the requirements of Mitigation Measures in the Oakland Army Base 2013 Standard Conditions of Approval and Mitigation Monitoring and Reporting (SCA/MM) Program. Below are recommended Technology Review Programs that can be implemented to reach the goals of the SCA/MM.

In consultation with regional agencies and stakeholders, the City and Port shall implement Technology Review Programs, such as:

- The City and Port should administer a minimum of a one year demonstration project, prior to 2020, of zero and near-zero emission truck technology. This demonstration project shall be conducted in cooperation with regional and state agencies and stakeholders.

- Research and funds shall be used to identify and test hybrid diesel electric locomotives and conduct a demonstration of locomotive DOC or DPF retrofits.

- Feasibility studies of electrification of freight/passenger rail from Port intermodal yards to the Bay Area Air Quality Management District's boundaries conducted in conjunction with the Metropolitan Transportation

Commission, Capital Corridor JPA, Union Pacific, and Burlington Northern Santa Fe railroads.

- Investigation of renewable energy generation via mechanical systems that utilize truck weight to generate electricity.

- Study of a "virtual container yard" system that integrates truck movements with container moves to minimize emissions and maximize efficient use of trucking fleets.

Example TAP Studies

As a possible framework for the Technology Review Program, consider the work of the San Pedro Ports Technology Advancement Program (TAP). TAP is a joint program of the Ports of Long Beach and Los Angeles through the Ports' joint Clean Air Action Plan (CAAP) adopted in 2006. The CAAP guides the Ports in their commitment to reduce the health risks and air emissions associated with port-related operations, while allowing port development and growth to continue. The CAAP focuses on near-term strategies, targeting significant reductions in diesel PM, nitrogen oxides (NOx), and sulfur oxides (SOx). The following is a selected list of demonstration projects completed through the TAP program:

- Balqon E-30 Electric Terminal Tractor Development and Demonstration Project

This vehicle was built as a demonstration vehicle and designed specifically for drayage operations. The prototype E-30 all-electric terminal tractor successfully completed cargo terminal tests in 2008.

Following the completion of cargo terminal tests during 2008, the Los Angeles Harbor Commission approved the purchase of 20 electric trucks from the manufacturer as part of the "Green Terminal" program. The Green Terminal program will also include the production of five on-road electric trucks.

This demonstration project was followed with a project to evaluate and demonstrate a lithium-ion battery as a technological upgrade to the lead-acid battery pack used in the previous TAP demonstration. The advanced technology lithium-ion batteries were anticipated to provide more than double the vehicle range, without adding additional weight. A one-day demonstration of the Nautilus E30 confirmed a range of over 150 miles on a single charge with unloaded conditions at 80% depth of discharge. However, this project was never completed.

- Capacity Plug-In Hybrid Electric Terminal Tractor (2010)

The TAP program conducted a three-week trial of a diesel-electric plug-in hybrid terminal tractor that uses a small diesel generator and a large lead-acid battery pack to provide power for vehicle operation. While this demonstration showed a 44

percent reduction in NOx emissions and a 56 percent reduction in PM emissions, compared to 2009 diesel yard tractors, the demonstration utilized a Tier 4-interim generator drive engine, and therefore does not meet CARB's Cargo Handling Equipment regulation of Tier 4 engines.

- Hybrid Yard Tractor Development & Demonstration (2010)

This TAP study investigated the feasibility and commercial viability of using advanced technology drive systems in cargo handling equipment. The three hybrid yard hostlers underwent six months of operation and in-use testing and could perform all the tasks required of yard hostlers in real-world port operations, and were well accepted by drivers and maintenance staff. Fuel economy and emissions benefits were evaluated, but a difference discovered in the mechanical specifications of the vehicles limited comparability. Based on all the evaluations and analyses conducted, the hybrid system is estimated to provide a 12 percent to 18 percent improvement in fuel economy. Further development of the hybrid system is underway to improve fuel economy and emissions reductions. A follow-up study was conducted entitled "Hybrid Yard Tractor Development and Demonstration – Beta Test".

- Alternative Petroleum Technologies (APT) Emulsified Biodiesel Fuel Demonstration (2011)

To demonstrate the viability and effectiveness of the emulsified biodiesel fuel in cargo handling equipment, APT performed a two-phased demonstration that consisted of an evaluation of the emulsified fuel with and without a diesel oxidation catalyst (DOC) in a laboratory setting and a real-time demonstration of the fuel in yard equipment at a port terminal.

The demonstration successfully proved that APT's emulsified B-20 blend mitigated an increase in NOx emissions, while also providing additional reductions in PM when coupled with a verified diesel emissions control system. This provides port drayage operators an alternative fuel selection for their existing fleet of container yard equipment.

As of April 2014, APT planned to pursue CARB verification of the emulsified biodiesel fuel for sale to existing cargo handling equipment fleet operations in the State.

- Liquefied Natural Gas Yard Tractor Demonstration (2007)

This Project was designed to develop, test and design a business case for LNG yard tractors. Phase 1 focused on development of LNG yard tractor specifications, procurement, and installation of temporary LNG refueling. Phase 2 included operation of the LNG yard tractors at a marine terminal for a period of eight months. Phase 3 of the project was the development of a business case assessment to

determine the cost effectiveness and return on investment of using LNG equipment as opposed to diesel.

During emissions testing, the LNG yard tractor produced lower PM emissions than on-road diesel engine equipped with a diesel oxidation catalyst and closed crankcase ventilation system. However, NOx emissions from the LNG yard tractor were approximately 21 percent higher than NOx emissions from this same on-road diesel engine configuration.

- ACTI Advanced Maritime Emission Control System (AMECS) Project (2008)

ACTI developed the AMECS as an alternative pollution control method for ocean-going vessels that are not configured to use shore power, also known as "cold ironing", while at berth. The goal was to demonstrate pollution reduction efficiencies equal to cold ironing for nitrogen oxides (NOx), sulfur oxides (SOx), and particulate matter (PM). The AMECS was demonstrated at Metropolitan Stevedore/Port of Long Beach on multiple vessels with varying exhaust stack configurations. During the demonstration period, two full-scale emission reduction efficiency tests were conducted, the results of which were independently verified by two testing laboratories. During emissions testing, NOx and PM emissions were reduced by 99 percent and 95.5 percent, respectively. In addition, sulfur oxides (SOx) were reduced by 99 percent, and volatile organic compound (VOC) emissions were reduced by greater than 97 percent. Further demonstration of this technology is necessary to determine how it functions in day-to-day operations, including evaluation of costs, durability, integration into operations.

- APL Singapore Slide Valve & Water-In-Fuel (WiFE) Emulsion Demonstration Program (2009)

Two emission control technologies were demonstrated - the use of slide valves in the vessel's main engines, and water-emulsified bunker fuel using an innovative onboard water in fuel emulsifier. The primary objectives of the demonstration projects were to a) evaluate the particulate matter (PM) emission reduction effectiveness of retrofitting OGV main engines with an improved injector design known as a slide valve; and b) demonstrate demand-based onboard water in fuel emulsification system and measure the NOx reduction effectiveness of varying the water content.

Project test conditions resulted in an evaluation that indicated the benefits of slide valves appear to be limited. Testing of the WiFE system aboard the APL Singapore showed water concentrations as high as 48 percent were successfully demonstrated, yielding NOx reductions on the order of 30 percent. A further study was completed in 2012.

- Bluefield Holdings Krystallon Ocean Going Vessel Scrubber (2013)

The primary focus of this project was to demonstrate the reduction of emissions of sulfur oxides (SOx) from an Ocean Going Vessel using an exhaust gas cleaning device to meet the International Maritime Organization (IMO) fuel sulfur limits in Emission Control Areas (ECA) and further to reduce particulate matter (PM), and volatile organic compound (VOC) emissions. This project demonstrated the potential for PM and SOx reductions that can be achieved through OGV retrofit using commercially available scrubbing technology. Additional research is needed further evaluate the potential for OGV engine emission reductions from scrubbers on main engines to comply with IMO ECA regulations.

- Foss Maritime Green Assist™ Hybrid Tugboat (2010)

Foss Maritime developed this diesel electric hybrid tugboat and named it the *Carolyn Dorothy*. The *Carolyn Dorothy* became a full working member of the Foss Maritime tug fleet on March 1, 2009. Since this time, the hybrid tug demonstrated performance comparable to a conventional Dolphin Class tugboat. The hybrid tugboat achieved emission reductions that exceed original targets (to reduce both NOx and PM by approximately 44 percent) when compared with the Dolphin tugs currently operating in the San Pedro Bay. The *Carolyn Dorothy* reduced PM, NOx and CO2 emissions by 73 percent, 51 percent and 27 percent, respectively. Based on this evaluation, there is evidence that this technology reduces fuel consumption by approximately 20 to 30 percent.

- OGV Slide Valve Low-Load Emissions Evaluation (2013)

This project is a follow up to the 2008 demonstration of a slide-type fuel values, and sought to test a new type of OGV main engine fuel valve (SV C36) designed to improve combustion properties by eliminating sac volume (i.e., fuel drips) at the valve nozzle. The elimination of the sac volume results in lower fuel oil consumption. In addition, slide valve nozzles incorporate an optimized spray pattern designed to improve the combustion process - this is intended to reduce overall emissions, including hydrocarbon, NOx and particulate matter. The visible smoke level is also greatly reduced because of the improved combustion. Among other findings, results showed that SV C26 nozzles did emit less diesel particulate matter (DPM) at low loads compared to the two conventional fuel valve configurations. At low loads, SV emits up to 50 percent less DPM than conventional C3 and C11 fuel valves and up to 65 percent less DPM for cylinder-lubrication-corrected particulate-emission results. Overall, SV C26 nozzles emit over 90 percent less total hydrocarbons compared to the two conventional fuel valve configurations.

California Energy Commission Projects

In addition to the emissions reduction studies that are being undertaken as part of the TAP, the California Energy Commission (Energy Commission) released a Grant Solicitation for "Sustainable Freight Transportation Projects" under the Alternative and Renewable Fuel and Vehicle Technology Program (ARFVTP). This grant

solicitation funded projects that demonstrate medium- and/or heavy-duty advanced vehicle technologies at California seaports. The three projects selected as part of this solicitation propose to demonstrate:

- 9 zero emissions rubber tired gantry cranes
- 15 battery electric yard tractor's
- 7 natural gas hybrid electric trucks
- 3 zero emissions top handlers
- 20 near zero natural gas trucks

Results of these demonstrations should inform the Technology Review Program established as part of the Oakland Army Base 2013 SCA/MM Program.

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 9/27/2017 8:15:03 PM
To: Brian Beveridge [Personal Address / Ex. 6]
CC: Margaret Gordon [Personal Address / Ex. 6] pcort@earthjustice.org
Subject: Following up: Customs station: FYSA, T6

Brian and Ms. Margaret

While our office is following up on this with DHS and CPB, I suspect it would be unfortunate to let the comment period close (October 12 ?) without you registering your concerns. And if your concerns go beyond those for which comment is asked directly in the notice, such as comments on the process or criteria, etc, I don't see a downside I that.

And on the Title VI front, I hope you have not lost track of the comment by Lilian Dorka on the August 17 call that you were welcome to submit additional information, specific suggestions and such at any time. Sooner is better, you can always submit more information later.

Richard

From: Brian Beveridge [mailto: Personal Address / Ex. 6]
Sent: Thursday, September 21, 2017 11:05 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Margaret Gordo Personal Address / Ex. 6
Subject: Re: Customs station: FYSA--West Oakland CES

I don't get it. The application period ends on 9/11, and the public notice went out on the 12th? I wanted to apply with some warehouse partners. How will they get this service back on the port without more discussion? Something wrong with this picture. And we did not get any emails from Customs.
Brian

On Sep 21, 2017 9:59 AM, "Grow, Richard" <Grow.Richard@epa.gov> wrote:

> Ms. Margaret and Brian
>
> Hope you are in the loop on this. I haven't read then notice (69 pp) yet.
>
> Richard
>
> **From:** DOIRON, LYNN [mailto:lynn.doiron@cbp.dhs.gov]
> **Sent:** Thursday, September 21, 2017 8:50 AM
> **To:** Grow, Richard <Grow.Richard@epa.gov>; Hass, Jennifer <jennifer.hass@hq.dhs.gov>
> **Subject:** FYSA--West Oakland CES

Good morning!

CBP is now in the process of selecting a CES. We have reached out to WOEIP to let them know (via email) and the hard copy is en route via certified mail. The official notice is attached.

Please let me know if you have any questions.

Lynn Doiron

Environmental Services Section Chief

Technical Resources Branch

FOF PMO

U.S. Customs and Border Protection

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 9/27/2017 7:14:06 PM
To: Israels, Ken [Israels.Ken@epa.gov]
Subject: FW: 2017-09-26 Meeting sign-in sheet - City of Oakland, Port of Oakland, U.S. DOT, and U.S. EPA
Attachments: 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

From: Keeler, Katsumi
Sent: Wednesday, September 27, 2017 11:37 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Daryl.Hart@dot.gov; eric.shen@dot.gov; rachel.kizito-ramos@dot.gov; yvette.rivera@dot.gov; charles.james@dot.gov; ryan.fitzpatrick@dot.gov; erva.cockfield@dot.gov; mbee@oaklandcityattorney.org; ccappio@oaklandnet.com; dwan@portoakland.com; mheffes@portoakland.com; bparker@oaklandcityattorney.org; atorrence@jenner.com; Minoli, Kevin <Minoli.Kevin@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>
Subject: 2017-09-26 Meeting sign-in sheet - City of Oakland, Port of Oakland, U.S. DOT, and U.S. EPA

Attached is the sign-in sheet for the City of Oakland/Port of Oakland/U.S. DOT/U.S. EPA meeting on 9/26/17.
Attended, but not listed on the sign-in sheet:

Kevin Minoli	minoli.kevin@epa.gov
Alexis Strauss	strauss.alexis@epa.gov
Desean Garnett	garnett.desean@epa.gov
Richard Grow	grow.richard@epa.gov

2017-09-26
Meeting City of O...

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/3/2017 8:54:50 PM
To: Reyes, Deldi [Reyes.Deldi@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Vallano, Dena [Vallano.Dena@epa.gov]; Davidson, Ken [Davidson.Ken@epa.gov]
Subject: Re: Env. Defense Fund explanation/discussion of air quality data for Oakland

Sure, I'll follow up. What I didn't mention is that Pat McGowan who is hosting the event is the City's Planning lead for the OAB since last fall, so the discussion of implications should be interesting.

From: Reyes, Deldi
Sent: Monday, July 3, 2017 11:48 AM
To: Grow, Richard; BANDROWSKI, MIKE; Vallano, Dena; Davidson, Ken
Subject: RE: Env. Defense Fund explanation/discussion of air quality data for Oakland

Ah, belay that—I'm in the office all day on Monday with commitments.
Thanks, though for letting us know, Richard.

A while back you'd circulated the press release. I suggested just recently it would be a good brownbag topic and Dena agreed it would be of interest.
Could be good, assuming Margaret has time / interest to invite her to share her views on citizen science with us . . .

From: Grow, Richard
Sent: Saturday, July 01, 2017 1:09 PM
To: Reyes, Deldi <Reyes.Deldi@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Vallano, Dena <Vallano.Dena@epa.gov>; Davidson, Ken <Davidson.Ken@epa.gov>
Subject: Fw: Env. Defense Fund explanation/discussion of air quality data for Oakland

Deldi, Mike and a few others

The Oakland City Planning department is hosting a presentation by EDF on the West Oakland monitoring study on Monday 7/10 11-12 at City Hall. Not exactly a public event but WOEIP has asked me to attend and I'm sure it would be fine if 2-3 others from our office wanted to joint. Given the players, the discussion as to the implications of the study may be interesting. Clips and correspondence attached and linked. Pls let me know if you plan to attend. Thx

Richard

Where Oakland City Hall, 3rd floor ConfRoom - Building Bridges
map

Calendar Patricia McGowan

Source Env. Defense Fund explanation/discussion of air quality data for Oakland

Description It is being rescheduled for Monday July 10, 11am at Oakland City Hall, Building Bridges Conference room, third floor (same floor as the Mayor's office). Fern U. from the Environmental Defense Fund will explain the air quality data that was collected for West Oakland and downtown Oakland. The attached outlook item contains the links to the data for your use and reference before the meeting. Thank you and I hope to see you can attend. Patricia McGowan City of Oakland 510-238-3588

From: Margaret Gordo **Personal Address / Ex. 6**
Sent: Friday, June 30, 2017 12:22 PM
To: Grow, Richard
Subject: Fwd: Env. Defense Fund explanation/discussion of air quality data for Oakland

OK Richard,

Here are some early press coverage so far, FYI:
https://www.google.com/amp/s/amp.cnn.com/money/2017/06/05/technology/google-street-view-edf-air-quality-oakland/index.html
http://www.wired.co.uk/article/air-pollution-maps-carbon-emissions

Air pollution map reveals pollution in London, UK and ...

www.wired.co.uk

Causes of air pollution is highlighted on hyper-local pollution maps, interactive maps by the Tomorrow project and the Air Quality Index

https://www.wired.com/2017/06/race-pollution-sensing-tech-oakland/

And a feature on Google blog (Google has been a partner on this project):
https://blog.google/products/maps/lets-clear-air-mapping-our-environment-our-health/

Ms.M

--
Ms. Margaret Gordon/Co-Director
West Oakland Environmental Indicators Project
349 Mandela Parkway
Oakland, CA 94607
Personal Address / Ex. 6
www.woeip.org

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/3/2017 8:44:47 PM
To: Connors, Rachel@ARB [Rachel.Connors@arb.ca.gov]; Olp, Kevin@EPA [Kevin.Olp@calepa.ca.gov]
Subject: Re: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Sure, anytime that day between 11 and 3 would be best, but I can make other times work if need be. Thanks

Richard

From: Connors, Rachel@ARB <Rachel.Connors@arb.ca.gov>
Sent: Monday, July 3, 2017 1:12 PM
To: Grow, Richard; Olp, Kevin@EPA
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hi Richard,

I am following up to schedule an informal meeting with Kevin and I, to discuss the issues you mentioned in the email below. Are you still available Friday 7/7? Is there any particular time that works for you? Thanks!

Rachel Connors
Air Resources Engineer
Fuels Enforcement Section
Phone: (916) 229-0513
rachel.connors@arb.ca.gov

California Environmental Protection Agency
Air Resources Board

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Wednesday, June 28, 2017 1:27 PM
To: Olp, Kevin@EPA
Cc: Reyes, Deldi; Connors, Rachel@ARB; Eady, Veronica@ARB
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hi Kevin – This Friday is kind of jammed (busy in West Oakland) but I'm free next Weds 7/5 (any time other than 11-12), Thursday 7/6 (other than 10-11, 2-3) or Friday 7/7 anytime. Looking forward to talking, pls let me know if any of these times work. Tomorrow 6/29 also good any time other than 10-11.

Richard

From: Olp, Kevin@EPA [mailto:Kevin.Olp@calepa.ca.gov]
Sent: Wednesday, June 28, 2017 10:53 AM
To: Grow, Richard <Grow.Richard@epa.gov>

Cc: Reyes, Deldi <Reyes.Deldi@epa.gov>; Connors, Rachel@ARB <Rachel.Connors@arb.ca.gov>; Eady, Veronica@ARB <Veronica.Eady@arb.ca.gov>
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Thanks for sharing Richard! I'd very much love to get your feedback on the larger issues here and I'll invite my colleagues Rachel and Veronica to join as well. Do you have time on Friday to chat, or is next week better for you? In advance of our conversation just wanted to say thanks for your help!

Kevin

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Wednesday, June 28, 2017 10:19 AM
To: Olp, Kevin@EPA <Kevin.Olp@calepa.ca.gov>
Cc: Reyes, Deldi <Reyes.Deldi@epa.gov>
Subject: FYI: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Kevin – this just came in.

Richard Grow
US EPA
Region 9
(415) 947-4104

From: Aloha Galimba [mailto:agalimba@baaqmd.gov]
Sent: Wednesday, June 28, 2017 8:48 AM
To: abockelman@mtc.ca.gov; Grow, Richard <Grow.Richard@epa.gov>; cynthia.marvin@arb.ca.gov; Karen Schkolnick <kschkolnick@baaqmd.gov>; muntu.davis@acgov.org; anna.lee@acgov.org
Cc: Sheng Thao <sthao@oaklandnet.com>
Subject: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hello,

The Bay Area Air Quality Management District is inviting you – or a representative from your organization - to attend a working meeting on solutions for reducing emissions and health impacts in the West Oakland Community from current operations at the Port of Oakland and future operations at the former Oakland Army Base.

This meeting will be hosted by Oakland Council Member at Large, Rebecca Kaplan, at the Alameda County Transportation Commission, which is located at 11th and Broadway in Downtown Oakland on **Friday July 14, 2017 between 12 pm – 2 pm**.

The goal of this meeting is to devise a workplan that harnesses and coordinates the resources of the participating entities.

Please confirm your participation with me with a CC to Ms. Kaplan' assistant Sheng Thao at Sthao@oaklandnet.com. If you have any questions or concerns, please feel free to reach out to me directly.

Thank you and have a great rest of the day!

Regards,

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782 | Personal Address / Ex. 6
agalimba@baaqmd.gov | www.baaqmd.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:06:43 PM
To: LUEHE, DOUGLAS [luehe.douglas@epa.gov]; Adams, Elizabeth [Adams.Elizabeth@epa.gov]; Lakin, Matt [Lakin.Matthew@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Miller, Amy [Miller.Amy@epa.gov]
CC: Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Reyes, Deldi [Reyes.Deldi@epa.gov]; Israels, Ken [Israels.Ken@epa.gov]
Subject: Ltr to City/Port: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - RECIPIENTS - 7-18-2017.pdf

Importance: High

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 3:52 PM
To: officeofthemayor@oaklandnet.com; colbruno@portcommissioner.com
Cc: Rivera, Yvette (OST); Charles.james@dot.gov; Jang, Deeana (OST); Fitzpatrick, Ryan (OST); Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin
Subject: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Dear Mayor Schaaf and Mr. Colbruno:

I am writing on behalf of the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), to notify you that, per the attached Letter of Acceptance, the agencies have accepted for investigation the above-referenced civil rights complaint. The attached Letter of Acceptance has also been mailed to you via certified mail. Please let us know if you have any questions.

Sincerely,

Lilian S. Dorka

Lilian Sotolongo Dorka, Esq.
Director, External Civil Rights Compliance Office
EPA, Office of General Counsel
202-564-9649
WJC-N Room 2450

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

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

July 18, 2017

The Honorable Libby Schaaf
Mayor, City of Oakland
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Michael Colbruno
President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, CA 94607

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

Dear Mayor Schaaf and Mr. Colbruno:

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

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

have determined that the complaint meets the jurisdictional requirements of both Agencies, and therefore the complaint will be jointly investigated.

Accordingly, the investigation will focus on:

1. Whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the Oakland Army Base subjects the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

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

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

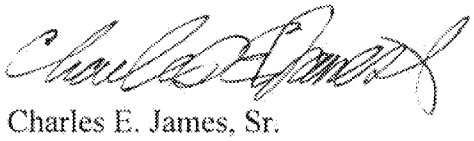
This does not foreclose resolution of matters raised in the complaint through informal resolution, including alternative dispute resolution (ADR). Both DOT's and EPA's nondiscrimination regulations provide that DOCR and ECRCO will attempt to resolve complaints informally whenever possible. 49 C.F.R.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

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights

protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with DOCR and ECRCO.

Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's DOCR, or Ericka Farrell, Case Manager in EPA's ECRCO, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Farrell can be reached at (202) 564-0717, or farrell.ericka@epa.gov.

Sincerely,



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

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/25/2017 3:42:23 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: Ph #s: Bay Area travel schedule

Personal Matters / Ex. 6

Office: (415) 947-4104

From: Fitzpatrick, Ryan (OST) [mailto:ryan.fitzpatrick@dot.gov]
Sent: Tuesday, April 25, 2017 8:33 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Bay Area travel schedule

Shoot me a call, let's chat about this real quick. I don't have your number handy

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst
Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
W78-312
(202) 366-1979

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Tuesday, April 25, 2017 11:31 AM
To: Fitzpatrick, Ryan (OST)
Subject: Bay Area travel schedule

Ryan

I'm hoping you have time to meet while you are out here to meet with the Port, which I am assuming is still set for some time next week. I wanted to also let you know that the first of three meetings called by the City to meet with CARB and BAAQMD (and which I will join) is set for May 9 from 11-12:30. If you see any utility in arranging your schedule to allow participation in that meeting, I'd think that could be accommodated. While the City has scheduled three meetings (May 9, 18 and 30) my sense is that ARB and BAAQMD are committing only to the first at this point, in lieu of determining whether the discussions are in fact meaningful.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/25/2017 3:31:26 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: Bay Area travel schedule

Ryan

I'm hoping you have time to meet while you are out here to meet with the Port, which I am assuming is still set for some time next week. I wanted to also let you know that the first of three meetings called by the City to meet with CARB and BAAQMD (and which I will join) is set for May 9 from 11-12:30. If you see any utility in arranging your schedule to allow participation in that meeting, I'd think that could be accommodated. While the City has scheduled three meetings (May 9, 18 and 30) my sense is that ARB and BAAQMD are committing only to the first at this point, in lieu of determining whether the discussions are in fact meaningful.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/25/2017 3:24:23 PM
To: Alison Kirk [AKirk@baaqmd.gov]; David Vintze [DVintze@baaqmd.gov]; Yura, Elizabeth@ARB [eyura@arb.ca.gov]; Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]; Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]; Margaret Gordon [margaret.woeip@gmail.com]; Brian Beveridge [brian.woeip@gmail.com]
Subject: Title VI complaint acknowledgement

All

Letters acknowledging receipt of the complaint went out on April 7 (from EPA) and April 13 (DOT), at least to Earthjustice, which had filed the complaint. My understanding is that the recipients, ie the City and Port, whose activities are the subject of the complaint, would also have been notified. The next step at both federal agencies is a "jurisdictional" review, which leads to a decision of whether or not to formally accept the complaint for investigation.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 10/20/2017 1:45:22 PM
To: Machol, Ben [Machol.Ben@epa.gov]
CC: McDaniel, Penelope [MCDANIEL.PENELOPE@EPA.GOV]; Israels, Ken [Israels.Ken@epa.gov]
Subject: City/Port position: Emissions Reductions Actions Guidance for the Port and Oakland Army Base
Attachments: DOC101917.pdf

Ben (Penny and Ken)

Deliberative Process / Ex. 5

Richard

From: Damian Breen <dbreen@baaqmd.gov>
Sent: Thursday, October 19, 2017 10:43 AM
To: rsinkoff@portoakland.com; CCappio@oaklandnet.com; MDNichols@oaklandnet.com; Tess Lengyel; adao@alamedactc.org; abockelman@mtc.ca.gov; Matt Maloney; Jack Broadbent; Aloha de Guzman; cynthia.marvin@arb.ca.gov; elizabeth.yura@arb.ca.gov; Grow, Richard; Matthew Davis; Lee, Anna, Public Health, OOD; Carolyn Clevenger; Henry Hilken; Sheng Thao ; Rebecca Kaplan ; Catherine Mukai; Ranyee Chiang; Machol, Ben; Israels, Ken; Woo, Winnie; David Vintze; Alison Kirk; Karen Schkolnick; McGowan, Patricia
Subject: RE: Emissions Reductions Actions Guidance for the Port and Oakland Army Base

Please find attached the City of Oakland Memo referenced below in Mr. Sinkoff's email.

Damian Breen

Deputy Air Pollution Control Officer
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Tel: (415) 749-5041

From: Richard Sinkoff [mailto:rsinkoff@portoakland.com]
Sent: Wednesday, October 18, 2017 5:15 PM
To: Damian Breen <dbreen@baaqmd.gov>; CCappio@oaklandnet.com; MDNichols@oaklandnet.com; Tess Lengyel <tlengyel@alamedactc.org>; adao@alamedactc.org; abockelman@mtc.ca.gov; Matt Maloney <mmaloney@mtc.ca.gov>; Jack Broadbent <jack@baaqmd.gov>; Aloha de Guzman <adeguzman@baaqmd.gov>; cynthia.marvin@arb.ca.gov; elizabeth.yura@arb.ca.gov; Grow, Richard <Grow.richard@epa.gov>; Matthew Davis <mdavis@portoakland.com>; Lee, Anna, Public Health, OOD <anna.lee@acgov.org>; Carolyn Clevenger <cclevenger@alamedactc.org>; Henry Hilken <HHilken@baaqmd.gov>; Sheng Thao <sthao@oaklandnet.com>; Rebecca Kaplan <kaplanforoakland@gmail.com>; Catherine Mukai <cmukai@portoakland.com>; Ranyee Chiang <rchiang@baaqmd.gov>; machol.ben@epa.gov; Israels, Ken <Israels.Ken@epa.gov>; Woo, Winnie <WWoo@oaklandnet.com>; David Vintze <DVintze@baaqmd.gov>; Alison Kirk <AKirk@baaqmd.gov>; Karen Schkolnick <kschkolnick@baaqmd.gov>; McGowan, Patricia <PMcGowan@oaklandnet.com>
Subject: RE: Emissions Reductions Actions Guidance for the Port and Oakland Army Base

Dear Damian,

Thank you for the opportunity to review and respond to the "BAAQMD Emissions Reductions Actions for the Port of Oakland/Former Oakland Army Base" (August 2017) and the emissions control strategies that BAAQMD has presented at different meetings and in different forms (i.e., July 14, 2017, "Proposal to Further Reduce Emissions at the Port of Oakland and Former Oakland Army Base" presentation by Jack P. Broadbent, Executive Officer/APCO; July 14, 2017, "BAAQMD – Emissions Reductions 'Strawman' Revised, etc.) (collectively, the "BAAQMD Proposals"). As an initial matter, the Port of Oakland (the "Port") has similar questions as the City of Oakland regarding the intended implementation and legal status of the BAAQMD Proposals. The Port reiterates and incorporates by reference the questions, concerns and comments identified by the City of Oakland in its October 18, 2017 memo to you.

The Port shares BAAQMD's goals of reducing emissions associated with the Oakland Army Base ("OAB") redevelopment project. The Port would like to work with the BAAQMD to identify the proposed emission reduction actions set forth in the BAAQMD Proposals that will have the greatest positive impact and will be both economically and technologically feasible. Given the Port's continued focus on public health in West Oakland, the Port's emissions reduction efforts will continue to emphasize reductions in diesel particulate matter ("DPM"), but the Port will also evaluate other emissions reductions, including actions to reduce greenhouse gas ("GHG") emissions.

In order to identify which source categories to target with additional emissions reductions efforts, the Port has modeled emissions projections for 2020 and 2030. Concurrently, we are also modeling CO2e for source categories within the context of the State's 2030 GHG emissions reduction targets. Based upon our projections, we have identified a "first tier" of source categories and emissions reductions activities that would have the largest impact on reducing emissions of DPM, GHGs, and criteria air pollutants at the Port. These are listed first then described in greater detail, below.

1. Harbor Craft ("HC")
2. Cargo Handling Equipment ("CHE")
3. Vessel retrofits for Ocean-Going Vessels ("OGV")
4. Vessel Speed Reduction ("VSR") for OGVs
5. Alternative emissions control systems for OGVs
6. Shore-Power Vaults and Cable Reels
7. Electrical System Upgrades and Improvements

Harbor Craft (HC)

- Emissions reductions for HC would benefit the entire Bay Area, as the local tug fleet serves many area ports and terminals. As such, actions for HC depend on coordination between the tug owners (only one of whom is a Port of Oakland tenant), port and terminal authorities, and the BAAQMD.

- In coordination with the BAAQMD, Port staff propose to conduct outreach to HC owners and operators regarding the engines in their fleet and their ideas for successful retrofits and replacement. We propose to also contact Chevron Richmond for information regarding its purchase of a Tier 4 tug for use in the Bay Area. The goal of the outreach is to identify tugs with the greatest potential for emissions reductions through retrofits or replacement, and use the emissions reduction potential to identify appropriate grant funding.

Cargo Handling Equipment (CHE)

- One terminal operator at the Port would like to immediately apply for grant funding for up to 13 hybrid Rubber Tired Gantry ("RTG") cranes. The hybrid RTG cranes can reduce diesel use by up to 80% and rely on a modular design so that the diesel range extenders can eventually be replaced with rechargeable batteries.

- Port staff propose to work with the BAAQMD to identify specific funding opportunities based on the emissions reduction potential and prepare grant applications for repowering 13 RTGs at the interested terminal.

Vessel retrofits for Ocean-Going Vessels (OGVs)

- To increase the use of shore power at the Port, more vessel retrofits are required so that ships have the on-board hardware and systems needed to plug in. While some liner services calling at the Port have 100% shore power-capable vessels, some lines include vessels with no hardware or systems to plug in.

- Port staff propose to work with the BAAQMD to identify specific funding opportunities based on the emissions reduction potential of a typical vessel and identify candidate vessels.

Vessel Speed Reduction for Ocean-Going Vessels (VSR)

- A VSR program has benefits beyond air quality improvements, such as protection of marine mammals, especially the larger whale species (i.e., reducing the potential for mortality to whales feeding or resting in shipping lanes, etc.). By increasing efficiency, a VSR can also reduce GHG emissions from OGVs. Port staff propose to share information regarding actual vessel speeds, which the Port has been collecting for recent months from the Marine Exchange, with the BAAQMD. Port staff seeks more information from the BAAQMD on the format and use of the BAAQMD's VSR incentive program. This information sharing could result in development of guidelines for a permanent Bay Area VSR incentives program.

Alternative emissions control systems for Ocean Going Vessels

- Recognizing that not all vessels that call at the Port are equipped to utilize shore power, the Port is interested in barge-mounted emissions control systems. Port staff know of three companies currently offering these services. Port staff propose to work with the BAAQMD to identify specific funding opportunities based on the emissions reduction potential of this technology and the requirements of the candidate vendors.

Shore-Power Vaults and Cable Reels

- Cable reel extenders are an option to increase the use of shore power, as are additional shore power vaults. Port staff propose to work with the BAAQMD to identify specific funding opportunities for cable reel extenders. Based on conversations with terminal operators, Port staff may also seek funding opportunities for additional shore power vaults.

Electrical System Upgrades and Improvements

- We are encouraged that the BAAQMD Proposals include the potential for funding support for electric system upgrades. As we previously discussed, improvements to the electrical system are foundational for the transformation of ports goods movement to a zero- and near-zero emissions platform. As a first step, Port staff propose to work with the BAAQMD to identify specific funding opportunities to build a solar canopy structure with potential battery storage at Harbor Facilities. The battery storage will provide resiliency for Harbor Facilities and other Seaport facilities. Longer-term plans for Port infrastructure as described in the Port's June 2016 Maritime Electric Strategic Assessment, which we have shared with you, are also candidates for funding. Port staff may also seek funding opportunities to study infrastructure capacity needs within each of the Port's terminals to support future electrification.

We look forward to discussing these options with you and to working together on establishing a "first tier" of successful programs and projects. Let's begin the discussion of these proposals at ACTC on October 20.

Sincerely,

Richard

Richard Sinkoff
Director of Environmental Programs and Planning
Port of Oakland
510-627-1182
rsinkoff@portoakland.com

From: Damian Breen [mailto:dbreen@baaqmd.gov]
Sent: Tuesday, October 17, 2017 4:43 PM
To: CCappio@oaklandnet.com; MDNichols@oaklandnet.com; Tess Lengyel <tlengyel@alamedactc.org>; adao@alamedactc.org; abockelman@mtc.ca.gov; Matt Maloney <mmaloney@mtc.ca.gov>; Jack Broadbent <jack@baaqmd.gov>; Aloha de Guzman <adeguzman@baaqmd.gov>; cynthia.marvin@arb.ca.gov; elizabeth.yura@arb.ca.gov; Grow, Richard <Grow.richard@epa.gov>; Matthew Davis <mdavis@portoakland.com>; Lee, Anna, Public Health, OOD <anna.lee@acgov.org>; Carolyn Clevenger <cclevenger@alamedactc.org>; Richard Sinkoff <rsinkoff@portoakland.com>; Henry Hilken <HHilken@baaqmd.gov>; Sheng Thao <sthao@oaklandnet.com>; Rebecca Kaplan <kaplanforoakland@gmail.com>; Catherine Mukai <cmukai@portoakland.com>; Ranyee Chiang <rchiang@baaqmd.gov>; machol.ben@epa.gov; Israels, Ken <Israels.Ken@epa.gov>; Woo, Winnie <WWoo@oaklandnet.com>; David Vintze <DVintze@baaqmd.gov>; Alison Kirk <AKirk@baaqmd.gov>; Karen Schkolnick <kschkolnick@baaqmd.gov>; McGowan, Patricia <PMcGowan@oaklandnet.com>
Subject: Emissions Reductions Actions Guidance for the Port and Oakland Army Base

Dear Colleagues,

On October 3, 2017, the Bay Area Air Quality Management District (Air District) hosted a conference call to discuss its "Emissions Reductions Actions" document for current and future operations at the Port of Oakland (Port) and former

Oakland Army Base (OAB). At that meeting the City of Oakland (City) staff, had expressed concerns regarding a number of the recommendations in the document. Two specific concerns surrounded the Air District's recommendations on:

- Emission standards for trucks that should be used at the Port and OAB, and
- HEPA filtration for sensitive receptors located around the Port and OAB operational area.

At the meeting, the Air District had requested that City staff provide specific suggestions regarding alterations to the language contained in the guidance document, at which point a follow-up meeting could be scheduled to discuss these concerns. To date, no response has been received. Separately, the Port stated that it also wished to provide input on the guidance document and the Air District's technology assessment spreadsheet (see attached). Again, this feedback is yet to be received.

In light of the fact that our group will be assembled on Friday, the Air District is suggesting that all written comments on both the attached spreadsheet and guidance document be submitted to all group members prior to that meeting. Any written comments can then be the subject of our discussion.

For example:

In response to the concerns expressed by City staff at the first meeting, the Air District is proposing to amend the actions document to as follows:

HEPA Filtration:

2.8. ~~All~~ Existing land uses serving sensitive receptors within 1,000 feet of the Project boundaries shall be eligible to receive incentive funds to retrofit or install central air systems with HEPA air filtration systems rated MERV 13 or better. The Port and City will establish a fund and contribute on a fair share basis to the cost of installing and maintaining the MERV 13 systems and provide educational materials to owners and occupants explaining how to maximize the benefits of these systems. Institutional sites with existing central air systems that serve sensitive groups, such as schools, day cares, health care facilities and nursing homes, shall be the priority for HEPA air filtration installations.

On-road/Drayage Trucks:

1.10. Require all future tenants at the OAB meet a set of best practices for on and off road trucks and equipment, or require the payment of an OAB air quality offset fee for any emissions in excess of those that would have occurred through the implementation of the current list of best practices. Any emission offset funds will be used as incentives to retrofit existing buildings per measure 2.8 or fund other emission reduction programs benefiting the West Oakland Community. The following is the current list of best practices for the OAB:

a. *All yard trucks are zero-emissions.*
b. *All forklifts are zero-emissions.*
c. *All medium-heavy and heavy-heavy duty on-road trucks, including any alternative or hybrid fuel vehicles, meet or exceed the 2010 emission standards.*
d. *Use of new zero and near-zero technologies (such as battery electric or fuel cell electric) for all types of equipment in use at the site, including zero emission electrified rail mounted gantry cranes, and battery electric and hybrid electric medium-duty trucks as feasible.*
e. *As it becomes available, participation in the deployment of zero and near-zero medium-heavy and heavy-heavy duty trucks traveling within 100 miles of the site.*

The City and Port will establish an Oakland Army Base Mitigation Fund Incentive Program (the "Mitigation Fund") consistent with the LDDA/CEQA mitigation measures 4.4-3, 4.4-4 and 5.4-1. When tenants are unable to meet the current list of best practices listed above, the City and Port will require the tenants pay into the Mitigation Fund based on the current cost of reducing one ton of diesel particulate matter.

ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm.

We're hoping to get all of your ideas incorporated in these documents before we take into our Board of Directors in December, so please bring them forward as soon as possible.

Thank you,

Damian Breen
Deputy Air Pollution Control Officer
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Tel: (415) 749-5041

CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA OAKLAND, CALIFORNIA 94612-2033

City Administrator's Office
Oakland Army Base Project Implementation

(510) 238-3541
FAX (510) 238-2240
TDD (510) 238-3254

Date: October 18, 2017
To: Damian Breen, Bay Area Air Quality Management District
From: Claudia Cappio, Assistant City Administrator CC
Subject: Input about the BAAQMD Emission Reduction Actions for the former Oakland Army Base

This memo is a follow up to the conference call meeting of October 3, 2017 during which BAAQMD staff discussed the draft August 2017 document "BAAQMD Emissions Reductions Actions for the Port of Oakland/Former Oakland Army Base" with both City and Port representatives. You indicated that the City and Port should respond to the Air District in writing to be sure our comments and suggestions were accurately presented. Also, I reiterate that the City shares the overall goal of reduction of diesel emissions for this important project.

As we discussed during the conference call, the City would like to work with staff from the BAAQMD to refine the proposed emission reduction actions set forth in the draft document in the interest of ensuring that the identified emissions reduction measures are both economically and technologically feasible, and that their adoption does not exceed the legal authority of the City, Port or BAAQMD.

I'm not sure if you are aware that we have been working with staff from the BAAQMD and CARB to review air quality/diesel emission reduction plans for construction of three sites within the City's portion of the former Oakland Army Base during the past year. Much of the input received from BAAQMD and CARB staff has been incorporated into these plans, resulting in reduced diesel emissions and reduced air quality impacts during construction of these sites. In fact, many of the suggestions have been incorporated into our standard mitigation practices for air quality impacts during construction.

As an initial matter, it will be important for the City to better understand the intended implementation and legal status of the proposed Action list. If we know more about how you intend to use and implement these Actions, we can approach these issues more constructively. Nevertheless, until we receive your response to this inquiry, and as you requested in the telephone meeting, below is a list of our questions, concerns and comments.

1. How does BAAQMD intend to use and implement this list of Actions?

002393 2020-10-29

2. What action do you anticipate the Board of the BAAQMD will take on the Action list? Is there some sort of formal adoption of the proposed action items? How does BAAQMD intend that the document, once adopted, will be enforced?

3. We welcome more information from you about grant funding that is available and appropriate for use by the future tenants at the City's portion of the former Oakland Army Base. As you know, these tenants will include three logistics warehouses, two recycling facilities, 15-acres of truck parking/trucker services, one bulk terminal and a storage yard for empty shipping containers. Some specific information regarding grant funding which would be applicable to these types of tenants would be welcomed right away.

4. Many of the Actions in your document use the terms "require that…", "all equipment…", "all…shall be". Such definitive terms are of concern to us. We recommend replacing these terms with "strive for…", "most equipment…", "most … should be". As a general matter, the City's authority to monitor and ensure compliance with project-specific mitigation measures and conditions of approval identified in the "Standard Conditions of Approval and Mitigation Monitoring and Reporting Program" for the 2012 approvals is limited to requirements that are both economically and technologically feasible. CEQA Guidelines Section 15364 defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." Accordingly, we recommend that the majority of these formulations be replaced with language that is aspirational or hortatory, and that acknowledges that many of the specific requirements may not be applicable for full nor immediate implementation. Actions framed as mandatory allow no room for the City to determine "feasibility" when implementing the mitigation measures, and simply exceed the City's legal authority to enforce.

5. Some of the items on the Action list we believe will be considered by the City to be feasible under the CEQA Guidelines, while other items are of concern to us.

6. Briefly, the items of concern from the Action list are:
   - 1.10 Please see our comments on this item on page 3 of this memo.
   - 1.12 Perhaps this could be modified to address a phase-in program for existing equipment. For example, replacing Tier 3 forklifts with Tier 4 or electric on a phase-in schedule.
   - 1.15 Unclear.
   - 1.16 Needs to be discussed as it relates to the future West Gateway terminal.
   - 2.2 An appointment system might not be needed at the warehouses or at the recycling facilities.
   - 2.3.1 The City's role regarding commercial harbor craft is unclear.
   - 2.4 Electric mobile cargo handling equipment that may be used at the buildings on the City's portion of the OAB might not yet be commercially available or feasible.

2.5 The three logistic warehouse will be LEED Gold. It is unclear if any diesel emission reductions would result from requiring LEED Platinum for other future buildings at the City's portion of the OAB. Additionally, the second part of 2.5 needs to be studied regarding "All buildings providing sources of energy." This may not be feasible for every building and we are not familiar with individual buildings providing tidal or wind energy.

2.8 The intent may be a good idea, but the current wording requiring changes to private property owned by others is of concern.

2.10.1 We understand that employers with 50 or more full-time employees are subject to the Bay Area Commuter Benefits Program, BAAQMD Regulation 14, Rule 1. Our concern is that 2.10.1 states that a committee would be formed… The requirement for, and function of, such a committee is unclear.

2.10.2 "Provide on-site services such as cafeterias, banks, dry cleaners and convenience market" is of concern. "Construct transit facilities and improve transit bus service to the area" needs to be further studied. We agree that transportation control measures are required (reference mitigation measure 4.4-5), but the specifics in 2.10 need more attention to make them applicable, usable, and feasible.

2.10.4 "Provide a shuttle to and from the West Oakland BART station and mid-day shuttles to food service" is a good intent but the goal could be accomplished in other ways, hence our concern about wording of this item.

2.11.1 For new stationary sources moving to the OAB, such as Custom Alloy Scrap Services (CASS), the requirement that the City shall fund emission reduction beyond regional and State requirements is of concern.

3.3 While the intent is good we have concern about the strict language; does ARB At-Berth regulation apply to bulk vessels? The only terminal at the West Gateway will be a bulk terminal.

3.4 - 6 We needs to review these Actions regarding the railroads in greater detail.

Regarding item 1.10, perhaps your staff could provide us with the background information they used prior to proposing this Action item. It will be important to know if other Air Districts have imposed this requirement, or any of the components therein, since it covers many items. Can your staff help by providing information on fleets of some of the delivery company to whom this requirement would apply, such as how many of their trucks already meet or exceed the 2010 emission standards and the financial implications of requiring a portion of the fleets be replaced with 2010 trucks two to five years in advance of the CARB Rule? Perhaps they could provide fleet scheduling strategies so that it can be better understood how this requirement would affect the operational aspects of delivery company fleets who would be required to allocate only certain trucks to deliver to the OAB. Implementing a requirement that advances the Truck and Bus Rule by two to five years that would apply to delivery trucks and recycling trucks which will serve approximately five buildings at the OAB would need analysis to understand its feasibility and practicality. It would be helpful for your staff can provide the background information they gathered in order to propose this Action item as a requirement.

We feel that several working meetings between City, Port and BAAQMD staff to work through the intent of, and specific wording of, these actions items would be a useful way to move forward.

We welcome such meetings and will await hearing from you this set of important issues.

cc: Rebecca Kaplan, Councilmember
Barbara Parker, City Attorney
Sabrina Landreth, City Administrator
William Gilchrist, Director Bureau of Planning and Building
Darin Ranelletti, Deputy Director Bureau of Planning and Building
Doug Cole, OAB Project Manager
Richard Sinkoff, Port of Oakland, Director of Environmental Programs and Planning

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/25/2017 12:49:03 AM
To: Brian Beveridge Personal Address / Ex. 6
CC: Alison Kirk [AKirk@baaqmd.gov]; David Vintze [DVintze@baaqmd.gov]; Yura, Elizabeth@ARB [eyura@arb.ca.gov]; Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]; Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]; Margaret Gordon Personal Address / Ex. 6
Subject: Re: Request to review draft AQ plans with the City for development at the former Oakland Army Base

If invited I will attend any appropriate meeting. RG

From: Brian Beveridge Personal Address / Ex. 6
Sent: Monday, April 24, 2017 5:27 PM
To: Grow, Richard
Cc: Alison Kirk; David Vintze; Yura, Elizabeth@ARB; Lee, Anna, Public Health, OOD; Marvin, Cynthia@ARB; Margaret Gordon
Subject: RE: Request to review draft AQ plans with the City for development at the former Oakland Army Base

We have not heard from EarthJustice yet, but I did have an interesting call from Kaplan today. I think we should have a meeting of our ConC group and discuss it.
Brian

On Apr 24, 2017 1:14 PM, "Grow, Richard" <Grow.Richard@epa.gov> wrote:

FYI – I'm told the complaint has been "acknowledged" by at least EPA and probably by DOT, via a letter (likely to Earthjustice) several days ago. Basically this simply acknowledges receipt of the complaint. The next step would be formal "acceptance" (or rejection) of the complaint by either or both agencies, based on "jurisdictional" review, which would confirm an actual investigation. While my guess is this is likely in the next week or so, it doesn't actually change much in the near term, while the federal agency(ies) develop plans for investigation.

Richard

From: Lee, Anna, Public Health, OOD [mailto:Anna.Lee@acgov.org]
Sent: Monday, April 24, 2017 12:47 PM
To: 'Marvin, Cynthia@ARB' <cynthia.marvin@arb.ca.gov>; David Vintze <DVintze@baaqmd.gov>; Brian Beveridge <brian.woeip@gmail.com>
Cc: Alison Kirk <AKirk@baaqmd.gov>; Grow, Richard <Grow.Richard@epa.gov>; Margaret Gordon <margaret.woeip@gmail.com>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>
Subject: RE: Request to review draft AQ plans with the City for development at the former Oakland Army Base

Same here, but want to follow Brian's advice of waiting until the Feds acknowledge the complaint.

Thanks,

Anna

From: Marvin, Cynthia@ARB [mailto:cynthia.marvin@arb.ca.gov]
Sent: Sunday, April 23, 2017 5:30 PM
To: David Vintze <DVintze@baaqmd.gov>; Brian Beveridge Personal Address / Ex. 6
Cc: Alison Kirk <AKirk@baaqmd.gov>; Lee, Anna, Public Health, OOD <Anna.Lee@acgov.org>; Richard Grow <grow.richard@epa.gov>; Margaret Gordon Personal Address / Ex. 6 Yura, Elizabeth@ARB <eyura@arb.ca.gov>
Subject: RE: Request to review draft AQ plans with the City for development at the former Oakland Army Base

ARB is open to participating in these meetings, assuming the first one is substantive and productive. There are some other State players trying to help get the City onboard and we will be approaching on multiple fronts simultaneously. All with the same objectives as we've discussed as group. If you have any questions or concerns, please call (v. email) to discuss. Thanks.

Cyn

From: David Vintze [mailto:DVintze@baaqmd.gov]
Sent: Friday, April 21, 2017 10:56 AM
To: Brian Beveridge
Cc: Alison Kirk; Anna Public Health CAPE Lee; Richard Grow; Margaret Gordon; Marvin, Cynthia@ARB; Yura, Elizabeth@ARB
Subject: Re: Request to review draft AQ plans with the City for development at the former Oakland Army Base

My guess is that they may be going further on the mitigation side than before the most recent events, but probably not as far as we would like. We won't know the answer to that question until we see the plan either in a pre-public release of the operational plan or when it is publicly released. I think my management will want me to attend at least one meeting with the City per their request. I will let everyone know if that is the case. Dave

Dave Vintze

Air Quality Planning Manager

Bay Area Air Quality Management District

375 Beale Street. Suite 600

San Francisco, CA. 94105

Desk. 415-749-5179

Cell. Personal Address / Ex. 6

On Apr 20, 2017, at 11:21 PM, "Brian Beveridg Personal Address / Ex. 6 wrote:

Hi Dave

Thanks for the notice. My first concern is the continued reference to the SCA/MMRPs. If they aren't going beyond those docs, they are just rearranging the life boats. Do you think they are taking the recommendations from BAAQMD and CARB seriously? We are holding off with any formal meetings until we get acknowledgement from the feds.

Regards, Brian

On Apr 20, 2017 12:19 PM, "David Vintze" <DVintze@baaqmd.gov> wrote:

Ms, Margaret & Brian,

The City has requested a meeting with agency staff only to discuss a pre-public draft of the operational mitigation plan. I had mentioned this to the City as a possible means of jump starting a new process. I don't know if we need three meetings but I think agency staff should at least attend the first meeting to see if things will be different.

I think this would be a good opportunity to meet one on one with City staff to see if they will discuss issues more openly and or how far they are willing to push the developer on mitigation. We can reassess this new process after the first meeting.

Margaret/Brian, and others please weigh in on your preference. Dave

Dave Vintze

Air Quality Planning Manager

Bay Area Air Quality Management District

375 Beale Street. Suite 600

San Francisco, CA. 94105

Desk. 415-749-5179

Cel Personal Address / Ex. 6

Begin forwarded message:

From: "McGowan, Patricia" <PMcGowan@oaklandnet.com>
Date: April 19, 2017 at 2:51:48 PM CDT
To: David Vintze <dvintze@baaqmd.gov>, "Yura, Elizabeth@ARB" <eyura@arb.ca.gov>
Cc: "Anna Lee (anna.lee@acgov.org)" <anna.lee@acgov.org>, "Richard Grow (grow.richard@epa.gov)" <grow.richard@epa.gov>, "Cappio, Claudia" <CCappio@oaklandnet.com>, "Ranelletti, Darin" <DRanelletti@oaklandnet.com>, "Monetta, John" <JMonetta@oaklandnet.com>, "Cole, Doug" <DCole@oaklandnet.com>, "Wald, Mark" <MWald@oaklandcityattorney.org>, "Damian Breen (dbreen@baaqmd.gov)" <dbreen@baaqmd.gov>
Subject: Request to review draft AQ plans with the City for development at the former Oakland Army Base

Hello Dave and Elizabeth,

In follow up to my previous e-mails and phone conversations with you Dave about how to proceed on air quality plans for the City's portion of the Oakland Army Base, I would like to summarize and recommend a way of moving forward. The City's OAB team has been considering how to address the concerns that the quarterly Stakeholders meetings are not working for the WOEIP and for the air quality agencies. We acknowledge your concerns about developing operational plans after construction begins. However, there are multiple ways to comply with the mitigation requirements to achieve effective outcomes. The City believes there are opportunities to develop effective construction and operational air quality plans that will achieve our mutual goal of improving air quality at the former Oakland Army Base and in West Oakland. We would like to move forward with you in a cooperative and constructive manner to do that.

As you may know, a complaint was filed under Title VI of the Civil Rights Act of 1964 by Earth Justice on behalf of the West Oakland Environmental Indicators Project. The City will be working to resolve that complaint and will continue processing applications at the same time. Prologis has recently submitted a draft operational air quality plan for their warehouse which is currently under

construction. We would like to review that draft plan with you, prior to releasing it for public review.

We recommend a staff-to-staff meeting to review, discuss, and improve this draft plan prior to the official review process outlined in the SCA/MMRP. The developer has used the two lists of recommended measures we received from BAAQMD and from CARB in developing the draft plan, as recommended by Cynthia Marvin of CARB at the meeting of December 13, 2016. Many of the items from these lists are included in their plan. Additionally, construction and operational air quality plans will soon be submitted for an 11-acre container storage yard which we would also like to review with you, striving to improve these plans prior to the public review process outlined in the SCA/MMRP.

We would like to invite you to three meetings to review these draft plans: the operational air quality plan for the Prologis warehouse, the construction AQ plan and the operational AQ plan for the container storage yard. Following each meeting, I will provide input to the developer, the plans revised or clarified by the developer, and then the public review process outlined in the SCA/MMRP would officially begin. These staff-to-staff meetings are in addition to the steps outlined in the SCA/MMRP and do not replace the public review process of the SCA/MMRP in any way. We are inviting the you two who represent the air quality agencies that authored the two lists; if staff of the EPA and Alameda Co. Public Health would like to attend, they are certainly welcome and are being copied on this e-mail. The developer will <u>not</u> attend these meetings. These are staff-to-staff working sessions.

Meeting location: 250 Frank H. Ogawa Plaza, Suite 3315, Oakland Planning Department offices.

Dates and times: Tuesday, May 9, 11:00-12:30

Thursday May 18, 1:30-3:00

Tuesday May 30, 2:00-3:30

I will also send you an Outlook request for these meeting dates and times which will indicate which conference room, and I will e-mail the draft plan(s) to you about one week in advance of each meeting. Please let me know if you will be able to attend.

We look forward to working with you on this.

Best Regards,

Pat McGowan

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com |
Website: www.oaklandnet.com/planning

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/24/2017 8:14:42 PM
To: Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]; 'Marvin, Cynthia@ARB' [cynthia.marvin@arb.ca.gov]; David Vintze [DVintze@baaqmd.gov]; Brian Beveridg Personal Address / Ex. 6
CC: Alison Kirk [AKirk@baaqmd.gov]; Margaret Gordon Personal Address / Ex. 6 Yura, Elizabeth@ARB [eyura@arb.ca.gov]
Subject: RE: Request to review draft AQ plans with the City for development at the former Oakland Army Base

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Cc: Alison Kirk <AKirk@baaqmd.gov>; Grow, Richard <Grow.Richard@epa.gov>; Margaret Gordon Personal Address / Ex. 6 ura, Elizabeth@ARB <eyura@arb.ca.gov>
Subject: RE: Request to review draft AQ plans with the City for development at the former Oakland Army Base

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Subject: RE: Request to review draft AQ plans with the City for development at the former Oakland Army Base

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Cyn

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Sent: Friday, April 21, 2017 10:56 AM
To: Brian Beveridge
Cc: Alison Kirk; Anna Public Health CAPE Lee; Richard Grow; Margaret Gordon; Marvin, Cynthia@ARB; Yura, Elizabeth@ARB
Subject: Re: Request to review draft AQ plans with the City for development at the former Oakland Army Base

My guess is that they may be going further on the mitigation side than before the most recent events, but probably not as far as we would like. We won't know the answer to that question until we see the plan either in a pre-public release of the operational plan or when it is publicly released. I think my management will want me to attend at least one meeting with the City per their request. I will let everyone know if that is the case.
Dave

Dave Vintze
Air Quality Planning Manager
Bay Area Air Quality Management District
375 Beale Street. Suite 600
San Francisco, CA. 94105
Desk. 415-749-5179
Cell Personal Address / Ex. 6

On Apr 20, 2017, at 11:21 PM, "Brian Beveridge Personal Address / Ex. 6 wrote:

> Hi Dave
> Thanks for the notice. My first concern is the continued reference to the SCA/MMRPs. If they aren't going beyond those docs, they are just rearranging the life boats. Do you think they are taking the recommendations from BAAQMD and CARB seriously? We are holding off with any formal meetings until we get acknowledgement from the feds.
> Regards, Brian
>
> On Apr 20, 2017 12:19 PM, "David Vintze" <DVintze@baaqmd.gov> wrote:
> Ms, Margaret & Brian,
>
> The City has requested a meeting with agency staff only to discuss a pre-public draft of the operational mitigation plan. I had mentioned this to the City as a possible means of jump starting a new process. I don't know if we need three meetings but I think agency staff should at least attend the first meeting to see if things will be different.
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> Begin forwarded message:
>
> > **From:** "McGowan, Patricia" <PMcGowan@oaklandnet.com>
> > **Date:** April 19, 2017 at 2:51:48 PM CDT
> > **To:** David Vintze <dvintze@baaqmd.gov>, "Yura, Elizabeth@ARB" <eyura@arb.ca.gov>
> > **Cc:** "Anna Lee (anna.lee@acgov.org)" <anna.lee@acgov.org>, "Richard Grow

(grow.richard@epa.gov)" <grow.richard@epa.gov>, "Cappio, Claudia" <CCappio@oaklandnet.com>, "Ranelletti, Darin" <DRanelletti@oaklandnet.com>, "Monetta, John" <JMonetta@oaklandnet.com>, "Cole, Doug" <DCole@oaklandnet.com>, "Wald, Mark" <MWald@oaklandcityattorney.org>, "Damian Breen (dbreen@baaqmd.gov)" <dbreen@baaqmd.gov>
Subject: Request to review draft AQ plans with the City for development at the former Oakland Army Base

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Dates and times: Tuesday, May 9, 11:00-12:30

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I will also send you an Outlook request for these meeting dates and times which will indicate which conference room, and I will e-mail the draft plan(s) to you about one week in advance of each meeting. Please let me know if you will be able to attend.

We look forward to working with you on this.

Best Regards,

Pat McGowan

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com |
Website: www.oaklandnet.com/planning

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/20/2017 9:55:44 PM
To: David Vintze [DVintze@baaqmd.gov]
Subject: RE: Request to review draft AQ plans with the City for development at the former Oakland Army Base

Dave – however you all decide to respond to this, I would be interested in sitting in if there is anything along the lines of a multi-agency discussion. We would also be glad to field more senior staff if that had some tactical appeal. My own guess is the table will need to be reset, in effect setting up a negotiation of sorts, but that's not a sure thing and if there is progress to be made in the meantime, especially if it further establishes a record, then great.

Richard

From: David Vintze [mailto:DVintze@baaqmd.gov]
Sent: Thursday, April 20, 2017 11:19 AM
To: Margaret Gordon Personal Address / Ex. 6
Cc: Cynthia@ARB Marvin <cynthia.marvin@arb.ca.gov>; Elizabeth Yura <eyura@arb.ca.gov>; Grow, Richard <Grow.Richard@epa.gov>; Anna Public Health CAPE Lee <Anna.Lee@acgov.org>; Alison Kirk <AKirk@baaqmd.gov>
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Subject: Title VI and: Request to review draft AQ plans with the City for development at the former Oakland Army Base

FYI all re Title VI status.

EPA, DOT and DOJ have held discussions on this and the first step is a "jurisdictional" review in which each agency determines whether to formally accept the complaint, after which (assuming it is accepted) the investigation phase commences. My best estimate (often erroneous) is that this will occur within the next two weeks. The complaint requested DOT take the lead, and most of you met their chief investigator when he was here in December. DOJ's role is to ensure coordination at the federal level. I anticipate our office (EPA/R9) will have a significant role on the mitigation issue, whether or not EPA formally accepts the complaint.

You all have seen the complaint, which concludes with this statement:

"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."

I assume all will consider the relevance of this position in determining how to proceed.

Richard

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Sent: Thursday, April 20, 2017 11:19 AM
To: Margaret Gordon Personal Address / Ex. 6
Cc: Cynthia@ARB Marvin <cynthia.marvin@arb.ca.gov>; Elizabeth Yura <eyura@arb.ca.gov>; Grow, Richard <Grow.Richard@epa.gov>; Anna Public Health CAPE Lee <Anna.Lee@acgov.org>; Alison Kirk <AKirk@baaqmd.gov>
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Message

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Sent: 4/20/2017 4:19:27 PM
To: Adams, Elizabeth [Adams.Elizabeth@epa.gov]
CC: Lakin, Matt [Lakin.Matthew@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: RE: West Oakland Title VI complaint update

Deliberative Process / Ex. 5

Richard

From: Adams, Elizabeth
Sent: Thursday, April 20, 2017 8:25 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Lakin, Matt <Lakin.Matthew@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>
Subject: Re: West Oakland Title VI complaint update

Do you think we should go to these upcoming meetings between the city and air agencies? Have we gone in the past?
Elizabeth Adams
Acting Director, Air Division
US EPA Region 9
415-972-3183
Cell: 415-297-4308

On Apr 20, 2017, at 7:54 AM, Grow, Richard <Grow.Richard@epa.gov> wrote:

All

Deliberative Process / Ex. 5

Richard

From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, April 19, 2017 12:52 PM
To: David Vintze <dvintze@baaqmd.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>
Cc: Anna Lee (anna.lee@acgov.org) <anna.lee@acgov.org>; Grow, Richard <Grow.Richard@epa.gov>; Cappio, Claudia <CCappio@oaklandnet.com>; Ranelletti, Darin <DRanelletti@oaklandnet.com>; Monetta, John <JMonetta@oaklandnet.com>; Cole, Doug <DCole@oaklandnet.com>; Wald, Mark <MWald@oaklandcityattorney.org>; dbreen@baaqmd.gov
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Sent: 4/20/2017 2:54:15 PM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]; Jordan, Deborah [Jordan.Deborah@epa.gov]
CC: Miller, Amy [Miller.Amy@epa.gov]; Garnett, Desean [Garnett.Desean@epa.gov]; Adams, Elizabeth [Adams.Elizabeth@epa.gov]; Matthew Lakin [Lakin.Matthew@epa.gov]; Reyes, Deldi [Reyes.Deldi@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Machol, Ben [Machol.Ben@epa.gov]
Subject: West Oakland Title VI complaint update

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Meeting location:	250 Frank H. Ogawa Plaza, Suite 3315, Oakland Planning Department offices.
Dates and times:	Tuesday, May 9, 11:00-12:30
	Thursday May 18, 1:30-3:00
	Tuesday May 30, 2:00-3:30

I will also send you an Outlook request for these meeting dates and times which will indicate which conference room, and I will e-mail the draft plan(s) to you about one week in advance of each meeting. Please let me know if you will be able to attend.

We look forward to working with you on this.

Best Regards,
Pat McGowan

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/19/2017 9:43:40 PM
To: David Vintze [DVintze@baaqmd.gov]; Lee, Anna, Public Health, CAPE (Anna.Lee@acgov.org) [anna.lee@acgov.org]; Marvin, Cynthia@ARB (cynthia.marvin@arb.ca.gov) [cynthia.marvin@arb.ca.gov]; Elizabeth Yura (eyura@arb.ca.gov) [eyura@arb.ca.gov]; Alison Kirk [AKirk@baaqmd.gov]
Subject: Re: Request to review draft AQ plans with the City for development at the former Oakland Army Base

I would suggest at a minimum you have the discussion with Margaret and Brian before committing.

From: David Vintze <DVintze@baaqmd.gov>
Sent: Wednesday, April 19, 2017 2:20 PM
To: Lee, Anna, Public Health, CAPE (Anna.Lee@acgov.org); Marvin, Cynthia@ARB (cynthia.marvin@arb.ca.gov); Elizabeth Yura (eyura@arb.ca.gov); Grow, Richard; Alison Kirk
Subject: FW: Request to review draft AQ plans with the City for development at the former Oakland Army Base

This request is in response to my request that the city meet with agency staff outside the developer to discuss the mitigation program for future development at OAB. I think we should meet with the City staff (one more time) to try and hammer out an effective mitigation program, if I can be so naive. At least this will be staff on staff so we can ask very frank questions to the City about meeting their mitigation obligation. Unfortunately I cannot attend the first two meetings but Alison will attend with our concerns and recommendations. What do you all think – should we engage in this process without Margaret and Brian? Dave

---

From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, April 19, 2017 12:52 PM
To: David Vintze <DVintze@baaqmd.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>
Cc: Anna Lee (anna.lee@acgov.org) <anna.lee@acgov.org>; Richard Grow (grow.richard@epa.gov) <grow.richard@epa.gov>; Cappio, Claudia <CCappio@oaklandnet.com>; Ranelletti, Darin <DRanelletti@oaklandnet.com>; Monetta, John <JMonetta@oaklandnet.com>; Cole, Doug <DCole@oaklandnet.com>; Wald, Mark <MWald@oaklandcityattorney.org>; Damian Breen <dbreen@baaqmd.gov>
Subject: Request to review draft AQ plans with the City for development at the former Oakland Army Base

Hello Dave and Elizabeth,

In follow up to my previous e-mails and phone conversations with you Dave about how to proceed on air quality plans for the City's portion of the Oakland Army Base, I would like to summarize and recommend a way of moving forward. The City's OAB team has been considering how to address the concerns that the quarterly Stakeholders meetings are not working for the WOEIP and for the air quality agencies. We acknowledge your concerns about developing operational plans after construction begins. However, there are multiple ways to comply with the mitigation requirements to achieve effective outcomes. The City believes there are opportunities to develop effective construction and operational air quality plans that will achieve our mutual goal of improving air quality at the former Oakland Army Base and in West Oakland. We would like to move forward with you in a cooperative and constructive manner to do that.

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warehouse which is currently under construction. We would like to review that draft plan with you, prior to releasing it for public review.

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We look forward to working with you on this.

Best Regards,
Pat McGowan

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/19/2017 9:24:54 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: Re: Oakland TA

Understood, hope you have time to talk with me/us while you're here.

From: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>
Sent: Wednesday, April 19, 2017 2:22 PM
To: Grow, Richard
Subject: RE: Oakland TA

We're going to keep it in-house, between DOT and its recipients, but when it comes to the investigation, we will certainly be in touch.

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst
Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
W78-312
(202) 366-1979

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Wednesday, April 19, 2017 5:21 PM
To: Fitzpatrick, Ryan (OST)
Subject: Re: Oakland TA

Thanks. If there's any chance we (meaning me) could observe or particpate I'd be interested.

From: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>
Sent: Wednesday, April 19, 2017 2:19 PM
To: Grow, Richard
Subject: Oakland TA

Hey Richard:

Just wanted to make you aware that Pattie Tom from MARAD and I will be coming out to Oakland to deliver requested technical assistance to the City and the Port on May 3. I had mentioned that we were working on this before, and we finally have a date nailed down. The technical assistance will focus on Title VI and the provision of meaningful public engagement, with a focus on the redevelopment of the OAB. This was in the works before the complaint was filed, and is intended to respond to a DOT recipient's request, rather than being part of the investigation.

So just to be clear, this doesn't have anything to do with the complaint or any investigation, and we won't be conducting any investigation-related activities while we're out there. Its just going to be Pattie and I. But I wanted to give you a heads up, since we've been communicating so much on these issues.

Give me a call if you have any questions.

Ryan

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst
Departmental Office of Civil Rights
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Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/19/2017 9:21:10 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: Re: Oakland TA

Thanks. If there's any chance we (meaning me) could observe or particpate I'd be interested.

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Ryan

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Lead Civil Rights Analyst
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Message

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Sent: 4/19/2017 9:12:11 PM
To: ryan.fitzpatrick@dot.gov
Subject: Note from City of Oakland: Request to review draft AQ plans with the City for development at the former Oakland Army Base

Deliberative Process / Ex. 5

Richard

From: McGowan, Patricia <PMcGowan@oaklandnet.com>
Sent: Wednesday, April 19, 2017 12:51 PM
To: David Vintze; Yura, Elizabeth@ARB
Cc: Anna Lee (anna.lee@acgov.org); Grow, Richard; Cappio, Claudia; Ranelletti, Darin; Monetta, John; Cole, Doug; Wald, Mark; dbreen@baaqmd.gov
Subject: Request to review draft AQ plans with the City for development at the former Oakland Army Base

Hello Dave and Elizabeth,

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Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/19/2017 9:04:04 PM
To: Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]; Yura, Elizabeth@ARB [eyura@arb.ca.gov]; David Vintze [DVintze@baaqmd.gov]
Subject: City meeting request

Cynthia, Elizabeth and Dave

I see the City's request. The T6 complaint is in the process of being formally accepted ("jurisdiction review") and EPA and DOT are working closely on this but may take a couple more weeks to formally accept. Frankly the "working to resolve" statement in their note doesn't correspond to anything I am seeing. Let me know if we should have a conference call, I'm good tomorrow (Thursday), Friday tied up meeting with 100 or so advocates at our office. Next weel also good.

Richard

By electronic and certified U.S .mail

April 4, 2017

Attn: Ryan Fitzpatrick
Lead Civil Rights Analyst, Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave., S.E.
Washington, D.C. 20590
ryan.fitzpatrick@dot.gov

Attn: Velveta Golightly-Howell
Director, Office of Civil Rights
United States Environmental Protection Agency
U.S. EPA Office of Civil Rights (Mail Code 1201A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
Title_VI_Complaints@epa.gov

Attn: Daria Neil
Deputy Chief, Federal Coordination and Compliance Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Daria.neal@usdoj.gov

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

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[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 . . . .").

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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).

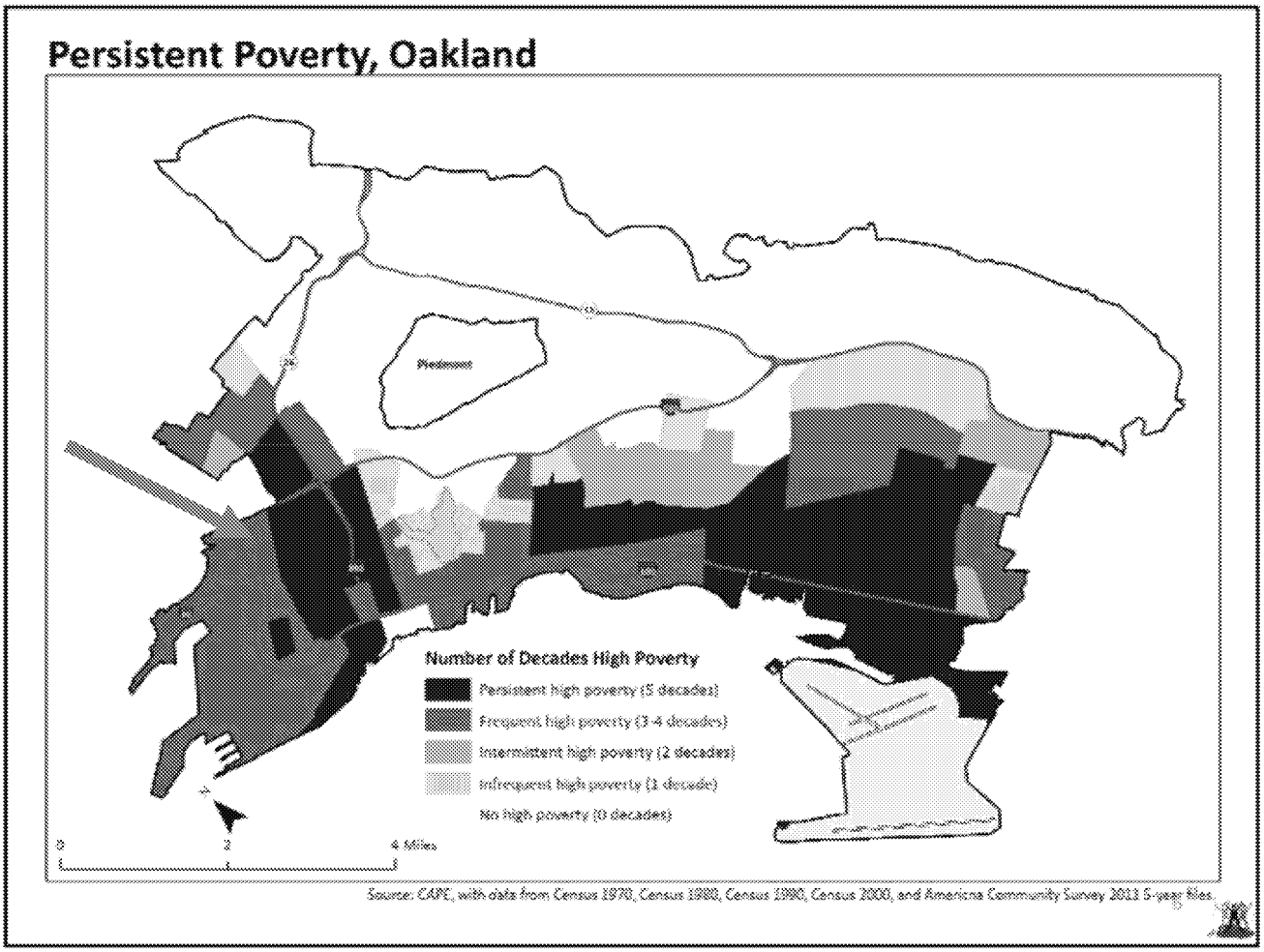

Figure 1 Map of areas of persistent poverty in Oakland (with arrow pointing to West Oakland).[24]

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]

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[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.

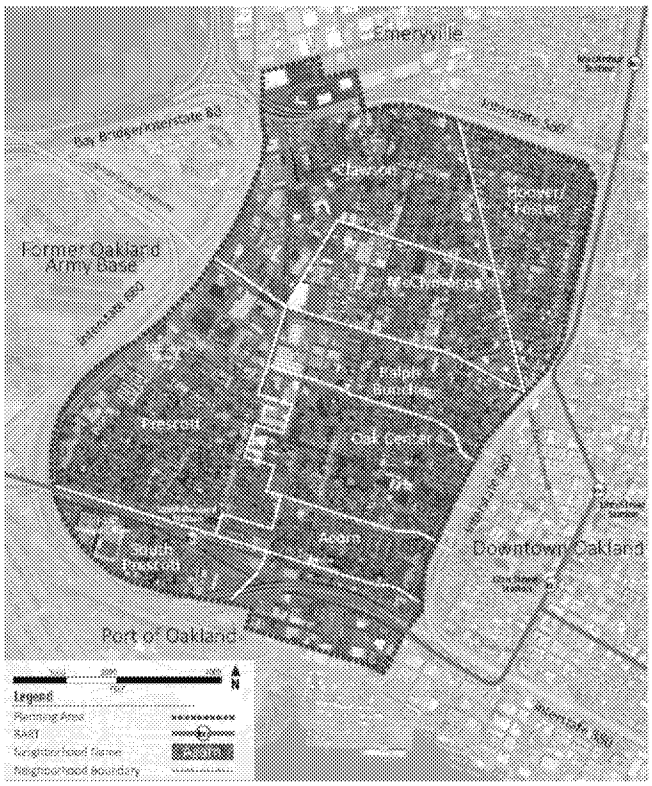

Figure 2 Map of the community of West Oakland.[27]

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.

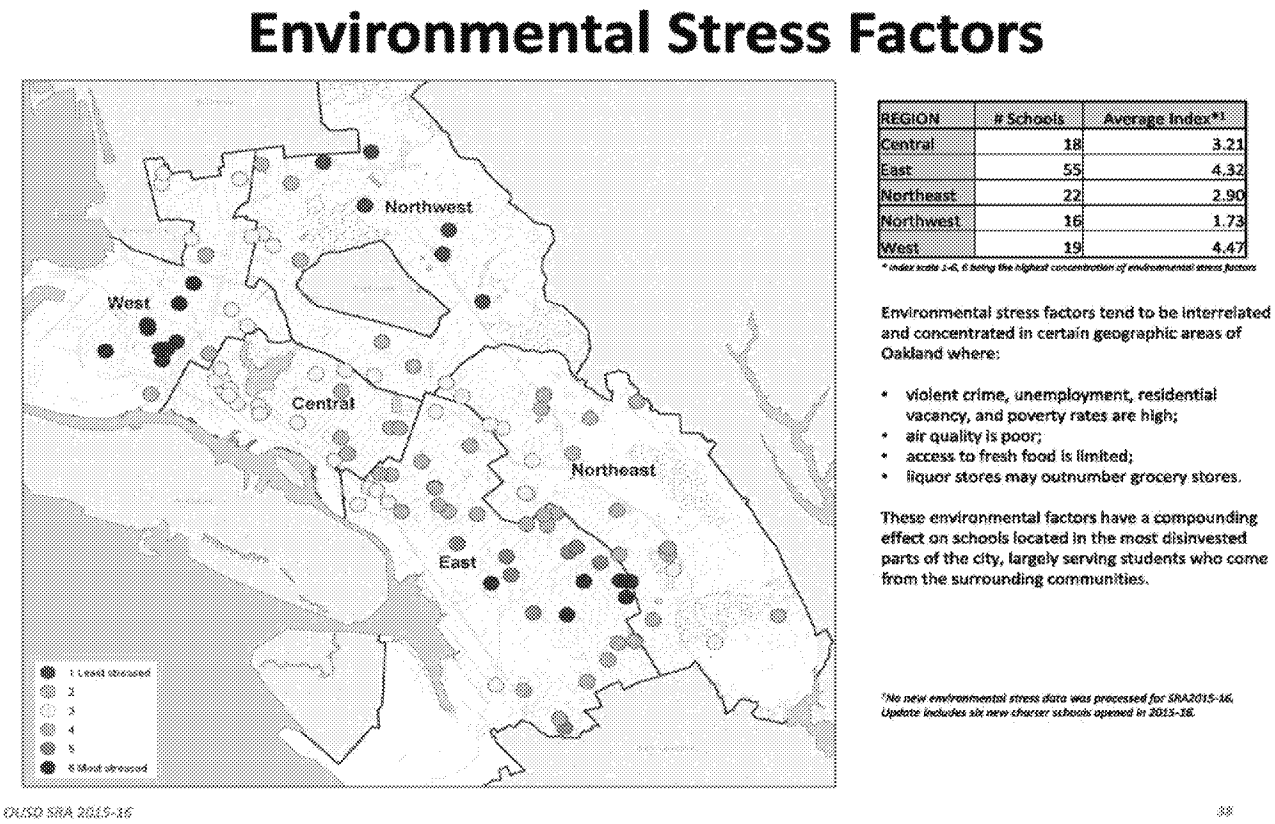

Figure 3 Environmental stress factors by school.

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).

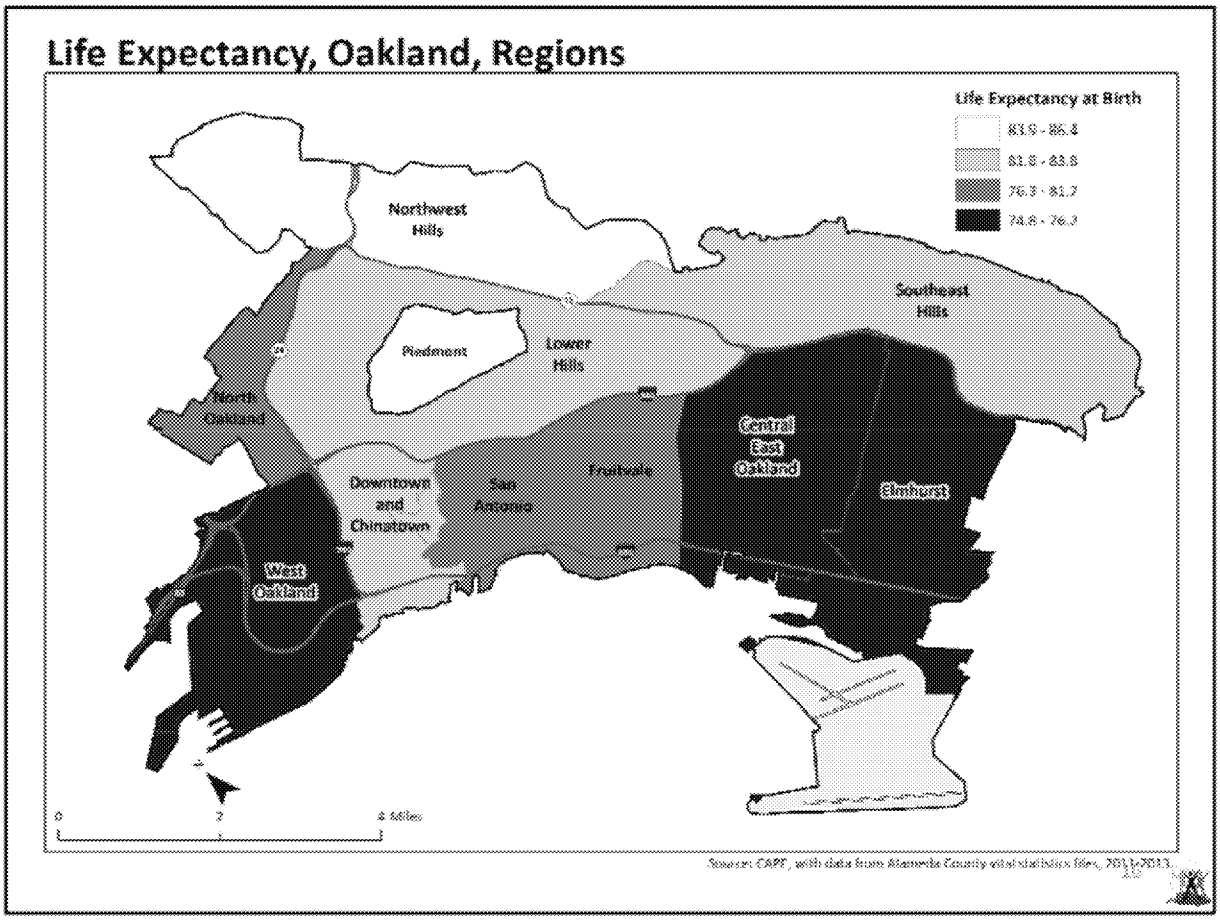

Figure 4 Life expectancies in Oakland's communities.[39]

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.

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[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]

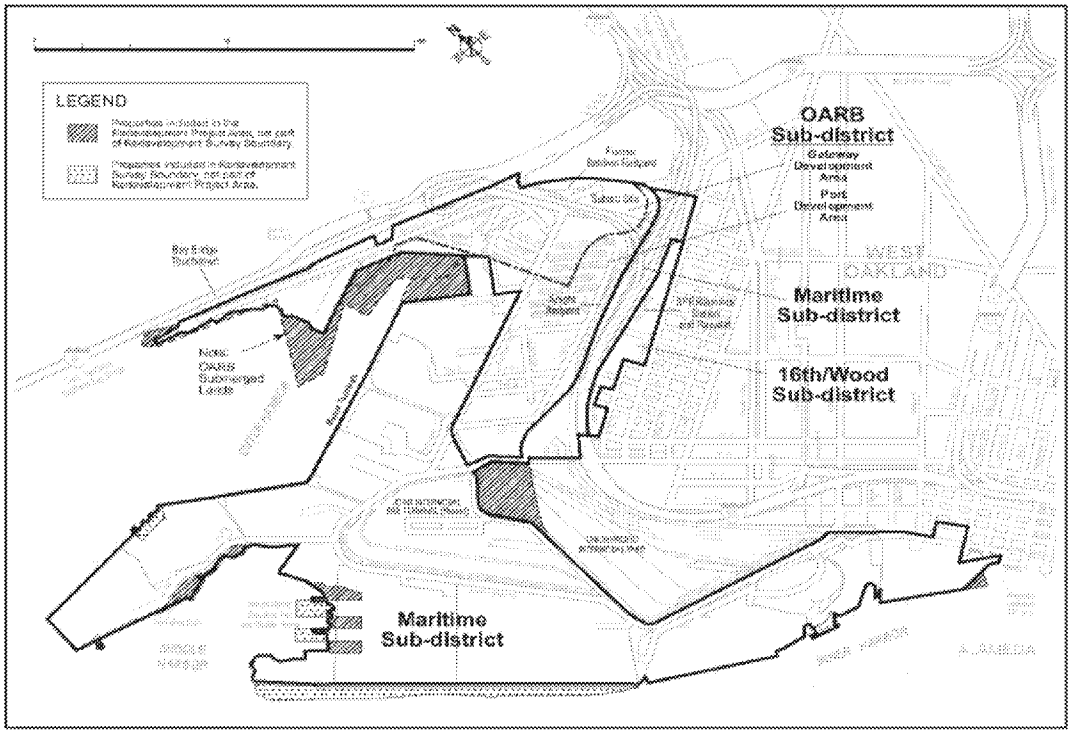

Figure 5 Oakland Army Base Redevelopment Area Sub-Districts, April 2002[52]

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

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[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]

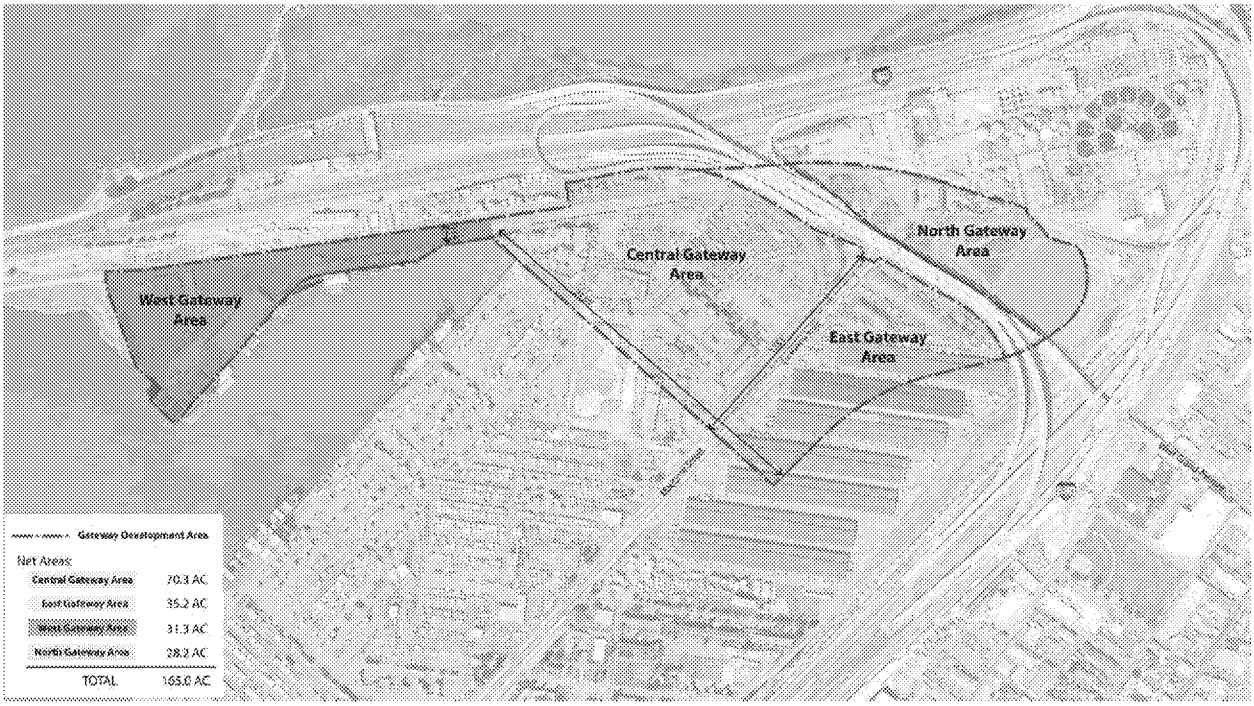

Figure 6 Gateway Development Area.[62]

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[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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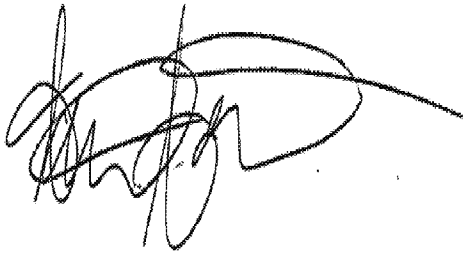
Complainant further requests that the City and Port be brought into compliance by: (a) requiring the City to withdraw its approvals of the Gateway construction management plans unless and until the City conducts a full review of the construction and long-term operation of all of the Gateway areas, and 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,

Yana Garcia
Paul Cort
Attorneys for West Oakland Environmental Indicators Project



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PORT OF OAKLAND

J. Christopher Lytle
Executive Director

August 16, 2017

VIA EMAIL AND UPS OVERNIGHT MAIL

Mr. Charles E. James, Sr.
Director
Office of the Secretary of Transportation
Departmental Office of Civil Rights
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Ms. Lilian S. Dorka
Director
External Civil Rights Compliance Officer
Office of General Counsel
U.S. Environmental Protection Agency
Mail code 1201A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

Dear Mr. James and Ms. Dorka:

I am writing on behalf of the Board of Port Commissioners ("Board") and the Port of Oakland (collectively referred to as the "Port") to respond to the U.S. Department of Transportation ("DOT") and U.S. Environmental Protection Agency's ("EPA") July 18, 2017, Notification of Acceptance for Investigation ("Acceptance Letter") issued to the Port and the City of Oakland ("City"), and the April 4, 2017, West Oakland Environmental Indicators Project ("WOEIP") Complaint Under Title VI of the Civil Rights Act of 1964 against the Port and the City ("Complaint").[1] This letter is written solely on behalf of the Port and not the City. I understand that the City is providing a separate letter to the DOT and EPA in response to the Acceptance Letter.

As further described in Section I below, while the Port is a department of the City, it is a separate legal entity from the City. The Port holds all Port property in trust for the people of the

[1] The information provided in this letter is submitted in the spirit of cooperation and for the sole purpose of assisting with the DOT and EPA investigation in this matter. This letter is not intended to be used, nor does the Port consent to its use, in any other administrative, trial, or other proceeding. While we believe this letter to be accurate in all respects, as further information becomes available, the Port may modify, correct, or supplement the information contained in this letter, but undertakes no obligation to do so.

State of California and must use and maintain its trust assets consistent with its Tidelands Trust obligations to promote commerce and navigation.

EXECUTIVE SUMMARY

In the Acceptance Letter[2], DOT and EPA state that their investigation will focus on:

(1) whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the OAB subjects the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 ("Title VI"); and

(2) whether the City's and Port's methods, including their public participation process, for approving and authorizing new development and expanded activities at the Port of Oakland and the OAB subject the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI.[3]

With respect to the first focus of the EPA-DOT investigation, the Port was not involved in the City's approval of a construction management plan or permission for groundbreaking on the Northeast Gateway development project and has no role in that project.[4] Accordingly, the Port will focus this letter and the legal analysis provided in Section III below, on the second prong of DOT's and EPA's investigative focus: the public participation process and other methods for approving and authorizing new development and expanded activities at the Port.

As we will show in this letter, the Port strives to operate both as a significant contributor to the local, regional, and national economies and as a steward of the public interest in management of Port assets. The health and welfare of residents who are the Port's neighbors is an integral concern of the Port's day-to-day operations. The Port has built into its decision-making process and operations various channels and manners of soliciting input from stakeholders, the public, and local communities, including when planning new development or activities. Indeed, there are multiple avenues for public participation and engagement in the Port's decision-making process,

[2] Although EPA and DOT have already determined that the WOEIP Complaint meets the agencies' jurisdictional requirements, the Port notes that the Complaint was submitted to DOT and EPA more than 180 days after the City's October 4, 2016, approval of the Northeast Gateway construction management plan. Furthermore, although specific dates of any Port action are not alleged in the Complaint, the Port's Oakland Army Base ("OAB") development project began years ago, and certainly more than 180 days prior to filing of the WOEIP Complaint.

[3] Acceptance Letter, p. 2.

[4] *See* October 4, 2016, Northeast Gateway development project approval from the City, attached as Exhibit A.

including, but not limited to: (1) the Board's open public meetings held in accordance with the Brown Act and the Port of Oakland Sunshine Ordinance No. 4265 ("Sunshine Ordinance")[5]; (2) the Port's Social Responsibility Department's ("SRD") engagement with community members at various West Oakland venues to solicit feedback on a variety of Port programs; (3) specific community outreach associated with the OAB development; and (4) meaningful public engagement and environmental mitigation pursuant to the California Environmental Quality Act ("CEQA").

Through its process of robust public engagement, the Port has committed to measures and procedures to address Port-related air pollutant emissions that have broken new ground and often have exceeded State and Federal regulatory requirement. These efforts include, but are not limited to: (1) developing a precedent setting Air Quality Mitigation Program associated with the Vision 2000 Maritime Development Program ("V2K Program"); (2) voluntarily undertaking emissions inventories; (3) cooperating with a State-led health risk assessment for West Oakland; (4) developing and implementing a Maritime Air Quality Improvement Plan ("MAQIP"); (5) developing and implementing a Comprehensive Truck Management Program ("CTMP") for the Port; (6) working with the City to develop a City-Port Truck Management Plan for the entire OAB; (7) supporting a cutting-edge battery-powered big rig truck pilot test at the Port; and (8) applying for and securing grants to aid in the design and construction of the necessary infrastructure to provide "shore power" so that vessels can plug in while at berth. This effort includes commissioning a high-voltage cable-on-reel system that will connect more vessels to the Port's landside shore power grid.

As we demonstrate below, the WOEIP Complaint mischaracterizes the Port's public engagement and air emissions reduction achievements. At the crux of WOEIP's Complaint, WOEIP alleges that the Port has "continuously refused, to engage the community in a meaningful process by which to receive and incorporate their input."[6] WOEIP's allegation simply is not true. In fact, community groups in West Oakland, including WOEIP, have publicly acknowledged the collaborative approach taken by the Port to reduce air pollutant emissions while expanding Port operations.

For example, in 2011, the Port announced that it was allocating $2.7 million to the Port of Oakland's Shore Power Program and to an Energy Efficiency and Renewable Energy Study. At the time of this announcement, Margaret Gordon, co-chair of the WOEIP and at that time a member of the Board of Port Commissioners, stated that "[t]his action is delivering real emission reduction results that benefit the community and paves the way for an innovative approach to energy and the

[5] Port Ordinance No. 4265: Ordinance Approval and Adopting Rules and Requirements for Noticing, Agendizing and Posting of Board of Port Commissioners Meetings, Assuring Public Access and Participation and Providing Cure and Correction of Non-Compliance with Open Meeting Laws, adopted Dec. 12, 2013, attached as Exhibit B

[6] Complaint, p. 28.

environment going forward...I am pleased that the Port and West Oakland community worked collaboratively to get us here and look forward to more collaborative partnerships as these projects are implemented."[7]

Ray Kidd, co-chair of the West Oakland Neighbors, had similar comments, stating that "West Oakland residents and many Port stakeholders have benefited from the emission reductions that have been achieved through the Port-community dialogue targeting sources such as trucks, buses, tugboats, cargo handling equipment, and now ships. We are pleased the Port has also embraced the community's suggestion of directing funding to an innovative and exciting energy research initiative in partnership with the community."[8]

As will be demonstrated in this letter, the Port's commitment to an open and public decision-making process, as well as its commitment to reducing Port-related emissions, goes back decades and has continued to the present day. The facts show that this public engagement and collaborative decision making has yielded huge reductions in air pollutants from Port-related sources.

The facts here simply do not support a Title VI disparate impact claim. The Port's methods for approving and authorizing new development and expanded activities provide for robust public engagement and have resulted in reduced air emissions. Even if there were a valid argument that the Port's public engagement methods were insufficient (which they are not), there is no causal link between those methods and the alleged disparate air quality in West Oakland, particularly because the Port is not the primary cause of air pollution in West Oakland.

In Section I below, we briefly describe the Port of Oakland and its critical role as part of the local, State, and national economy. In Section II, we provide some further factual background, including the Port's commitment to public engagement and emissions reductions, a description of air quality in West Oakland, and a description of the Port's strong civil rights and anti-discrimination policies. In Section III, we discuss the applicable legal standards and our conclusion that the Port has not discriminated against communities of color in violation of Title VI, and confirm the Port's commitment to environmental stewardship and its willingness to cooperate with this investigation. The Port believes DOT and EPA should close this investigation without any finding of discrimination against the Port. Nevertheless, the Port remains open to discussing the possibility of an informal resolution of this investigation.

[7] Press Release, Port Allocates $2.7 Million for Shore Power & Innovative Energy Study, April 4, 2011 ("Shore Power Press Release")(available at: http://www.portofoakland.com/press-releases/press-release-223/).
[8] Shore Power Press Release.

I. THE PORT OF OAKLAND

A. Port Established in 1927 Pursuant to an Amendment to The Charter of the City of Oakland: Duty to Promote Commerce, Shipping, and Navigation

Since the Port was founded in 1927, the Oakland maritime port ("Seaport") has served as a principal ocean gateway of the nation for international containerized cargo shipments. It is currently the 3rd busiest Seaport in California and the 7th busiest Seaport in the U.S., both as measured by cargo volume. Unlike some "operating port authorities" (*i.e.,* ports with employees who directly operate cargo handling facilities), the Port is mainly a "landlord" Seaport; that is, the Port leases land and facilities to various private companies (such as marine terminal operators and logistics businesses) who handle maritime cargo at various points in the supply chain. The Port does not engage in day-to-day operations of shipping, cargo handling, or transportation.

The Port is an independent department of the City governed by the Board, which is vested with exclusive control and management of Port property, Port facilities, and revenues by the Charter of the City of Oakland ("Charter").[9] The Port was established pursuant to an amendment to the Charter "[t]o promote and more definitely insure the comprehensive and adequate development of the Port of Oakland through continuity of control, management and operation."[10] The Board has the complete and exclusive power, and duty for and on behalf of the City to make provisions for the needs of commerce, shipping, and navigation of the Port and to promote, develop, construct, repair, maintain and operate all water front properties including piers, wharves, docks, and warehouses. Said Board power and duty includes the obligation to establish, equip and operate all other facilities or aids incident to the development, protection, and operation of the Port, as may be deemed proper and desirable in its judgment; the Board may modify its plans from time to time as the requirements of commerce, shipping, and navigation may demand.[11]

B. Port Holds All Port Property in Trust for the People of the State of California: Obligation to Comply with Tidelands Trust

The State of California holds all right, title, and interest in tide and submerged lands and beds of navigable waterways within its borders, and all such lands are held in trust for the benefit of the people of California. Beginning in 1919, the State granted the City of Oakland the right to the tidelands and submerged lands at the Port of Oakland. In that grant, the State limited the use of the tidelands:

> Only for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips,

[9] Article VI, Section 601 (Adopted by the people of the City of Oakland, Nov. 5, 1968).
[10] Article VII, Section 700 of the Charter.
[11] Article VII, Section 706(2) of the Charter.

quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation.[12]

Under the State's grant and the Tidelands Public Trust Doctrine, uses on the Port's public trust lands must serve statewide, as opposed to purely local, public purposes; those purposes are limited to water dependent or related uses, including commerce, fisheries, navigation, ecological preservation, and recreation. Thus, the Port is constrained in how it can use the land, and has the affirmative duty to use and develop the land consistent with these tideland trust consistent uses. Moreover, the Port is strictly constrained by the Tidelands Public Trust to use all of its assets consistent with trust purposes. Finally, the Port must not only comply with environmental laws and regulations, but also must comply with a myriad of other Federal and State laws and regulations, including the Shipping Act, which imposes restrictions and requirements on how the Port interacts with its tenants and customers.

C. Port Divided into Three Major Geographical Areas

The Port's property is divided into three major areas which are managed by three revenue divisions: the Oakland Seaport or Maritime area managed by the Maritime Department; the Oakland International Airport ("Airport") managed by the Aviation Department; and commercial properties managed by the Commercial Real Estate Department. All of the allegations in the Complaint relate to the Port's Maritime operations, which will be the focus of this response letter.

D. Port's Fundamental Role in the Economy

The Oakland Seaport consists of 1,300 acres of maritime-related facilities serving a local market of over 14.5 million consumers, 34 million within a seven-hour drive, and 50% of the US population by rail.

The Port is a fundamental part of the Bay Area and national economy. In Fiscal Year 2016, a total of approximately 2.3 million 20-foot equivalent units ("TEUs") of containerized cargo moved through the marine terminals located at the Port.[13] In 2010, the Port's Seaport operations were responsible for nearly 11,000 direct jobs, and another 17,000 induced or indirect jobs. In 2010, the Port paid more than $538 million in employee wages and salaries and generated approximately $233 million in State and local taxes.[14] About 80 percent of the containerized cargo exported through the Port is estimated to originate in the Bay Area and Northern California, and 85 percent of the containerized imports are consumed in the region.[15]

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[12] Chapter 516, Statutes of 1919.
[13] Port of Oakland Comprehensive Annual Financial Report for the Years Ended June 30, 2016 and 2015, p. ii.
[14] The Economic Import of the Port of Oakland – 2010, Martin Associates, April 18, 2011 ("Economic Impact Report"), pp 12-14, attached as Exhibit C.
[15] Economic Impact Report, p. 33.

II. FACTUAL BACKGROUND

A. The Port's Demonstrated Commitment to Public Engagement

The Port embraces environmental stewardship as one of its core organizational principles. As stated in the Port's Board-approved Strategic Plan, one of the "Prioritized Goals" for the Port is to "[s]ustain healthy communities through leading edge environmental stewardship." The objectives of this goal include, "[e]nsure effective communication and education regarding environmental and safety standards with business partners and the community."[16] At the Port, the "environment" includes both the natural environment and the human built environment and communities. In line with these goals, and in concert with community stakeholders, the Port has developed and implemented numerous programs to reduce the impacts of Seaport operations and development on the environment.

1. Board Adopted Sunshine Ordinance To Require More Notice And Promote Full Public Participation in the Port's Decision-Making Process Beyond State Law Requirements

The Port is a public entity with a strong commitment to an open and public decision-making process. Any approval or authorization made by the Board goes through a thorough public notice and review process. All major projects are presented to the Board of Port Commissioners in a public meeting and are included in advance on the public agenda, pursuant to California's open meetings law. In addition to following the public-notice and participation requirements of State law - the Brown Act - the Port of Oakland follows its own enhanced[17] public notice and participation rules in its Sunshine Ordinance.

The Board adopted the Sunshine Ordinance "to assure public access to and information of Board meetings and transparent public notice, information and input are essential for the proper administration and discharge of the Board's duties and powers and for the management and government of the Port and facilities."[18] Section 1.B. of the Sunshine Ordinance provides: "Requiring the noticing and posting of Board meetings beyond the requirements of the Brown Act provides for more time for the public and Board members to obtain and study the items on the Board's agenda, enhances understanding of the issues and encourages public input to and participation in the Board's decision-making."[19] In addition to the notice requirements, the

[16] Port of Oakland Strategic Plan, Fiscal Years 2011-2015 ("Strategic Plan"), p. 21.
[17] For example, under the Brown Act, there is a general requirement to post agendas 72-hours in advance of regular meetings, whereas under the Port's Sunshine Ordinance, agendas must be posted 10 days in advance of regular meetings. Sunshine Ordinance No. 4265, § V.A.1.
[18] Sunshine Ordinance No. 4265, p. 1.
[19] Sunshine Ordinance No. 4265, § 1.B.

Sunshine Ordinance provides for public comment in writing or at Board meetings on any item on the agenda and on any other item of interest that a member of the public would like to raise.[20]

The Board's open meeting process provides the public notice of, and the opportunity to comment on, all major Port activities, including development projects like those at the OAB. All of the emissions reduction programs and development projects discussed below went through the Board's open meeting and public participation process, in addition to any special efforts undertaken to incorporate public engagement for an individual project. Thus, the public had ample notice and opportunity to provide meaningful comment on these important Port plans.

2. The Port Implements Comprehensive Outreach Coordinated by Two Port Departments that Specifically Engage the Public

The Port's SRD is charged with engaging community stakeholders and instilling institutional culture and programs to fulfill the Port's social responsibilities. The SRD holds multiple public forums throughout the year to update residents living near Port property on Port activities, gathers community feedback, and follows up on suggestions and complaints. These meetings are open to all who are interested in learning about the Port's activities and providing feedback. Additionally, SRD employees regularly go to the Port's neighboring communities, like West Oakland, to attend community meetings as representatives of the Port and to solicit feedback from residents on a variety of Port projects and initiatives.

EPA recently recognized the Port's SRD as a "successful example" of a program that "can be tailored to emphasize investments in near-port communities and/or communities experiencing high rates of poverty, unemployment and underemployment."[21] The report describes the Port's efforts to invest in near-port communities, and highlights the following programs: "a small local business utilization policy, a disadvantaged business enterprise program, a Maritime and Aviation Project Labor Agreement (which includes a commitment to local hiring and local workforce development), and a living wage policy."[22]

The Port's Environmental Programs and Planning Department ("EPPD") leads the Port's programs specifically to ensure the highest standards of regulatory compliance and environmental performance. The EPPD works to improve responsiveness to environmental concerns raised by the community and Port customers, and increase the Port's capacity to respond to emerging environmental regulations, policies, and conditions.

[20] Sunshine Ordinance No. 4265, § X.
[21] U.S. EPA, A Ports Primer for Communities, Section 6.4 Case Studies: Job and Benefits, published July 2016 ("EPA Ports Primer") (available at https://www.epa.gov/ports-initiative/ports-primer-64-case-studies-job-and-benefits#oakland).
[22] EPA Ports Primer.

These Port Departments help to focus the Port on environmental impacts on neighboring communities and incorporate community concerns in the Port's decision-making process. In addition, the public has ready access to the Port's public website, which provides a wide variety of information about the Port's operations and future plans.[23] Board agendas and resolutions are posted on the website, along with many of the technical and planning documents discussed herein. The Port's website has a "live chat" option that connects members of the public with a member of the Port staff, who will respond to all nature of inquiries and requests, and, if necessary, connect the member of the public with the appropriate technical person at the Port.

3. *The Port Fully Complies With The California Environmental Quality Act Which Is Designed To Provide For Meaningful Public Input on Proposed Development*

CEQA is a State statute that requires State and local agencies to identify the significant environmental impacts of their proposed discretionary actions and any feasible alternatives or feasible mitigation measures that would substantially lessen the significant environmental effects of those actions.[24] Public disclosure and participation are "Basic Purposes of CEQA."[25]

Consistent with its Charter-conferred duties and powers, the Board functions as a Lead or Responsible Agency under CEQA. As defined in the CEQA Guidelines, the Lead Agency is "the public agency which has the principal responsibility for carrying out or approving a project"[26] and a Responsible Agency is an agency that is not the Lead Agency, but also has some discretionary approval power over the project, and consults with the Lead Agency regarding CEQA review."[27] For example, the Port acted as the Lead Agency for the Vision 2000 EIR (1998) and as a Responsible Agency for the City's Oakland Army Base Redevelopment Plan EIR (2002).

Pursuant to CEQA, if there is substantial evidence that a project may have a significant effect on the environment, the Lead Agency must prepare an environmental impact report ("EIR"). The EIR process requires multiple layers of public review and opportunity to comment.[28]

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[23] *See*, www.portofoakland.com.
[24] Public Resources Code § 21002.
[25] 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a).
[26] CEQA Guidelines, § 15367.
[27] CEQA Guidelines, § 15381.
[28] Public Resources Code § 21080(d). The Lead Agency must provide public notice that it is preparing an EIR; other agencies and the public then have 30 days to comment on the scope of the EIR. Public Resources Code § 21092(a). The Lead Agency then issues the Draft EIR, which must contain a project description and identify the project's environmental setting, significant environmental effects, unavoidable significant adverse effects, growth-inducing impacts, cumulative impacts, mitigation measures, and alternatives. The Lead Agency must provide public notice of the availability of the Draft EIR, with a minimum 45-day public comment period for most projects. The Lead Agency must evaluate comments on environmental issues, prepare written responses to comments, and include those responses in a Final EIR published prior to the Lead Agency's decision to approve or disapprove the project. If the project

The CEQA Guidelines provide that "Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities."[29] A primary substantive goal of CEQA (which is different from the federal National Environmental Policy Act process) is to require identification and implementation of feasible mitigation measures to reduce environmental impacts to less than significant levels.

The Vision 2000 EIR and the OAB Redevelopment Plan EIR fully complied with CEQA, including its public participation requirements, as have the Port's subsequent approvals of activities that implement these approved plans. As discussed below with regard to the OAB development project, the Board consulted with the City on its EIR (through Port staff), and then, acting as a Responsible Agency, adopted findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program ("MMRP") after considering the record, including the City's 2002 OAB Redevelopment EIR. The Port and the City are implementing mitigation measures in the MMRP as approved developments at the OAB proceed. Although litigation challenging the adequacy of projects' CEQA compliance is common, the approvals of the OAB Development Plan did not lead to CEQA litigation.

To the extent the Complaint asserts that it is inappropriate, due to the passage of time, for the Port and the City to continue to look to the 2002 OAB EIR (see Complaint p. 24), it is incorrect. Under CEQA, once an EIR has been certified for a project, further CEQA review is disfavored.[30] When considering a new discretionary action that would implement the approved project, the public agency must determine only whether new, or substantially more severe, significant environmental impacts would result compared to those identified in the earlier EIR, due a change in the project, a change in its circumstances, or new information that could not have been known with the exercise of reasonable diligence at the time the EIR was certified.[31] Mere passage of time

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would cause significant environmental impacts that cannot be reduced to a less-than-significant level through feasible mitigation measures or project alternatives, the Lead Agency can still approve the project, but only by identifying to the public, in a "statement of overriding considerations," why the benefits of the project outweigh its remaining significant environmental effects. Public Resources Code § 21081. A Responsible Agency must also make its own statement of overriding considerations if it decides to approve a project with significant unavoidable environmental effects.

[29] CEQA Guidelines, § 15201; see also CEQA Guidelines § 15002, subj. (i).

[30] Public Resources Code § 21166; *Friends of the College of San Mateo Gardens v. San Mateo Comity Coll. Dist.*, 1 Cal. 5th 937 (2016).

[31] Public Resources Code § 21166; CEQA Guidelines § 15162.

does not undermine reliance on a previously certified EIR; the question is whether the EIR remains relevant.[32]

B. The Port's Success in Reducing Air Pollutants from Port Sources

Through means described in this section, the Port's 2015 Seaport Emissions Inventory shows that the Port's emissions reductions efforts have been successful, resulting in major reductions in emissions associated with the Port from 2005 to 2015:

- Truck Diesel Particulate Matter ("DPM") emissions have decreased from 16 tons to 0.4 tons.
- Total DPM emissions at the Oakland Seaport decreased by 76%
    - Trucks - DPM down 98%
    - Locomotives - DPM down 89%
    - Cargo handling equipment - DPM down 82%
    - Ocean going vessels - DPM down 75%
    - Harbor Craft - DPM down 53%[33]

Independent sources have also confirmed that Port-related DPM emissions have significantly decreased, confirming what the Port has found in its Emissions Inventories. In 2015 and 2016, the University of California, Berkeley published independent research studies on Port trucks.[34] The studies evaluated truck emissions before and after the State Drayage Truck Regulation requirements took effect and required drayage trucks to use diesel particulate filters and selective catalytic reduction systems. The study found that between 2009 and 2015, black carbon and particulate matter ("PM") emissions from trucks serving the Port reduced by approximately 73% and 74%, respectively.[35]

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[32] *Friends, supra; Committee for Re-Evaluation of the T-Line Loop v. San Francisco Mun. Transp. Agency*, 6 Cal. App. 5th 1237 (2016) (upholding reliance on 1998 EIR); *Citizens Against Airport Pollution v. San Jose*, 227 Cal. App. 4th 788 (2014) (upholding 8th addendum to 1997 EIR).

[33] 2015 Seaport Air Emissions Inventory, Final Report, October 2016 ("2015 Emissions Inventory"), p. 8, attached as Exhibit D.

[34] Effects of Particle Filters and Selective Catalytic Reduction on Heavy Duty Diesel Drayage Truck Emissions at the Port of Oakland Preble, et al., *Environmental Science and Technology*, June 26, 2015 ("2015 UC Berkeley Study"); Effects of Exhaust After-Treatment and Fleet Modernization on Port of Oakland Truck Emissions Following Complete Implementation of California's Drayage Truck Regulation, Draft Final Report, Preble, et al., Department of Civil and Environmental Engineering, University of California, Berkeley, November 2016 ("2016 UC Berkeley Study"), attached as Exhibit E.

[35] 2016 UC Berkeley Study, p. v.

Numerous efforts and programs have contributed to these emissions reductions at the Port, including:

- A truck management program (described later in this letter) including a $38 million grant program to upgrade and replace the oldest trucks operating at the Port and a ban on "dirty" drayage trucks years ahead of California State truck emission requirements.
- Shipping lines switching to cleaner burning, low sulfur fuel, while they are within a certain distance of land.
- A $60 million project to construct a power grid that ships can plug into at berth rather than run auxiliary diesel engines.

In addition, the Port's strategic management decisions also help to mitigate emissions and other environmental impacts of the Port's operations, including:

- Based on need, night and/or weekend operations at marine terminals, to spread out truck traffic and reduce idling.
- Appointments to pick up international cargo, further reducing congestion.
- $100 million railyard developed to bring more cargo by rail and cut truck traffic.
- Warehousing/distribution developments planned adjacent to docks to cut truck traffic on roadways outside the Port.
- Shipping lines loading more cargo on fewer ships to cut vessel traffic.
- The Port is negotiating to bring a fueling station and truck service center to the Seaport which is intended to keep trucking-related activities out of the adjoining neighborhoods.

Finally, it is important to note that the above emissions reductions were achieved over a period of time in which the Port saw an increase in container volume. In the period from 2005-2012, TEU container volumes increased by 3% while overall DPM emissions decreased by 70%. The Port is now conducting an update to its Emissions Inventory which is expected to show continued reduction in air emissions generated from Port operations.

C. Chronological History of Port Emissions Reduction Programming and Commitment to Continued Public Engagement

1. *Vision 2000 Maritime Development Program: Air Quality Mitigation Program with $9 Million for Emissions Reductions*

The Port has been working for decades to continually reduce the impacts of its operations and development on local communities. In 1997, the Port embarked on the redevelopment of the former Fleet Industrial Supply Center, Oakland ("FISCO"), in a project known as the V2K

Program. The V2K Program included developing two new marine terminals, a rail terminal, a public park, roadways, and ancillary facilities. Most of these facilities have been completed.

As part of the V2K Program, the Port established a groundbreaking Air Quality Mitigation Program ("AQMP") and committed to fund the AQMP with nearly $9 million. The V2K AQMP was guided by a Technical Advisory Committee ("TAC"). The AQMP TAC included community members (including WOEIP), industry members, Federal and State environmental agencies, and other interest groups. The AQMP TAC met regularly to discuss project updates and seek guidance on new projects and programs, like the Truck Replacement Project discussed below.

Projects funded under the AQMP included:

- **Truck Replacement Project:** The Port subsidized the retrofit of truckers' diesel truck engines with new engines meeting California emission standards for new diesel engines, or add-on exhaust treatment devices;

- **Cargo-handling Equipment:** The Port subsidized the retrofit of tenants' diesel cargo-handling equipment with new engines meeting California emission standards for new diesel engines, or add-on exhaust treatment devices; and

- **Air Quality Baseline Study:** The Port initiated an air quality and meteorological monitoring program in April 1997 to measure the levels of PM in West Oakland.[36]

2. Port Voluntarily Undertakes Emissions Inventories

Following the progress made related to the V2K Program, the Port instituted policies to monitor and evaluate emissions associated with its operations on a regular basis. Beginning in 2005, the Port engaged consultant Environ International Corporation (n/k/a Ramboll Environ) to prepare an air Emissions Inventory for its Seaport operations. A copy of the 2005 Emissions Inventory is attached hereto as Exhibit F. Although not legally required to create such an inventory, the Port voluntarily chose to prepare the air Emissions Inventory and update it periodically over subsequent years. The Port conducted subsequent air Emissions Inventories in 2012 and 2015. Copies of the 2012 and 2015 Emissions Inventories are attached hereto as Exhibits G and D, respectively. The Emission Inventories provide estimates for emissions of five air pollutants: reactive organic gas ("ROG"), carbon monoxide ("CO"), nitrogen oxides ("NOx"), PM (including diesel), and sulfur oxides ("SOx").[37]

[36] Summary Report to West Oakland Neighbors, Vision 2000 Air Quality Mitigation Program, December 2006, attached as Exhibit H.
[37] Port of Oakland 2005 Seaport Air Emissions Inventory, Environ International Corp., March 14, 2008 ("2005 Emissions Inventory"), p. ES-2.

Emissions were estimated for the five major source categories at the Port: ocean-going vessels, harbor craft, cargo handling equipment, drayage trucking, and locomotives.[38] Beginning in 2012, the Seaport Emissions Inventories also include other off-road equipment, for example from construction. The results of the Port's Emissions Inventories are published on the Port's public website. The Emissions Inventories have been a crucial tool in evaluating how the Port could reduce air emissions and determining how successful emissions reductions programs have been over the past decade. Indeed, the 2012 and 2015 Emissions Inventories have shown dramatic decreases in Port-related emissions, as discussed above.

3. *Port Cooperates with* CARB *Health Risk Assessment*

During the Port's development of the Emissions Inventory, the California Air Resources Board ("CARB") announced that it intended to conduct a health risk assessment ("HRA") of the potential health effects of DPM on the neighborhood of West Oakland. The Port worked closely and cooperatively with CARB to assist with the HRA, and adapted the Port's Emissions Inventory to align with CARB's methodologies at the time. CARB published its report, "Diesel Particulate Matter Health Risk Assessment for the West Oakland Community Preliminary Summary of Results," in 2008.[39] We will address the findings of the CARB HRA in more detail below.

4. *Port Spearheads Development and Implementation of Maritime Air Quality Improvement Plan Shaped by Local Communities and Regulatory Agencies*

During the first Emissions Inventory and the CARB HRA for West Oakland, the Port partnered with neighborhood and business representatives and air quality regulators to develop the MAQIP.[40] The MAQIP is attached hereto as Exhibit I. The MAQIP planning process involved extensive public stakeholder participation. The MAQIP process began in 2006, when discussions with community groups, regulatory agencies, and other interested parties led to the formal initiation of the Port's air quality plan and establishment of the MAQIP Task Force.

The MAQIP Task Force was comprised of 35 stakeholders, including the WOEIP, and was created to develop goals and actions to guide air quality improvement efforts at the Port.[41] Members of the MAQIP Task Force were selected through a public nomination process from community members, Port tenants, environmental advocacy groups, air quality and health agencies, and maritime-related businesses. The MAQIP Task Force had four co-chairs: the Executive Director of the Port, the Executive Officer of the Bay Area Air Quality Management

[38] 2005 Emissions Inventory, p. ES-1.
[39] Diesel Particulate Matter Health Risk Assessment for the West Oakland Community Preliminary Summary of Results, California Air Resources Board, December 2008 ("CARB HRA").
[40] Port of Oakland Maritime Air Quality Improvement Plan, Final, Approved by Board of Port Commissioners, April 2009 ("MAQIP").
[41] MAQIP, pp. 16-19.

District ("BAAQMD"), the Co-Chair of WOEIP, and the Executive Vice President of GSC Logistics Inc.[42]

The MAQIP Task Force met seven times at roughly one to two-month intervals during the plan development phase. The role of the Task Force included proposing or reviewing meeting topics, prioritizing air emissions reduction measures, deliberating on the merits of proposed actions, contributing to strategies for implementation, monitoring, and adaptive management and generally shaping plan content. The process was led by staff from a neutral facilitator, all Task Force meetings were open to the public, and comment was solicited from both Task Force and non-Task Force members. Stakeholder deliberations routinely included brainstorming sessions, break-out group exercises, and roundtable discussions following various presentations by select stakeholder groups. Port staff worked in consultation with Task Force members and other stakeholders to develop broad-based consensus on the elements of the MAQIP, although no formal voting procedure was used to decide on the final MAQIP content.[43] In short, while the Board was responsible for approving the final content of the MAQIP through the formal approval of the plan, the policy direction and content were shaped by the Port's planning partners through this consultative process – which included WOEIP as a Co-Chair.

The MAQIP Task Force identified seven guiding principles, including:

> **Promote Environmental Stewardship:** The Port of Oakland holds environmental stewardship as one of its core organizational goals. The Port is committed to ensuring that Seaport activities are carried out in an environmentally responsible manner, minimizing adverse impacts on our neighbors and the environment, and striving to improve the environmental conditions in the Seaport area for the benefit of both present and future generations;
>
> **Engage Stakeholders:** The Port of Oakland Seaport commits to actively engage and partner with its diverse stakeholder community in developing, implementing, and monitoring the MAQIP. The Port recognizes the need to especially collaborate and partner with those who are most affected by Seaport operations, including, but not limited to, labor, tenants, customers, and neighboring residents; and
>
> **Promote Environmental Justice:** The Port of Oakland seeks to prevent and address adverse impacts to communities that experience disproportionate environmental and economic effects.[44]

The MAQIP Task Force also adopted two planning goals:

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[42] MAQIP, p. 16.
[43] MAQIP, p. 17.
[44] MAQIP, pp. 19-20.

Goal 1: Reduce the adverse public health impacts of the Port of Oakland's Seaport-related air emissions at the Seaport area and in neighboring communities that are most affected by goods movement at the Seaport (in particular West Oakland) and on workers in the maritime area, as expeditiously as feasible; and

Goal 2: Reduce the adverse impacts of the Port of Oakland's Seaport-related air emissions on ambient air quality in West Oakland and more generally in the San Francisco Bay Area Air Basin, as expeditiously as feasible.[45]

The MAQIP was finalized in 2009, and it provides a master plan for the Port's long-term commitment to reducing the air quality and health risk impacts of its maritime operations. It builds upon the Port Maritime Air Quality Policy Statement ("Policy Statement"), adopted by the Board in March 2008, which sets a goal of reducing the excess community cancer health risk related to exposure to DPM emissions associated with the Port's maritime operations by 85% from 2005 to 2020, through all practicable and feasible means.[46] In the Port's Policy Statement, the Board affirmed "that it has the social responsibility to minimize exposure of neighboring residents to air pollution from Port sources and to support the rights of community, local businesses and workers to clean air and fair working conditions."[47] The Board committed to funding air emissions reductions and to adopt air emissions reductions measures prior to the dates such measures are required under State or Federal law. In addition to the significant public participation measures in the MAQIP process, the Port's Policy Statement was publicly noticed on the Board's agenda in advance of the Board meeting, and discussed at the Board's public meeting, with full opportunity for members of the public to comment. Then-Board Commissioner Margaret Gordon (co-chair of WOEIP) voted in favor of the Policy Statement, along with all other Board Commissioners.

In line with the guiding principles and planning goals established by the MAQIP Task Force, the MAQIP not only supports current and future State and local emission reduction requirements, but also enhances these requirements through early implementation goals and by pursuing emission reductions that exceed legally mandated requirements when and where feasible.

The MAQIP identified concrete and high-impact control measures and strategies the Port would undertake independently or together with its tenants to significantly reduce emissions, including:

- Early action retrofit and/or replacement of Port drayage trucks;

[45] MAQIP, p. 20.
[46] MAQIP, p. ix; Board Resolution No. 08057, adopted March 18, 2008.
[47] Board Resolution No. 08057.

- Construction of infrastructure to enable compliance with CARB's "shore power" regulation, even though the Port was not required to take any such action under the regulation;
- Design and operational efficiencies;
- Participation in pilot and verification projects for NOx and DPM reduction strategies;
- Early action construction emissions reduction;
- Support enforcement of regulations by CARB and BAAQMD through coordination with tenants; and
- Accountability, monitoring and reporting.[48]

In addition to the above strategies, the MAQIP Task Force identified 355 initiatives that had the potential to achieve emissions and risk reductions beyond regulatory requirements. The TAC reviewed and evaluated all of these initiatives; ultimately, Port staff identified a number of primary and secondary interest air quality initiatives for potential implementation.[49]

To ensure the Port's accountability in implementing its emissions reductions programs going forward, the Port committed to convene a stakeholder group to serve as a forum for sharing project information, to prepare written status reports, and to reconvene the MAQIP Task Force in five and ten years to review progress towards the plan's goals.[50] In satisfaction of this commitment, on November 19, 2013, Port staff held a public meeting to present a progress report on the MAQIP to MAQIP Task Force members and other interested members of the public; over 30 people attended this meeting. In connection with MAQIP progress reports, the Port is committed to reconvening the MAQIP Task Force.

5. Port Comprehensive Truck Management Program Bans Dirty Port Drayage Trucks Ahead of State Regulations

As part of its CTMP, the Port in 2009 adopted a ban[51] from entry into the Port of drayage trucks that fail to meet the State of California truck emission standards. This ban prohibits access to drayage trucks with 1993 or older engines as well as trucks with 1994-2003 model year engines unless equipped with a verified diesel particulate filter. In 2011, the Port modified its truck ban[52]

[48] MAQIP, p. 65.
[49] MAQIP, pp. 75-94.
[50] MAQIP, p. 70.
[51] Port Ordinance No. 4112.
[52] Port Ordinance No. 4174.

to require all drayage trucks to meet or exceed 2007 model year California or Federal emissions standards.

To help truckers transition to clean trucks ahead of the State regulatory requirements, the Port spent over $5 million to subsidize truck conversions. Overall implementation of the CTMP was estimated at the time to cost over $15 million, with Port staff costs around $1 million for the first 3 years.[53] Port staff estimates that the Port has spent more than $21 million on outside vendors for CTMP-related costs. This section describes the history and success of the Port's CTMP.

In conjunction with the MAQIP process, in 2007, the Port began work on the CTMP.[54] The CTMP was finalized in 2009 and, through certain of its components, fulfilled a key mitigation measure of the 2002 OAB EIR.[55] The CTMP is attached hereto as Exhibit J; it sets forth plans and actions for comprehensively addressing air quality, safety and security, business and operations, and community issues associated with drayage. Through adoption and implementation of the CTMP, the Port sought to identify drayage trucks serving the Seaport, support regulations to reduce emissions of air pollutants, increase safety and security domain awareness, improve operations, reduce traffic and congestion, and involve and educate all Seaport stakeholders.[56]

Similar to the process that took place to develop the MAQIP, the Port established a CTMP TAC to assist Port staff in developing the CTMP. The TAC was comprised of State and Federal regulators, marine terminal operators, trucking companies, and West Oakland residents, including the WOEIP.[57] The TAC met formally on multiple occasions and provided ideas and solutions that shaped the development of a truly comprehensive plan that incorporated a number of inter-related issues ranging from air quality to security.

The efforts made by the Port under the CTMP have resulted in significant improvements to truck traffic and air pollution in West Oakland. Key components of the CTMP include:

- **Port Registry & Truck Ban:** Only Licensed Motor Carriers ("LMCs") and trucks associated with those LMCs that have agreed to fully comply with all applicable laws and entered their information into the Port Registry database are allowed to serve the Port's Seaport facilities;

- **Clean Trucks:** The Port contributed $5 million, in addition to local, State and Federal funding, to provide grants to retrofit and/or replace trucks to meet CARB emissions standards, notably the CARB Drayage Truck and Statewide Truck and Bus Regulations.

[53] CTMP, p. 6.
[54] Port of Oakland Maritime Comprehensive Truck Management Program, A MAQIP Program, Adopted June 16, 2009 ("CTMP").
[55] Mitigation Measure 4.3-7.
[56] CTMP, p. 1.
[57] CTMP, pp. 20-22.

The Port also severely restricted the ability of "dirty" trucks from serving Port facilities, while providing truckers an opportunity to comply with clean truck standards before having to consider alternative employment to Seaport-related trucking;

- **Traffic and Congestion:** The Port participated in traffic, congestion, and parking studies, and made improvements to reduce congestion and truck idling. The Port also provides approximately 55 acres of truck parking and service facilities on Port property, which alleviates the problem of trucks parking in West Oakland; and

- **Customer Service Center:** The Port established and continues to fund and manage the Customer Service Center, which maintains the Port Registry and manages turned away trucks.[58] During the initial stage of the State's Drayage Truck Regulation, the Port translated materials into the languages representing the demographic make-up of port truckers. Additionally, the Customer Service Center continues to provide assistance in multiple languages, to facilitate the needs of the diverse port trucker community.

6. Port Actively Developing Joint City-Port Truck Management Plan

The Port is currently engaged with the City in the planning stages of developing a joint truck management plan, focused on West Oakland, the Port, and the OAB ("Truck Management Plan"). The Truck Management Plan will be developed over the next year, in a process that will involve meaningful communication and input from the West Oakland community and other interested stakeholders. The Port and the City are conducting outreach to WOEIP and numerous other West Oakland community groups to participate in the Truck Management Plan planning process. The Truck Management Plan is a key mitigation measure of the 2002 OAB EIR.[59]

As part of the Truck Management Plan process, the Port has hired a transportation engineering firm, Kittleston & Associates, Inc., to conduct a truck study that specifically looks at drayage truck parking in the West Oakland neighborhood. This was one of several truck parking surveys conducted in 2015, 2016, and 2017. In addition, on August 27, 2015, Port employees participated in the WOEIP "Yard Party" where the Port set up a table and solicited input from community members for the West Oakland truck parking study. West Oakland residents were asked to identify truck parking "hot spots" in West Oakland, and that information was collected by the Port's consultant for use in the parking survey.

The Port is committed to making the public engagement in the updated Truck Management Plan as inclusive and meaningful as possible and has begun outreach to initiate that process. The Port and the City are designing a robust public engagement process as a component of the Truck Management Plan. Pursuant to this process, Port staff are currently conducting outreach to community groups, commerce associations, elected officials and residents in West Oakland,

[58] CTMP, pp. 2-5.
[59] Mitigation Measure 4.3-7.

including the WOEIP, to solicit input on the Truck Management Plan. Under the public engagement process, the Port and the City are planning public meetings, many of which will take place in West Oakland, to engage with the public and incorporate their feedback into the plan. The public meetings will be facilitated by a professional communications consultant and include information and reports from a transportation consultant.

The joint Truck Management Plan, coupled with the Port's existing CTMP, demonstrate the decades-long Port commitment to addressing truck-related impacts comprehensively.

7. The Port Continues to Implement Emissions Reductions Programs

The above programs highlight just some of the efforts the Port has undertaken to ensure that its activities take into account the views of its neighboring communities and to design, fund, and implement programs that minimize potentially adverse effects and maximize beneficial effects on the surrounding area's health and wellbeing. The Port is proud of its track-record of public engagement and emissions reductions which is well-documented.

The Port continues to implement practices and policies that will further reduce emissions from Port operations and maintain contact and collaboration with the local community. The Port has accomplished significant emissions reductions over the past 15 years, and the Port continues to look for new and innovative ways to further reduce the impact Port operations have on the environment and local communities. One example of this continuing effort is the very recent announcement, made on August 2, 2017, that a major Port of Oakland-based trucking operator plans to test battery-powered (i.e., non-diesel) big rig technology at the Port beginning in September.[60] The Port trucking operator will conduct a three-year trial with a heavy-duty, all-electric truck as part of a statewide effort to determine the feasibility of zero-emission freight hauling. This will be the first ever test of battery-powered trucks in Northern California, and is the next logical step in the Port's effort to reduce diesel emissions with the corresponding goal of improving the local public health.

Another example of this continuing effort is an even more recent announcement, made on August 14, 2017, that the Port has commissioned a high-voltage cable-on-reel system that will connect more vessels to the Port's landside shore power grid.[61] The mobile platform can be deployed alongside any vessels thus allowing vessels with limited onboard power cables to be able to reach the Port's landside shore power grid thereby further reducing air emissions from ships.

[60] Press Release, Port of Oakland-based firm first to test battery-powered big rig, August 2, 2017, available at: http://www.portofoakland.com/press-releases/port-oakland-based-firm-first-test-battery-powered-big-rig/.

[61] Press Release, Port of Oakland OKs new high-power line to plug in more ships, August 14, 2017, available at:http://www.portofoakland.com/press-releases/port-oakland-oks-new-high-power-line-plug-ships/.

8. Emissions Reduction Grants

The Port has made numerous requests for grants related to emissions reductions in recent years. WOEIP's claims that the Port has refused to accept or apply for funding to support emissions reduction efforts is simply not true.[62] Indeed, WOEIP references a 2013 EPA grant awarded to the Port through EPA's National Clean Diesel Reduction Program.[63] In fact, the Port has completed this Clean Diesel Reduction project, and on July 11, 2017, the Port submitted to EPA its final close-out reports for that project.

Other examples of emissions reductions grants pursued and received by the Port include grants from the BAAQMD Mobile Source Incentive Fund, CARB Good Movement Emission Reductions Program ("GMERP"), federal funds administered locally by the Metropolitan Transportation Commission ("MTC"), and Transportation Investment for Generating Economic Recovery ("TIGER") administered by the U.S. DOT and Maritime Administration, all to install grid-based shore power infrastructure at the Seaport marine terminal in 2011-2014. The grant funding totaled approximately $29 million. In addition, Port tenants obtained grant funding independently to construct additional shore power infrastructure and/or reduce vessel emissions. This infrastructure project allows the Port to offer electric plug-ins for ships at berth at the Port, allowing those ships to turn off auxiliary diesel engines and reduce DPM emissions.

In 2010, the Port conducted outreach and education on the Port's implementation of shore power in an effort to secure the maximum funding from CARB's GMERP. Outreach was made to the wider community including West Oakland residents, and the community was overwhelmingly supportive of the Port's efforts to secure funding for this program. Indeed, numerous community organizations and groups, including the West Oakland Community Advisory Group, sent letters to CARB in support of the Port's efforts and asked CARB to award maximum shore power funding to the Port.

In 2016, the Port applied for California Energy Commission ("CEC") grant funding to demonstrate zero-emission hydrogen fuel cell trucks, and also supported BAAQMD's application for demonstration of zero-emission container yard equipment and trucks. In sum, the Port has sought and received numerous grants to enhance sustainability through infrastructure improvements and innovative projects to reduce emissions.

D. The Oakland Army Base Development

1. CEQA Review Process

The U.S. Army designated the OAB for closure in 1995 pursuant to the Defense Base Closure and Realignment Act of 1990. In July 2000, the City adopted and approved the

[62] *See* Complaint, p. 30.
[63] Complaint, p. 6.

Redevelopment Plan for the OAB Redevelopment Project, and established an approximately 1,730-acre redevelopment project area. The City, as the Lead Agency, prepared a Draft EIR in accordance with CEQA for the OAB Area Redevelopment Plan. The Redevelopment Plan divides the OAB into the City's Gateway Development Area (approximately 193 acres) and the Port Development Area (approximately 187 acres).

The City issued a Notice of Preparation of the Draft EIR in August 2001 and held a Planning Commission meeting to take public comments on the EIR's scope in September 2001. All public comments received during the scoping process were included and addressed in the Draft EIR.[64] The City made the Draft EIR available for review and comment by government agencies and by the general public. Copies of the Draft EIR were sent to those who provided input regarding the EIR's scope, to responsible agencies, and to those who had requested copies. In addition, copies were placed in libraries in Oakland, made available at the planning Department of the City, and on the City's web site.[65] A 45-day public EIR review and comment period occurred between April 29 and June 12, 2002. As a Responsible Agency, the Port both consulted with the City on the Draft EIR and submitted comments on it. The City conducted a public hearing to solicit comments on June 5, 2002, at the Oakland Planning Commission.[66] Numerous parties commented on the Draft EIR, and those comments were all addressed in the Response to Comments section of the Final EIR.[67]

The City issued a Response to Comments and a Final Environmental Impact Report ("Final EIR"), certified the EIR, and adopted a Final OAB Reuse Plan on July 31, 2002, for the OAB Area Redevelopment Plan.[68] Shortly thereafter, as a Responsible Agency, the Port adopted its own

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[64] Draft EIR, pp. 1-8 - 1-17; Appendix 1.

[65] Response to Comments and Final Environmental Impact Report for the OAB Area Redevelopment Plan, July 2002 ("Final EIR"), p. 1-1.

[66] Final EIR, p. 1-1.

[67] WOEIP did not comment on the 2002 EIR. WOEIP now cites, as the sole basis for its claim that community concerns were ignored, a June 11, 2002, comment made by a representative of the West Oakland Citizens Advisory Group ("WOCAG"). Complaint, p. 18, fn. 56 & 57. The Complaint claims the comment asserted 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." Complaint, p. 18. The comment, however, did not say this and did not discuss community benefits; instead, it objected that WOCAG's own plan for the OAB was not analyzed in the EIR and advocated adoption of the Gateway Adaptive Reuse/Eco-Park Alternative "although it would not meet the very high job generation goals." (See Exhibit K.) In addition to mischaracterizing the comment letter, the Complaint does not mention that detailed responses were provided in the Final EIR, including explanations of the ways in which certain WOCAG recommendations had been incorporated into the proposed plan and alternatives studied in the EIR (see pages 3-12 to 3-17 of Final EIR).

[68] Final EIR, p. 1-1.

findings, statement of overriding considerations, and mitigation program. The Final EIR was not challenged in any administrative or court proceedings.

In addition to analyzing the impacts of anticipated development on the portion of OAB designated for City ownership, the EIR analyzed the environmental impacts -- including impacts to air quality and human health risk -- of future Port cargo throughput of 4.05 million TEUs per year. The Final EIR identified numerous mitigation measures that the City and/or Port would undertake related to the OAB plan's air quality impacts, including the following:

> **Mitigation Measure 4.4-3:** The Port shall develop and implement a criteria pollutant reduction program aimed at reducing or off-setting Port-related emissions in West Oakland from its maritime and rail operations to less than significant levels, consistent with applicable Federal, State, and local air quality standards. The program shall be sufficiently funded to strive to reduce emissions from redevelopment related contributors to local West Oakland air quality, and shall continually reexamine potential reduction toward achieving less than significant impacts as new technologies emerge. The adopted program shall define measureable reductions within specific time periods.
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> **Mitigation Measure 4.4-4:** The City and the Port shall jointly create, maintain, and fund on a fair share basis, a truck diesel emission reduction program. The program shall be sufficiently funded to strive to reduce redevelopment related contributions to local West Oakland diesel emissions to less than significant levels, consistent with applicable Federal, State, and local air quality standards. The adopted program shall define measureable reduction within specific time periods.
>
> **Mitigation Measure 5.4-1:** The City and the Port shall encourage, lobby for, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality.[69]

The Port is implementing these mitigation measures through, among other things, its MAQIP and the CTMP (including the ongoing process to develop the Truck Management Plan), and the testing of low diesel emission technologies.

In 2012, the City adopted an amended OAB Reuse Plan, supported by an Addendum to the 2002 Final EIR. The primary difference between the 2002 Reuse Plan and the 2012 Reuse Plan is a shift at the City's Gateway Development Area from office and research and development square footage to a greater amount of warehouse distribution and maritime-related logistics.[70] Other project modifications include plans to designate approximately 27.3 acres in the Gateway Development Area for recycling facilities. Notably, the recycling facilities are currently operating

[69] Draft EIR, pp. 4.4-26 – 28, 5-20.
[70] 2012 Oakland Army Base Project Initial Study / Addendum, May 2012 ("2012 EIR Addendum"), p. 4.

in the West Oakland neighborhood. In response to community concerns about the health, trucking, and noise effects of the current neighborhood-based recycling companies, the City is providing for these companies to relocate out of the West Oakland neighborhood and into the OAB property. This will remove a significant (non-Port-related) source of air pollution, truck traffic and parking, and noise from the West Oakland neighborhood. The Port has entered into a purchase and sale agreement with the City to sell to the City approximately 1.6 acres of land without which relocation of the recycling facilities would be precluded or limited.

The 2012 Oakland Army Base Initial Study concluded that none of the circumstances necessitating preparation of additional CEQA review, as specified in CEQA and the CEQA Guidelines were present[71]. In particular, the Initial Study concluded that the 2012 Project air quality impacts would be lower than those identified in the 2002 EIR, and that no further CEQA review, for example, a supplemental EIR, was required.[72] The City documented these conclusions in an Addendum to the 2002 Final EIR.

After publication of the 2002 EIR, the City of Oakland adopted Standard Conditions of Approval ("SCA") that are applicable to all development projects within the City. Many requirements of the SCA apply directly to air emission impacts, including: SCA AIR-1: Construction Management Plan; SCA AIR-2: Construction-Related Air Pollution Controls (Dust and Equipment Emissions); SCA AIR-3: Exposure to Air Pollution (Toxic Air Contaminants: Particulate Matter); and SCA TRANS-1: Parking and Transportation Demand Management.[73] These SCA requirements provide additional emissions controls and reductions beyond the mitigation measures implemented under the 2002 EIR.

In sum, the 2002 EIR and the 2012 Addendum identified mitigation measures that would greatly reduce impacts related to air quality impacts of the OAB development projects. All development projects at the OAB are required to comply with those mitigation measures.

2. *The Port's OAB Development*

Between 2003 and 2007, some portions of the OAB were transferred to City-related entities and other portions were transferred to the Port. The Port is developing the Port Development Area, either directly or in coordination with prospective Port tenants, into a logistics center ("Seaport Logistics Complex") that will include new logistics facilities (including rail-served warehouses to transload cargo), new rail yards (manifest, support, and intermodal), and related facilities. The development will facilitate the efficient movement of cargo in and out of the Port's marine terminals, improve intermodal service, and position the Port to stay competitive. The first phase of development – construction of the manifest and support rail yards – was completed in January 2017. The Port is currently finalizing negotiations with a developer to lease an approximate 27-

[71] 2012 EIR Addendum, p. 1.
[72] 2012 EIR Addendum, p. 146.
[73] 2012 EIR Addendum, p. 126-28.

acre site on which a new logistics facility would be built (by the developer), and the Port anticipates executing a lease for this parcel in Fall 2017.

Further development of the former OAB, including additional intermodal rail capacity and logistics buildings, is anticipated to be phased based on market demand. Currently, the Port anticipates that development of the entire Port Development Area will take at least ten years to complete. The Port currently does not anticipate reaching throughput of 4.05 million TEUs per year - the amount assumed and analyzed in the OAB EIR - before the year 2040.

The redevelopment of the Port Development Area of the OAB will have significant and enduring impacts on the economic success and viability of the Port. The San Francisco Bay Conservation and Development Commission ("BCDC") acknowledged the significance of the Port's OAB development in its most recent San Francisco Bay Area Seaport Plan ("Seaport Plan"). In the Seaport Plan, BCDC designated the Port's OAB property as "port priority use" property, and noted that the OAB "creates an opportunity for the Port to increase its container cargo throughput without significant Bay fill."[74]

The Port's OAB development will allow the Port to efficiently manage the distribution of goods through the Port, making the Port more profitable while also offering opportunities to lessen the Port's environmental impact. For example, the Port Development Area contains approximately 55 acres of truck parking and approximately 15 acres of servicing facilities; these facilities have reduced and will continue to reduce the amount of trucks parking and driving through West Oakland. Likewise, the Port's realignment of its rail yard will increase the movement of cargo directly to rail, thereby decreasing the need for drayage trucks.

The Port's plans to redevelop its portion of the OAB property have been part of an ongoing, open, and public process over the last fifteen years. In addition to the public CEQA process, and as with all significant Port projects and decisions, the Port's decisions related to redevelopment of the OAB were subject to full public notice and comment pursuant to the Brown Act and the Port's Sunshine Ordinance, discussed above. All major decisions were and continue to be presented to the Board for approval at public meetings, and are fully analyzed in advance in publicly-noticed Agenda Reports prepared by Port staff, which are posted on the Port's public website.

For example, the decision to start the process to issue a request for qualifications, seeking a qualified party to enter into a long-term lease for the operation, maintenance and development of the Port's OAB property, was proposed in Board Agenda Report No. M-4, presented at a public Board meeting on December 2, 2008. The Agenda Report explained the background of the OAB development project and identified how the project conformed to the EIR. The associated Resolution Number 08254 was voted on by the Board of Port Commissioners in the December 2,

[74] San Francisco Bay Area Seaport Plan, San Francisco Bay Conservation and Development Commission and Metropolitan Transportation Commission, April, 18, 1996 as amended through January 2012.

2008, public meeting.[75] WOEIP co-chair, Margaret Gordon, was a Port Commissioner at the time this OAB proposal was presented to and voted on by the Board, and Commissioner Gordon voted for this proposal.

Thus, the public had ample notice and opportunity to comment on this decision as well as on the Port's other development plans and proposals for the OAB. Additionally, Port staff facilitated public participation on the June 30, 2009 "Proposal Interview Panel" by including the Chairperson of the West Oakland Community Advisory Group, Mr. George Bolton, on the selection panel. A live viewing or simulcast of the session for members of the public to attend was also part of the public participation.

Additionally, the Port is currently engaged in a collaborative process with community groups in West Oakland to develop a jobs policy and community agreement related to the first logistics development on the Port Development Area of the OAB. The Port held over 18 working sessions in 2016 to develop an agreement that would enhance the Port's local hire policy, provide financial support for job readiness, and create a community advisory group. The Port has been working cooperatively on these agreements with the Oakland Works Coalition, of which WOEIP is a member, and the Revive Oakland Coalition, a broad coalition representing 30 community based organizations.

E. Air Quality in West Oakland

As discussed above, the Port has worked on numerous projects explicitly designed to decrease Port-related emissions that might impact West Oakland for many years. In 2008, CARB finalized its HRA for West Oakland, specifically analyzing health effects from Port and non-Port DPM emissions on residents of West Oakland.[76] As mentioned above, the Port fully cooperated in the development of the CARB HRA and supplied data to CARB from the Port's Emissions Inventory. The CARB HRA found that the West Oakland community is exposed to DPM ambient concentrations at higher levels than background in the Bay Area.[77] Due to exposure to higher DPM in the ambient air, the CARB HRA concluded that the West Oakland community had an increased estimated lifetime potential cancer risk.

The CARB HRA determined that 80% of the increased cancer risk was due to non-Port and non-railroad operations, while 4% of the increased cancer risk was due to railroad operations and only 16% was due to Port-related operations.[78] In fact, according to the CARB

[75] Board of Port Commissioners, City of Oakland, Resolution No. 08254, Dec. 2, 2008.
[76] CARB HRA, p. 1.
[77] CARB HRA, p.2.
[78] CARB HRA, p. 25.

HRA, the largest contributors of DPM pollution impacting West Oakland are on-road heavy-duty trucks not associated with Port operations.[79]

CARB has not updated the HRA since its publication in 2008. As discussed above, the Port's DPM emissions have dropped significantly since the HRA was conducted. Although CARB has not updated the 2008 CARB HRA, air quality data in West Oakland have been collected over the past several years. Beginning in 2013, the City began collecting air quality data at the OAB and in West Oakland.[80] The BAAQMD also collects air quality data from a monitor in West Oakland. The data from these monitors show that while there were some periods whose emissions exceeded EPA's 24-hour $PM_{2.5}$ (fine particulate matter) standard, the ambient air concentrations at these monitors was below the EPA standard for the majority of the time over the past several years.[81]

In addition, researchers from the Environmental Defense Fund ("EDF"), working with the University of Texas at Austin, Google Earth Outreach, and Aclima, have measured and charted air quality in Oakland using Google Street View mapping cars equipped with mobile air monitors.[82] The 2017 EDF study does not evaluate health impacts from the air quality and does not determine what air pollution might be associated with the Port versus other sources. The data collected in this project does provide a snapshot of air quality in West Oakland, and indicates the heaviest concentrations of air pollutants are present along transportation corridors (interstate highways) and near industrial facilities (concrete supply company, metals recycling business).[83] The Port understands that the City and EDF, along with other regulatory agencies, continue to collect air quality data in West Oakland.

F. The Port Maintains Strong Civil Rights and Anti-Discrimination Policies

The Port requires that its staff, customers, and tenants abide by all Federal, State, and local civil rights statutes and internal Port anti-discrimination policies. The Port maintains an Equal Opportunity Policy to promote, facilitate, and encourage the fullest possible participation by all persons, including women and minorities, in the activities of the Port.[84] The Port's Equal Opportunity Policy applies to Port personnel, public works contracts, and tenants leasing and businesses operating on Port property. In addition, the Port has a policy requiring reasonable accommodation for individuals with disabilities and discrimination complaint procedures. Under these policies, any employee who believes she has been the subject of discrimination can contact

[79] CARB HRA, p. 2.
[80] Oakland Global Air Quality Web Portal (available at: http://ngem.com/OAB_AQM/).
[81] Oakland Global Air Quality Web Portal.
[82] See EDF website, available at: https://www.edf.org/airqualitymaps.
[83] *See* Environ. Sci. Technol., *High-Resolution Air Pollution Mapping with Google Street View Cars: Exploiting Big Data*, J. Apte et al., 2017, 51, 6999–7008, available at: http://pubs.acs.org/doi/pdf/10.1021/acs.est.7b00891.
[84] Port of Oakland Policy No. AP 450, Equal Opportunity, attached hereto as Exhibit L.

the Port's Office of Equal Opportunity ("OEO"). The OEO will investigate the claim of discrimination under procedures detailed in the Port's policy.

Additionally, contracts issued by the Port contain standard provisions prohibiting discrimination by bidders, contractors, subcontractors, licensees, lessees, and permittees. Contract provisions specifically prohibit discrimination in violation of Title VI of the Civil Rights Act and related regulations. For example, the standard language in Port Professional Service Agreements ("PSAs") with certain types of vendors contains the following:

> The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Similar language is found in the wide range of agreements the Port enters on a regular basis. This language and these policies are further evidence of the Port's commitment to equal opportunity and prohibiting discrimination in its operations.

G. WOEIP Mischaracterizes the Port's Public Engagement and Air Emissions Reductions

As the Port has demonstrated above, it has engaged in an open and public process to expand or modify operations while simultaneously significantly reducing air emissions associated with Port operations. The facts alleged by WOEIP in its Complaint regarding the Port's public participation and air emissions are largely inaccurate or misleading.[85] WOEIP alleges that "most of the pollution burden West Oakland residents shoulder directly results from the activities taking place at and around the Port and OAB."[86] However, as discussed in the previous section, the CARB HRA, which WOEIP relies on to substantiate adverse health impacts, clearly states that as of 2005, 80% of DPM emissions impacting West Oakland come from on-road heavy-duty trucks NOT associated with Port operations.[87] Thus, contrary to WOEIP's claims, "most of the pollution" impacting West Oakland comes from sources other than the Port.

[85] While the Port is addressing and rebutting certain allegations made by WOEIP, it has not responded to every statement made in the Complaint. The Port's failure to rebut any specific statement should not be deemed acceptance of that statement. Furthermore, many of WOEIP's allegations relate solely to the City, and the Port is not responding to those City-specific statements.
[86] Complaint, p. 13.
[87] CARB HRA, p. 25.

Furthermore, WOEIP's claims completely ignore the fact that while the CARB HRA used data from 2005, as of 2015, the Port has reduced aggregate DPM emissions from Port sources by 76 percent from 2005 levels – from 261 tons emitted in 2005 to 63 tons emitted in 2015.[88] Thus, the Port's contribution to air quality impacts in West Oakland is even lower today than it was in 2005, and is certainly not the source of "most of the pollution" in West Oakland. This further puts into question WOEIP's claim that "[f]urther expansions of the Port's activities will...further [elevate] the amount of diesel particulate matter in the air throughout West Oakland."[89]

Additionally, WOEIP often lumps together the City and the Port, implying that many decisions regarding the OAB expansion involved both entities. For example, WOEIP alleges that "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."[90] In fact, the Port has no involvement with the Gateway or Oakland Global Logistics Center development projects. Including the Port in this allegation is misleading and inappropriate.

Finally, many of the "Less Discriminatory Alternatives" sought by WOEIP have already been implemented by the Port or are underway.[91] WOEIP alleges that the Port has refused to engage the community in a meaningful process by which to receive and incorporate community input regarding continued expansion of the Port's activities.[92] Specifically, and as directed to the Port, WOEIP alleges that the Port has: (1) refused to develop a meaningful emissions reduction plan for activities at the Port and OAB; (2) failed to produce or require a comprehensive truck management plan; and (3) refused to mitigate the negative air quality and health impacts caused by increase in truck traffic to and from the Port and the OAB.

These allegations are directly refuted by the facts laid out above. In fact, the Port has robust public engagement policies at all levels of decision making; these policies allow for and in many cases require public participation and input above and beyond any statutory requirements. As described above, the Port organized numerous stakeholder task forces to guide development of both the MAQIP and the CTMP. Currently, the City and the Port are collaborating on, and seeking to organize, similar stakeholder groups to develop a joint Truck Management Plan to address quality of life impacts that might be caused by truck operations resulting from operations at the facilities developed at the OAB. Likewise, and as acknowledged by WOEIP and other community organizations, the Port has implemented and funded numerous emission mitigation projects that have and will continue to have a significant positive impact on the air quality and related public health in West Oakland.

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[88] 2015 Emissions Inventory, Final Report, p.8.
[89] Complaint, p. 14.
[90] Complaint, p. 21.
[91] Complaint, pp. 28-30.
[92] Complaint, p. 28.

III. LEGAL ANALYSIS

WOEIP alleges that the Port has violated Title VI and the associated DOT and EPA civil rights regulations, because the Port did not have a meaningful public participation process to address the adverse impacts of the Port's expansion of activities, which resulted in a disproportionate impact on the communities of color in West Oakland, and the Port has failed to implement less discriminatory alternatives.[93] This allegation is flatly refuted by the facts above.

In the Acceptance Letter, DOT and EPA state that their investigation will focus on:

(1) whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the OAB subjects the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964; and

(2) whether the City's and Port's methods, including their public participation process, for approving and authorizing new development and expanded activities at the Port of Oakland and the OAB subject the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI.[94]

As indicated in the Executive Summary above, with respect to the first prong of the EPA-DOT investigation, the Port was not involved in the City's approval of a construction management plan or permission for groundbreaking on the Northeast Gateway development project.[95] Accordingly, the Port will focus its legal analysis on the second prong of DOT's and EPA's investigative focus: the public participation process.

As the facts described above make clear, the Port has developed a meaningful process with robust procedures in place to involve the public in a wide spectrum of activities at the Port. In fact, the public generally, and WOEIP specifically, have been deeply engaged for decades in the Port's development projects and the Port's air emissions reduction efforts. The Port has not discriminated against the communities of color in West Oakland, nor do its public engagement policies related to development or activities have a disparate negative impact on those communities.

The Port's development activities are necessary and integral to the Port's institutional mission. The Port, including the Port's expanded development at the OAB, are located on Port priority property and necessarily have to remain in that water-adjacent location. Due to the location

[93] Complaint, pp. 26-30.
[94] Acceptance Letter, p. 2.
[95] *See* October 4, 2016, approval from the City.

constraints of the Port's operations, no less-impactful alternative exists, beyond the significant efforts the Port has already undertaken to reduce emissions related to its operations.

A. Title VI Background

Title VI provides that "[n]o 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. § 2000d; *see also* 49 C.F.R. § 21.5(a); 40 C.F.R. § 7.30. Discrimination under Title VI can take the form of intentional discrimination or discrimination through disparate impacts. DOT and EPA regulations provide specific prohibitions on: (1) the use of criteria or methods of administering a program or activity which have the effect of subjecting individuals to discrimination based on their race, color, national origin or sex; and (2) choosing a site or location of a facility that has the purpose or effect of subjecting individuals to discrimination under any program or activity on the basis of race, color, national origin or sex. 49 C.F.R. § 21.5(b)(2) and (3); 40 C.F.R. § 7.35(a) and (b).

In situations where allegations of discrimination are based on disproportionate or disparate impacts, Courts and agencies look to a three-part test to determine whether a recipient of Federal funding has violated Title VI: (1) Does the adverse effect of the policy or practice disproportionately affect members of a group identified by race, color, or national origin? (2) If so, can the recipient demonstrate the existence of a substantial legitimate justification for the policy or practice? (3) Is there an alternative that would achieve the same legitimate objective but with less of a discriminatory effect? *Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1407 (1993). Causation between the recipient's policy or practice and the alleged disproportionate impact must be present to prove a disparate impact claim, just as in a direct discrimination investigation. *Id.* Thus, a Title VI disparate impact claim will fail "if the evidence tends to show that even had the [recipient] not engaged in the challenged practice, the same disparate impact would nonetheless have existed." *Id.*

B. The Port Has Not Discriminated Against the Communities of Color in West Oakland

The Port's receipt of Federal funding from DOT and EPA makes it subject to the requirements of Title VI because it is receiving "Federal financial assistance." 42 U.S.C. § 2000d. The Port takes seriously its obligations under Title VI and has complied with its mandate. In short, the Port has not discriminated against communities of color in West Oakland, and a straightforward evaluation of the facts and circumstances surrounding the Port's methods for approving its operational and development projects demonstrates that the Port has, in fact, actively and consistently included WOEIP and other local community groups in the decision making processes for its development, air quality, and truck management programs.

1. Disparate Impact

The first step in evaluating whether a recipient of Federal funds impermissibly discriminated against a protected group based on the disparate impacts of its actions is to identify the specific policy or practice at issue. *Elston*, 997 F.2d at 1407. Here, DOT and EPA have identified the Port's practices at issues as: the Port's methods, including their public participation process, for approving and authorizing new development and expanded activities at the Port and OAB.

Next, and most crucially, DOT and EPA must evaluate: (1) whether there is actual adversity or harm to West Oakland residents; (2) whether that harm is disproportionately impacting communities of color; and (3) whether the Port has caused that disproportionate harm. *See New York City Envtl. Justice All. v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000) (plaintiffs must "allege a causal connection between a facially neutral policy and a disproportionate and adverse impact on minorities.")

The Port acknowledges that the CARB HRA provides some factual support for WOEIP's claims that West Oakland residents (who are predominantly minorities) are harmed by poor air quality, which causes health impacts at a disproportionate rate compared to other communities in the Bay Area. However, this does not prove that the Port's methods for approving new development and activities are the cause of that poor air quality. The speculative chain of causation implied in the Complaint between the Port's public participation methods and air quality in West Oakland is simply too tenuous on its face. **Moreover, the CARB HRA establishes that the Port is not the primary cause of those health impacts**. In fact, on-road heavy duty diesel trucks, not associated with the Port, are responsible for the vast majority of the DPM pollution in West Oakland. Indeed, due to the Port's ongoing emissions reductions efforts which were crafted in collaboration with WOEIP and other West Oakland community members, DPM emissions from Port-related operations have decreased from 261 tons in 2005 (the data used in the CARB HRA) to 63 tons in 2015.

Thus, **regardless** of the Port's public participation methods, and even if the Port ceased all operations at its Seaport and at the OAB, West Oakland residents would still have air quality impacts from industrial business and on-road heavy-duty trucks traveling on the highways surrounding the community. Because the primary cause of air pollution in West Oakland is sources not related to the Port, there is no causal link between the Port's public participation methods and the alleged disproportionate health impact in West Oakland. *See Elston*, 997 F.2d at 1407.

In sum, there is a fatal lack of causation in WOEIP's Complaint. Even if DOT and EPA find that there is a disparate negative health impact on communities of color in West Oakland, the Port is not the primary cause of that disparate impact, nor is the Port's public participation process. Accordingly, the Port cannot be held liable under Title VI.

2. *Legitimate Justification*

As discussed above in the previous section, the Port's activities and expansion practices do not cause a disproportionate adverse impact on West Oakland residents. Nevertheless, the Port separately notes that it has a substantial legitimate justification for its operations and development practices and is duty bound by the Charter and the Tidelands Trust to promote navigation and commerce.

The Port is a crucial part of the local, State, and national economy. As discussed above, the Port of Oakland was established "[t]o promote and more definitely insure the comprehensive and adequate development of the Port of Oakland through continuity of control, management and operation."[96] The Port has the obligation to establish, equip, and operate its maritime operations and to update or modify its operations as the requirements of commerce, shipping, and navigation may demand.[97] In light of those obligations, the Port is continually looking for ways to grow to meet the needs of commerce, while necessarily improving its cargo handling efficiency and reducing its environmental impact.

Indeed, the Port has expanded operations and increased the volume of cargo traveling through the Port, while at the same time drastically reducing the emissions associated with Port activities. Recent development projects at FISCO and the OAB are necessary to meet the Port's legitimate needs to expand and modernize its operations. The Port is a water-dependent use, and is limited in the land it can use for development. Under the BCDC Seaport Plan, Port property, including the Port's OAB property, are designated as a "Port Priority" Area. Utilizing this property to provide modern rail and logistics facilities is legitimate, important, and integral to the Port's institutional mission and duty. *Elston*, 997 F.2d at 1413.

3. *Less Discriminatory Alternatives*

The Port has engaged in a thoughtful, transparent, and publicly accessible process to minimize the environmental impacts of its activities and development. In light of the water-dependent nature of the Port's operations, and the meaningful public process the Port engaged in to reduce its environmental impacts, there is no less discriminatory alternative available. *Elston*, 997 F.2d at 1407, 1413 (Title VI requires recipients to implement a less discriminatory alternative if it is feasible and meets their legitimate objectives).

WOEIP identifies several items that it believes are "Less Discriminatory Alternatives" that the City and/or the Port should implement.[98] However, as explained in detail above, the Port has already undertaken the planning, public engagement, and emissions reductions sought by WOEIP. WOEIP and other community groups have been intimately involved in the Port's AQMP, MAQIP,

[96] Article VII, Section 700 of the Charter.
[97] Article VII, Section 706(2) of the Charter.
[98] Complaint, pp. 28-30.

CTMP, and development of mitigation measures specific to the OAB under the EIR. In addition, the City and the Port are beginning the process to include robust public engagement in the joint City-Port Truck Management Plan that will address truck traffic and emissions at the Port and the OAB.

The remaining claims of the WOEIP in their proposed "Less Discriminatory Alternatives" are simply not true. WOEIP claims that the Port has failed to develop a meaningful emissions reductions plan, failed to develop a comprehensive truck management plan, and failed to mitigate the negative air quality impacts in West Oakland. As detailed above, WOEIP and other community groups were involved with the Port in planning related to all of those activities – with significant emissions reductions as a result.

In sum, WOEIP has not, and cannot, point to any less discriminatory alternatives that the Port has not already engaged in. As such, WOEIP's assertions fail.

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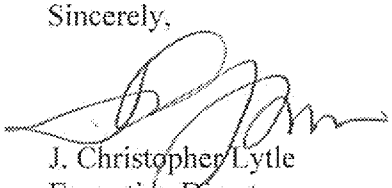
The Port reiterates its commitment to environmental stewardship and its willingness to cooperate with this investigation. The Port is confident that DOT and EPA will find that it has not discriminated against communities of color in West Oakland in violation of Title VI. To the contrary, the Port has a demonstrated and acclaimed track record in public participation processes that are an integral part of the Port's decision making. As the record described herein shows, the Port utilizes all its decision making methods, including public participation, to promote the economic use of its public tidelands on behalf of increasing jobs, employment, public health, and improved quality of life for the Port's neighboring communities, the City of Oakland, and the entire region.

Please let us know if you need anything further from the Port to assist in your investigation.

Sincerely,



J. Christopher Lytle
Executive Director

Enclosures: 1) CD of Exhibits; and 2) List of Exhibits Provided on the Enclosed CD and Additional Materials Available Online

cc: Board of Port Commissioners
Joan Story, President
Cestra Butner, First Vice President
Andreas Culver, Second Vice President

Michael Colbruno, Commissioner
Earl Hamlin, Commissioner
Arabella Martinez, Commissioner
Alan Yee, Commissioner

Danny Wan, Port Attorney

City of Oakland
The Honorable Mayor Libby Schaaf
Barbara Parker, City Attorney
Sabrina Landreth, City Administrator

Exhibits Provided on the Enclosed CD

Exhibit	Title	Date	Page
A	Northeast Gateway development project approval from the City of Oakland	10/4/2016	2
B	Port Ordinance No. 4265: Ordinance Approval and Adopting Rules and Requirements for Noticing, Agendizing and Posting of Board of Port Commissioners Meetings, Assuring Public Access and Participation and Providing Cure and Correction of Non-Compliance with Open Meeting Laws ("Sunshine Ordinance")	12/12/2013	3
C	The Economic Import of the Port of Oakland – 2010, Martin Associates ("Economic Impact Report")	4/18/2011	6
D	2015 Emissions Inventory	October 2016	11, 13
E	Effects of Exhaust After-Treatment and Fleet Modernization on Port of Oakland Truck Emissions Following Complete Implementation of California's Drayage Truck Regulation, Draft Final Report, Preble, et al., Department of Civil and Environmental Engineering, University of California, Berkeley ("2016 UC Berkeley Study")	November 2016	11
F	2005 Emissions Inventory	3/12/2008	13
G	2012 Emissions Inventory	11/5/2013	13
H	Summary Report to West Oakland Neighbors, Vision 2000 Air Quality Mitigation Program	December 2006	13
I	Maritime Air Quality Improvement Plan ("MAQIP")	April 2009	14
J	Comprehensive Truck Management Program ("CTMP")	June 16, 2009	18
K	WOCAG Comment on the Draft EIR for the OAB Redevelopment Plan	June 11, 2002	22
L	Port of Oakland Policy No. AP 450-452, Equal Opportunity	April 2000	27

Additional Materials Available Online

- Press Release, Port Allocates $2.7 Million for Shore Power & Innovative Energy Study, April 4, 2011
    - http://www.portofoakland.com/press-releases/press-release-223/)

- Charter of the City of Oakland
  - https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=THCHOA

- Chapter 516, Statutes of 1919
  - http://www.slc.ca.gov/Programs/Granted_Lands/G01_Alameda/G01-05_City_of_Oakland/S1919_Ch516%20.pdf

- Port of Oakland Strategic Plan, Fiscal Years 2011-2015
  - http://www.portofoakland.com/files/pdf/about/strategicPlan2011-2015.pdf

- Port of Oakland Comprehensive Annual Financial Report for the Years Ended June 30, 2016 and 2015
  - http://www.govwiki.info/pdfs/Special%20District/CA%20Port%20of%20Oakland%202016.pdf

- U.S. EPA, A Ports Primer for Communities, Section 6.4 Case Studies: Job and Benefits, published July 2016
  - https://www.epa.gov/ports-initiative/ports-primer-64-case-studies-job-and-benefits#oakland).

- Port of Oakland Website
  - http://www.portofoakland.com/

- California Public Resources Code
  - https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=2.6.&article=&goUp=Y

- Title 14. California Code of Regulations, CEQA Guidelines
  - http://resources.ca.gov/ceqa/guidelines/art1.html
  - http://resources.ca.gov/ceqa/guidelines/art11.html
  - http://resources.ca.gov/ceqa/guidelines/art13.html
  - http://resources.ca.gov/ceqa/guidelines/art20.html

- Effects of Particle Filters and Selective Catalytic Reduction on Heavy Duty Diesel Drayage Truck Emissions at the Port of Oakland, Preble, et al., *Environmental Science and Technology*, June 26, 2015
  - http://pubs.acs.org/doi/abs/10.1021/acs.est.5b01117

- Diesel Particulate Matter Health Risk Assessment for the West Oakland Community Preliminary Summary of Results, California Air Resources Board, December 2008
  - https://www.arb.ca.gov/ch/communities/ra/westoakland/westoakland.htm

- Board of Port Commissioners Public Agenda Reports, Ordinances, Resolutions and Minutes
    - http://www.portofoakland.com/port/board-of-commissioners/board-meetings/archive/

- Oakland Army Base CEQA/EIR Documents
    - http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157

- Press Release, Port of Oakland-based firm first to test battery-powered big rig, August 2, 2017
    - http://www.portofoakland.com/press-releases/port-oakland-based-firm-first-test-battery-powered-big-rig/

- Press Release, Port of Oakland OKs new high-power line to plug in more ships, August 14, 2017
    - http://www.portofoakland.com/press-releases/port-oakland-oks-new-high-power-line-plug-ships/

- San Francisco Bay Area Seaport Plan, San Francisco Bay Conservation and Development Commission and Metropolitan Transportation Commission, April, 18, 1996 as amended through January 2012
    - http://www.bcdc.ca.gov/seaport/seaport.pdf

- Oakland Global Air Quality Web Portal
    - http://ngem.com/OAB_AQM/

- EDF air quality monitoring website
    - https://www.edf.org/airqualitymaps

- Environ. Sci. Technol., *High-Resolution Air Pollution Mapping with Google Street View Cars: Exploiting Big Data*, J. Apte et al., 2017, 51, 6999–7008
    - http://pubs.acs.org/doi/pdf/10.1021/acs.est.7b00891

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/10/2017 7:24:16 PM
To: Mogharabi, Nahal [MOGHARABI.NAHAL@EPA.GOV]
CC: Matthew Lakin [Lakin.Matthew@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: Request: Earthjustice clip: Title VI complaint about West Oakland FW: EJ News 04/07/17

Nahal

Is there any way you could keep me informed as to what, if anything, we have been saying to the media re the complaint ? Many of our state/local agency allies (ARB, BAAQMD et al) as well as community groups stay in touch with me by way of our ongoing work on West Oakland issues and it would be good if I was up to date as to what we are saying. Thanks

Richard
7-4104

From: Mogharabi, Nahal
Sent: Monday, April 10, 2017 10:48 AM
To: Lakin, Matt <Lakin.Matthew@epa.gov>
Cc: Grow, Richard <Grow.Richard@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>
Subject: Re: Earthjustice clip: Title VI complaint about West Oakland FW: EJ News 04/07/17

Thanks so much, Matt.

Will let you know if the reporter has follow up.

Nahal

On Apr 10, 2017, at 9:01 AM, Lakin, Matt <Lakin.Matthew@epa.gov> wrote:

> Nahal,
>
> Here is the link to the complaint you requested:
> http://earthjustice.org/sites/default/files/files/2017-04-04-TitleVI_Complaint.pdf
>
> http://earthjustice.org/news/press/2017/community-group-alleges-civil-rights-violations-by-the-city-and-port-of-oakland-in-complaint-to-federal
>
> Richard Grow is our staff lead if you have any questions from EPA's perspective.
> Thanks,
> Matt
>
> _____
> Matthew Lakin, Ph.D.
> Acting Deputy Director, Air Division
> US EPA, Region 9 (AIR-1) | 75 Hawthorne St. | San Francisco, CA 94105
> P: 415.972.3851 | E: Lakin.Matthew@epa.gov

Bay Area Air Quality Management District

July 14, 2017

Proposal to Further Reduce Emissions at the Port of Oakland & Former Oakland Army Base

Jack P. Broadbent
Executive Officer/APCO

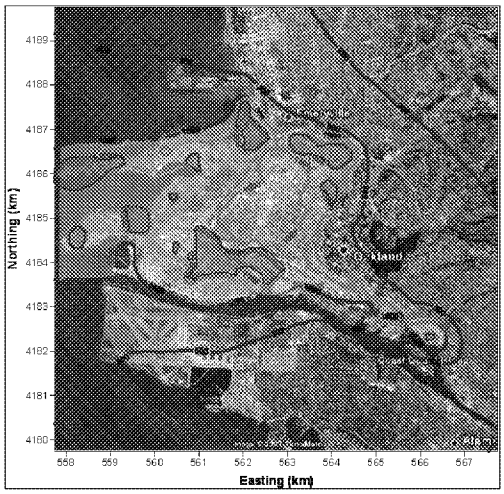
Overview

- Historical emissions & reductions efforts
- Current emissions & reductions efforts
- Future emissions concerns
- Outline of possible emissions reductions solutions

Emissions - 2008 Health Risk Assessment

- Dec. 2008 - Health Risk Assessment (California Air Resources Board/BAAQMD)
- Risk ~3 times higher than Bay Area average
- On-road heavy-duty trucks largest contribution followed by ships, harbor craft, locomotives, and cargo handling equipment

Figure 1 - Modeled Potential Cancer Risk – West Oakland



Established 1927
6th-Largest Port in USA
18 Berths
36 Container Cranes
6,500 trucks
2 Rail yards–UP/BNSF
2016: 2.37 million 20-foot equivalent units (TEU)
Bounded by former Oakland Army Base (OAB) and Port of Oakland
I-580, I-980, I-880
Approximately 22,000 residents
Residents/Air District concerned about Health

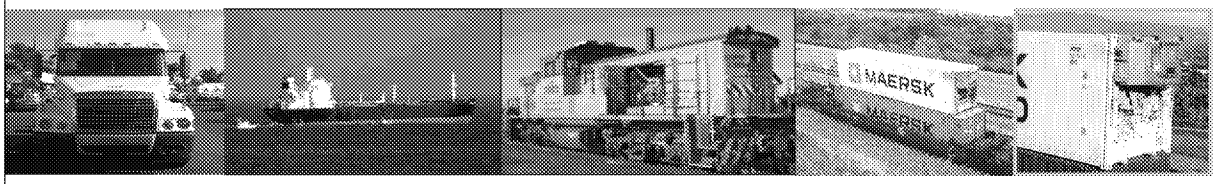
Actions to Reduce DPM

- **Air District - Clean Communities Initiative:**
  - Monitoring, CARE Program, Planning
  - Enforcement
  - Direct Incentives >$80 million (Trucks, Shorepower, Harbor Craft, Locomotives, Vessel Bonnet)
  - On-road >$50 million
  - Currently available - $20 million

- **Port of Oakland:**
  - MAQIP
  - Truck Ban
  - Incentives ~ $5.2 million (Trucks)

- **ARB**
  - Regulations (Trucks, Shorepower, Harbor Craft, Cargo handling equipment, Reefers)
  - Sustainable Freight Plan
  - I-Bond & Cap and Trade Incentives
  - Enforcement

- **Other Partners:**
  - West Oakland Community – MAQIP, Outreach & Truck survey
  - USEPA – Outreach & Incentives ($4 million)
  - ACTC – County-wide goods movement plan
  - MTC – Region-wide goods Movement Plan & Incentives (~$2 million)



Port Truck Emissions Reductions Project ($33.3 million):
$19.2 million – CARB Goods Movement Bond funding
$5 million – BAAQMD funding
$4.1 million – US EPA
1,319 trucks retrofit by grants
627 trucks replaced by grants

Air District provided $24.5 million to help install shore power at 15 berths at the Port of Oakland. Projects were all completed by the end of 2013.

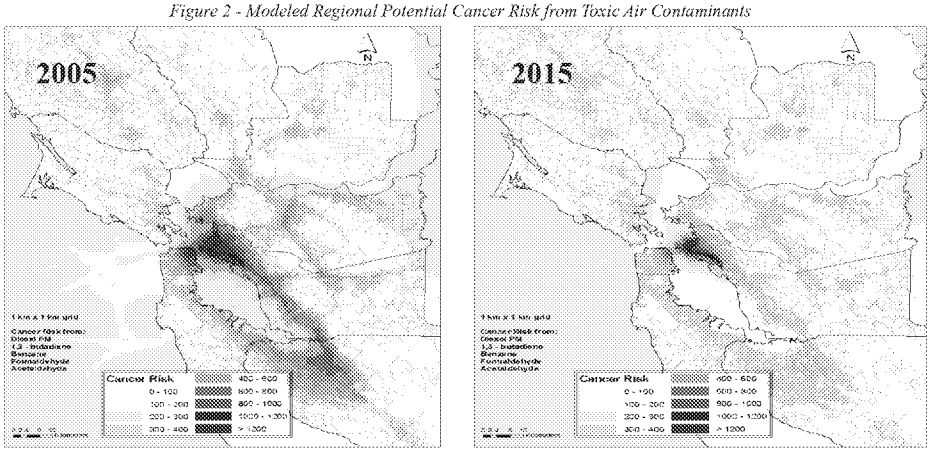
Goods Movement Bond
4 Locomotives - $8.5 million
319 On-road Trucks - $25 million
Vessel Bonnet - $2 million
17 Demo Trucks - $11 million

ARB Regulation:

Vessels at berth: 20% further reduction by 2017
Drayage & On-road Truck: compliance dates through 2023
Cargo Handling Rule: compliance dates through 2017
Commercial Harbor Craft: compliance dates through 2022

Progress in Reducing Cancer Risk from Air Pollution

Figure 2 - Modeled Regional Potential Cancer Risk from Toxic Air Contaminants

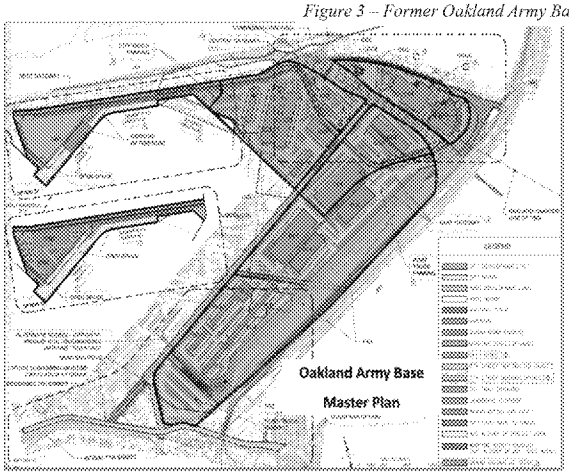


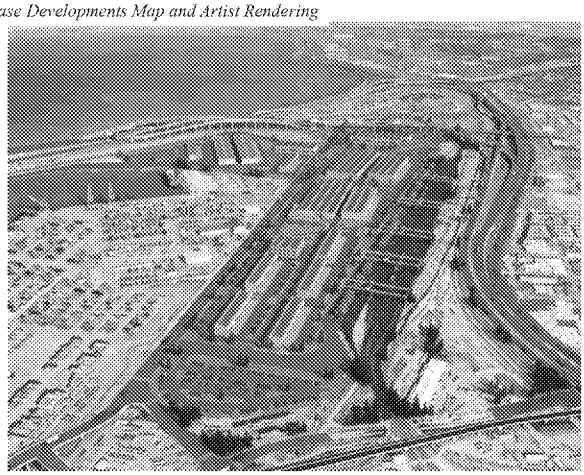
Improving Air Quality & Health in Bay Area Communities, Community Air Risk Evaluation Program Retrospective & Path Forward (2004 - 2013), April 2014, BAAQMD, www.baaqmd.gov/CARE

Significant emissions reductions in DPM and SO2 from TRU, Commercial Harbor Craft, On-dock Equipment
Issue compounded by recent changes to California Office of Environmental Health Hazard Assessment (OEHHA) Health Risk Guidelines have increased the health risk from DPM by a factor of ~3 to 4 times of those originally used in the 2008 HRA
New emissions sources at Oakland Army Base
The numbers of equipment at the Port and OAB are projected to increase in line with cargo volume increases
West Oakland remains the most highly impacted community in the Bay Area relative to exposure to toxic air contaminants

OAB Development Underway

Figure 3 – Former Oakland Army Base Developments Map and Artist Rendering





Source: Oakland Global

BAAQMD Recommendations

- Regulation & Enforcement Action
- Use of Partner Authorities
- Grant Funding
- Defined Policy Direction

Reviewed Port equipment inventories & emissions inventory
Sought understanding what may be developed at OAB
Reviewed planning frameworks at local, state & federal levels to determine how to integrate equipment replacement projects
Examined how the authorities of the various regulatory agencies might be used to reduce emissions
Looked at initiatives at other California ports and evaluating feasible technologies to get further emissions reductions
Updating projections for health risk in the region
Meet with stakeholders for their input

Regulation & Enforcement Action

Enforcement Action - *Emissions reduced: 6 TPY*

- Drayage rule
- Shore power rule

New Regulation - *Emissions reduced: TBD*

- Shore power
- Cargo Handling Equipment
- Locomotives
- Clarify OAB requirements
- Indirect Source Rule

Use of Authorities

Push for Zero and Near Zero Equipment and Infrastructure

- OAB - Lease Disposition and Development Agreement
- Leases & Concessions
- Ordinances
- Fee Authorities

OAB Lease Required Mitigations

- Port to develop and implement a criteria pollutant reduction program to reduce emissions from maritime and rail operations.
- City to administer a West Gateway Rail and Maritime Emissions Reduction Program.
- City and Port to jointly create, maintain, and fund on a fair share basis, a truck diesel emission reduction program.
- City and Port to work with major developers to fund BAAQMD Transportation Control Measures.
- City and Port to encourage, lobby, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality.
- Exposure to Air Pollution (Toxic Air Contaminants: Particulate Matter) incorporate health-protective measures into project design to reduce the potential health risk due to exposure to diesel particulate matter (PM) both inside buildings and out-of-doors.
- Greenhouse Gas (GHG) Reduction Plan: The Goal of this Plan shall be to increase energy efficiency and reduce GHG emissions by at least 20 percent with a goal of 36 percent below the project's "adjusted" baseline GHG emissions.

Grants & Incentives

BAAQMD Deemed Available Technologies - *Emissions reduced: 5.2 to 6.8 TPY*

- Locomotives - Tier 4 engines
- Yard Trucks – Electric equipment
- Tug Boats – Tier 4 engines & shore power
- Yard Hostellers – hybrid electric equipment
- Costs: $190 Million – requiring 50% match by industry
- Incentive funds required - $100 million

Under Investigation

- RTG – Electric equipment
- Drayage Truck – Electric/H2 equipment
- Shore power (very limited availability)
- Yard Hostellers – Electric/H2 equipment
- Oceangoing Vessel speed reduction

Defined Policy Direction

- Set Policy Goals:
  - Require Zero or Near Zero equipment as part of any new operations
  - Port and OAB to achieve Zero or Near Zero operations for all equipment by 2030

Questions and Discussion

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/19/2017 4:39:05 PM
To: Ken.Alex@gov.ca.gov
CC: Olp, Kevin@EPA [Kevin.Olp@calepa.ca.gov]
Subject: West Oakland Title VI complaint accepted for investigation
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - RECIPIENTS - 7-18-2017.pdf

FYI

Late yesterday EPA and DOT issued a formal "acceptance for investigation" letter to the City and Port, attached. Per the letter the City and Port may respond if they choose within the next 30 days. During that time EPA and DOT will be putting together their investigative plan. EPA's procedures are described in the Case Resolution Manual, a link to which is included in the letter. Keep in mind this is a joint DOT-EPA investigation and that the complainants suggested in their complaint that DOT take a lead role. Please feel free to call me to discuss this further.

Richard
Office: (415) 947-4104
Personal Matters / Ex. 6

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

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

July 18, 2017

The Honorable Libby Schaaf
Mayor, City of Oakland
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Michael Colbruno
President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, CA 94607

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

Dear Mayor Schaaf and Mr. Colbruno:

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

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

have determined that the complaint meets the jurisdictional requirements of both Agencies, and therefore the complaint will be jointly investigated.

Accordingly, the investigation will focus on:

1. Whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the Oakland Army Base subjects the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

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

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

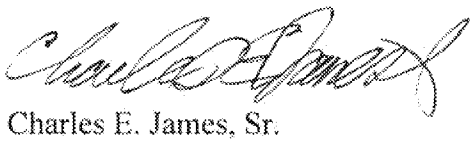
This does not foreclose resolution of matters raised in the complaint through informal resolution, including alternative dispute resolution (ADR). Both DOT's and EPA's nondiscrimination regulations provide that DOCR and ECRCO will attempt to resolve complaints informally whenever possible. 49 C.F.R.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

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights

protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with DOCR and ECRCO.

Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's DOCR, or Ericka Farrell, Case Manager in EPA's ECRCO, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Farrell can be reached at (202) 564-0717, or farrell.ericka@epa.gov.

Sincerely,



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

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 11/7/2017 7:11:12 PM
To: dvintze@baaqmd.gov; akirk@baaqmd.gov
Subject: Today's City meeting

Dave & Alison

So glad my other commitments got cancelled today and I was able to dial into the meeting with the City. Not going totally pollyanna here but it seemed to me this was the most motion we've seen from the City in quite a while. Together with the posture laid out in your comment letter to the Port last Friday it looks like you have succeeded in reframing the issues and getting some buy in, at least from the City. Have to be curious what has changed.

One question - "the document" or "action plan" that was referenced several times - should I assume that is the 16 page "BAAQMD emissions reductions actions for the Port of Oakland/Former OAB" document dated August 2017 ? I hear occasional references to a 120 page plus version of this. If that could be shared, subject to whatever groundrules required, that would be appreciated.

Thanks

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/19/2017 4:33:48 PM
To: cynthia.marvin@arb.ca.gov; dbreen@baaqmd.gov; David Vintze [DVintze@baaqmd.gov]; Yura, Elizabeth@ARB [eyura@arb.ca.gov]; Alison Kirk [AKirk@baaqmd.gov]; 'Lee, Anna, Public Health, CAPE' [Anna.Lee@acgov.org]
Subject: West Oakland Title VI complaint accepted for investigation
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - RECIPIENTS - 7-18-2017.pdf

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Richard

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

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

July 18, 2017

The Honorable Libby Schaaf
Mayor, City of Oakland
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Michael Colbruno
President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, CA 94607

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

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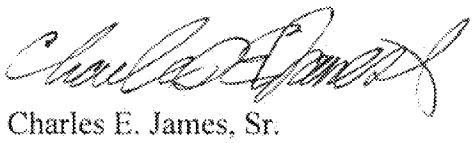

Charles E. James, Sr.
Director
Office of the Secretary of Transportation
Departmental Office of Civil Rights
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Lilian S. Dorka
Director
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U.S. Environmental Protection Agency

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 9/7/2017 3:34:57 PM
To: Israels, Ken [Israels.Ken@epa.gov]
Subject: W.O. 9/26 mtg/call with City/Port
Attachments: 9262017 mtg invite.pdf

Here's the meeting invite and call in number, 9/26 10-12 PDT. Are you still in AZ on that day ?

Grow, Richard

Subject:	Meeting with Oakland (Port and City) Re: Informal Resolution of the Title VI Complaint (Call in number: Conference Line/Code / Ex. 6
Location:	EPA Headquarters, 1200 Pennsylvania Ave. NW, Washington, DC (William Jefferson Clinton Building), 4th Floor, Room 4045
Start:	Tue 9/26/2017 10:00 AM
End:	Tue 9/26/2017 12:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Organizer:	Minoli, Kevin
Required Attendees:	howard.caro-lopez@dot.gov; Johahna Johnson (Johnson.Johahna@epa.gov); ryan.fitzpatrick@dot.gov; Redden, Kenneth; Rhines, Dale; Grow, Richard; Packard, Elise; deeana.jang@dot.gov; McGhee, Debra; Strauss, Alexis; O'Lone, Mary; Garnett, Desean; Dorka, Lilian; yvette.rivera@dot.gov; Temple, Kurt
Optional Attendees:	Trudeau, Shaun; Mills, Derek

Please enter via our north side entrance. Upon clearing security, someone will escort you to the meeting location. Any questions, please call 202-564-8040. Thank you.

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 2/8/2018 4:52:31 PM
To: sggrant@envirocommunications.com
CC: Margaret Gordon [margaret.woeip@gmail.com]
Subject: FW: Clarification: Question: Truck Management Plan - studies and scope

Surlene

I just noticed that, while you were in the distribution list for my initial exchange with the City regarding the TMP back in December, you weren't included in the exchange this week. Please feel free to call any time. Thank you.

Richard
Office: (415) 947-4104

Personal Matters / Ex. 6

From: Grow, Richard
Sent: Wednesday, February 07, 2018 5:01 PM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Margaret Gordon (margaret.woeip@gmail.com) <margaret.woeip@gmail.com>; Brian Beveridge (brian.woeip@gmail.com) <brian.woeip@gmail.com>; Andrea Gardner <agardner@portoakland.com>; Gilchrist, William <WGilchrist@oaklandnet.com>; Ranelletti, Darin <DRanelletti@oaklandnet.com>; brian.woeip@gmail.com
Subject: Clarification: Question: Truck Management Plan - studies and scope

Pat

Thank you. To try to be clear, my suggestion was for the TMP planning process, i.e. the one being conducted by the City and Port, to be modified to incorporate into it (the planning process) the information and implications of these studies. I'm always supportive of WOEIP having even more public forums on these studies, and have appreciated the ones they have already held, but the point of my suggestion had to do with the effect on the TMP project itself.

Richard

From: McGowan, Patricia [PMcGowan@oaklandnet.com]
Sent: Wednesday, February 7, 2018 4:27 PM
To: Grow, Richard
Cc: Margaret Gordon (margaret.woeip@gmail.com); Brian Beveridge (brian.woeip@gmail.com); Andrea Gardner; Gilchrist, William; Ranelletti, Darin
Subject: RE: Question: Truck Managament Plan - studies and scope

Hi Richard,
I am not ignoring your e-mail, just the opposite in fact. I am discussing it again with Bill Gilchrist and Darin Ranelletti. And on a related e-mail Surlene Grant is discussing with Ms. Margaret the content of the public meeting WOEIP is planning to hold regarding the Google/EDF/Aclima study.

We'll get back to you next week.

Thanks,
Pat

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

-----Original Message-----
From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Tuesday, February 06, 2018 8:33 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin <DRanelletti@oaklandnet.com>; Brian Beveridge <brian.woeip@gmail.com>; Margaret Gordon <margaret.woeip@gmail.com>
Subject: Question: Truck Managament Plan - studies and scope

Greetings, Patricia

It's been a while since I heard from you on the suggestions in my December 4 email, below. Could you please get back to me regarding the status of these issues ?

Thank you

Richard Grow
US EPA
Region 9
(415) 947-4104

-----Original Message-----
From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, December 13, 2017 11:55 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin <DRanelletti@oaklandnet.com>
Subject: RE: Truck Managament Plan - studies and scope

Hello Richard,
Please excuse my delay in replying to your e-mail. As you may know, City staff was on strike from Dec. 5 - 11, so I was unable to reply during that period.

Thank you for your attendance at the Dec. 2 public meeting and your compliment that you found it to be an excellent public workshop. Your comments/suggestions about the scope of the West Oakland Truck Management Plan are under consideration by the City and Port team. I will be in touch again as the City/Port team work through these suggestions.

Best regards,
Patricia

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

-----Original Message-----
From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Monday, December 04, 2017 11:50 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com
Subject: Truck Managament Plan - studies and scope

Patricia McGowan (cc William Gilchrist, Andrea Gardner, Surlene Grant)

This note is to follow up on the suggestion I put forward at the excellent community workshop on trucks in West Oakland which you hosted this past Saturday. In my remarks Saturday I made reference to a suggestion previously put forward by Ms. Margaret Gordon of the WOEIP at the July 10 meeting at City Hall which you also hosted, and during which EDF presented the findings from its "Street View" project documenting on a fine scale (block by block) the levels and distribution of black carbon. At the July 10 meeting Ms. Gordon suggested that the 20 or so parties gathered around the table, representing perhaps a dozen organizations, agencies and interests, work collaboratively together to assess and address the implications of the studies findings with regard to mitigation of the effects revealed by the study.

My suggestion this past Saturday was that you, along with others carrying out this latest "truck management plan" exercise, incorporate into the current planning effort time to for participants in the planning effort to consider the EDF/Google study as well as a more recent UC Berkeley assisted "100 x 100" West Oakland black carbon monitoring study. As I mentioned Saturday, there may be no community in the country for which there is a richer availability of local scale air pollutant data. It seems here that it would be unfortunate to not make use of this information in coming up with a truck plan addressing the public health impacts of truck-related operations in West Oakland.

Regarding the scope of the TMP, I hope you will be open to the possibility that consideration of this additional information could have some effect on the scope of the plan itself. It was clear from the discussions Saturday that the issue of the scope of the TMP is itself an issue of quite some concern to many stakeholders. This also goes to the assurances I had previously received from both yourself and Claudia Cappio at the August 23 Air Quality Stakeholders meeting, assurances that the scope of the TMP had not already been set, but would rather be set by way of the interactive process which you would be convening this fall. I found this encouraging, as well as consistent with the language of mitigation measure 4.3-7, committing to a truck management plan and enumerating 8 potential "elements", while also including the caveat that the plan "is not limited to" that list of elements.

I understand that you have been assuming the viability of a "five step" planning process as laid out at the Saturday meeting, with the next (i.e. third) meeting to be focused on "prioritization" of measures proposed by City staff based on the first two meetings, and acknowledge that my suggestions might result in the TMP process taking a bit longer, but hope that you will consider whether they might also add to

the quality of and support for the plan. There may be some logic in getting a common understanding of, and agreement on, the scope of the plan before moving on to prioritizing components of the plan.

Please feel free to call me directly to discuss this further, and thanks again for the very educational event this past weekend.

Richard Grow
US EPA
Region 9
(415) 947-4104

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 11/6/2017 4:22:32 PM
To: Alison Kirk [AKirk@baaqmd.gov]
Subject: RE: Comment Letter from BAAQMD for Port Board Meeting 11/9/17 item 5.1

Very nice.

From: Alison Kirk [AKirk@baaqmd.gov]
Sent: Friday, November 3, 2017 11:39 AM
To: dedgerly@portoakland.com
Cc: David Vintze; Henry Hilken; Karen Schkolnick; afournier@baaqmd.gov; Jean Roggenkamp; dbreen@baaqmd.gov; Jack Broadbent; Grow, Richard; Marvin, Cynthia@ARB; Cappio, Claudia; Lakin, Matt; Machol, Ben
Subject: Comment Letter from BAAQMD for Port Board Meeting 11/9/17 item 5.1

Hello,

Attached please find BAAQMD's comment letter and attachment for the 11/9/17 Board of Port Commissioners meeting.

These items are in reference to Agenda item 5.1: Ordinance and Resolution to approve Lease with CenterPoint-Oakland Development I, LLC for a Transload and Distribution Facility on the Former Oakland Army Base.

I would appreciate it if you could reply to this email and let me know it has been received. Thanks in advance!

Please contact me if you have any questions.

Sincerely,

Alison Kirk, AICP
Senior Environmental Planner
415-749-5169

The Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 2/8/2018 1:12:22 AM
To: Personal Address / Ex. 6
Subject: FW: Clarification: Question: Truck Management Plan - studies and scope

Ms. Margaret and Brian

Please let me know if I need to explain better the difference (in my view) of (1) their actually taking the studies into the TMP process vs. (2) them wishing you well in your (EIP) having yet another public briefing on the studies without them making any commitment to build the implications of those studies into the TMP. You've already done this some number of times, they've been at at least one of them, in fact Pat hosted one at City Hall, after which they blithely proceeded to hire Surlene and set up a five step TMP process which ignored the studies. Their process I've tried to suggest wouold include a step, or setps, within the TMP process, in which the studies and their implications are presented, discussed, and the outcomes and suggestions from those discussions incorporated into the process as it proceeds from there. No ?

Richard

From: Grow, Richard
Sent: Wednesday, February 7, 2018 5:01 PM
To: McGowan, Patricia
Cc: Margaret Gordon; Personal Address / Ex. 6 Andrea Gardner; Gilchrist, William; Ranelletti, Darin; brian.woeip@gmail.com
Subject: Clarification: Question: Truck Management Plan - studies and scope

Pat

Thank you. To try to be clear, my suggestion was for the TMP planning process, i.e. the one being conducted by the City and Port, to be modified to incorporate into it (the planning process) the information and implications of these studies. I'm always supportive of WOEIP having even more public forums on these studies, and have appreciated the ones they have already held, but the point of my suggestion had to do with the effect on the TMP project itself.

Richard

From: McGowan, Patricia [PMcGowan@oaklandnet.com]
Sent: Wednesday, February 7, 2018 4:27 PM
To: Grow, Richard
Cc: Margaret Gordon; Personal Address / Ex. 6 Andrea Gardner; Gilchrist, William; Ranelletti, Darin
Subject: RE: Question: Truck Managament Plan - studies and scope

Hi Richard,
I am not ignoring your e-mail, just the opposite in fact. I am discussing it again with Bill Gilchrist and Darin Ranelletti. And on a related e-mail Surlene Grant is discussing with Ms. Margaret the content of the public meeting WOEIP is planning to hold regarding the Google/EDF/Aclima study.

We'll get back to you next week.

Thanks,
Pat

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

-----Original Message-----
From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Tuesday, February 06, 2018 8:33 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin <DRanelletti@oaklandnet.com>; Brian Beveridge
Personal Address / Ex. 6
Subject: Question: Truck Managament Plan - studies and scope

Greetings, Patricia

It's been a while since I heard from you on the suggestions in my December 4 email, below. Could you please get back to me regarding the status of these issues ?

Thank you

Richard Grow
US EPA
Region 9
(415) 947-4104

-----Original Message-----
From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, December 13, 2017 11:55 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin <DRanelletti@oaklandnet.com>
Subject: RE: Truck Managament Plan - studies and scope

Hello Richard,
Please excuse my delay in replying to your e-mail. As you may know, City staff was on strike from Dec. 5 - 11, so I was unable to reply during that period.

Thank you for your attendance at the Dec. 2 public meeting and your compliment that you found it to be an excellent public workshop. Your comments/suggestions about the scope of the West Oakland Truck Management Plan are under consideration by the City and Port team. I will be in touch again as the City/Port team work through these suggestions.

Best regards,
Patricia

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

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Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com
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Please feel free to call me directly to discuss this further, and thanks again for the very educational event this past weekend.

Richard Grow
US EPA
Region 9
(415) 947-4104

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/13/2017 12:21:45 AM
To: LUEHE, DOUGLAS [luehe.douglas@epa.gov]
CC: Machol, Ben [Machol.Ben@epa.gov]; McDaniel, Penelope [MCDANIEL.PENELOPE@EPA.GOV]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: Fw: AGENDA: Meeting on Emissions Reductions for the Port of Oakland's/Former Oakland and Base Development
Attachments: Agenda- July 14- POA_OAB Meeting.docx

FYI

From: Aloha de Guzman <adeguzman@baaqmd.gov>
Sent: Wednesday, July 12, 2017 12:44 PM
To: CCappio@oaklandnet.com; MDNichols@oaklandnet.com; Tess Lengyel; adao@alamedactc.org; abockelman@mtc.ca.gov; Beba Sanchez; Matt Maloney; cynthia.marvin@arb.ca.gov; Grow, Richard; mdavis@portoakland.com; anna.lee@acgov.org
Cc: Sheng Thao ; Jack Broadbent; Maricela Martinez; Vanessa Johnson; dbreen@baaqmd.gov
Subject: AGENDA: Meeting on Emissions Reductions for the Port of Oakland's/Former Oakland and Base Development

On Behalf of Director Kaplan and the Bay Area Air Quality Management District:

Attached is the agenda for the meeting on Friday July 14, 2017.

Thank you!

Regards,

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782| Cell: 415.745.5633
adeguzman@baaqmd.gov| www.baaqmd.gov

Interagency Meeting on Emissions Reductions for the Port of Oakland's/Former Oakland and Base Development

Alameda County Transportation Commission
1111 Broadway, Room D,
Oakland, CA 94607

July 14, 2017 - 12 noon to 2:00pm

Meeting Goal:

The goal of this meeting is to devise a workplan that harnesses and coordinates the resources of the participating entities:

- To reduce emissions and health impacts in the West Oakland Community from current operations at the Port of Oakland; and
- To prevent emissions and health impacts in the West Oakland Community from future operations at the former Oakland Army Base.

Meeting Format:

This meeting is to be solutions oriented. It is a given that each of the government entities participating in this meeting has extensive knowledge regarding both Port of Oakland (Port) and the former Oakland Army base (OAB).

The meeting is structured to allow the Bay Area Air Quality Management District (Air District) to present its views on possible solutions (revised "strawman" proposal) to achieving the goals listed above. The Air District's "strawman" is meant to provide a platform for an actionable workplan which can be taken back to each of the government's oversight bodies (Boards, Councils, Commissions, etc.) for approval, funding and action.

Interagency Meeting on Emissions Reductions for the Port of Oakland's/Former Oakland and Base Development

AGENDA

12:00 – 12:10pm Introductions and Welcome by Director Kaplan

12:10 – 12:40pm Overview (BAAQMD)

- *Historical emissions & reductions efforts*
- *Current emissions & reductions efforts*
- *Future emissions concerns*
- *Outline of possible emissions reductions solutions*
  - *Regulation & Enforcement Action*
  - *Use of Partner Authorities*
  - *Grant Funding*

12:40 – 1:30pm Group Discussion

1:30 – 2:00pm Action Item recap, Assignments and Next Steps

2:00pm Adjourn

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 11/16/2017 3:34:12 PM
To: Israels, Ken [Israels.Ken@epa.gov]
Subject: 8:30 Alexis' conference room: Meeting re City an Port response and draft Framework Markup
Attachments: Port Clean Draft Informal Resolution Agreement.docx; City and Port DRAFT REDLINE to EPA DOT Draft 11_10_2013.pdf; City-Port joint Rx 11_10_2013.pdf

Ken – Meant to alert you to this. First chat within EPA on City/Port counteroffer that arrived Monday, prep for call with DOT likely next week. Alexis available for first 30 mins she said. RG

From: Temple, Kurt
Sent: Thursday, November 16, 2017 7:13 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>
Cc: Harrison, Brenda <Harrison.Brenda@epa.gov>
Subject: Re: Meeting re City an Port response and draft Framework Markup

The number and code for today's call re Oakland

Conference Line/Code / Ex. 6

From: Temple, Kurt
Sent: Monday, November 13, 2017 1:23 PM
To: Temple, Kurt; Dorka, Lilian; Rhines, Dale; McGhee, Debra; Keeler, Katsumi; Rhodes, Julia; O'Lone, Mary; Garnett, Desean; Grow, Richard; Strauss, Alexis
Cc: Harrison, Brenda
Subject: Meeting re City an Port response and draft Framework Markup
When: Thursday, November 16, 2017 11:30 AM-12:30 PM.
Where: Room 2528

Conference Line/Code / Ex. 6

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 11/6/2017 4:20:59 PM
To: Machol, Ben [Machol.Ben@epa.gov]; mcdaniel.penny@epa.gov
Subject: FW: Comment Letter from BAAQMD for Port Board Meeting 11/9/17 item 5.1
Attachments: DRAFT Port-OAB Action List Nov 3.pdf; BAAQMD ltr to POAK Board Item 5.1.pdf

Deliberative Process / Ex. 5

From: Alison Kirk [AKirk@baaqmd.gov]
Sent: Friday, November 3, 2017 11:39 AM
To: dedgerly@portoakland.com
Cc: David Vintze; Henry Hilken; Karen Schkolnick; afournier@baaqmd.gov; Jean Roggenkamp; dbreen@baaqmd.gov; Jack Broadbent; Grow, Richard; Marvin, Cynthia@ARB; Cappio, Claudia; Lakin, Matt; Machol, Ben
Subject: Comment Letter from BAAQMD for Port Board Meeting 11/9/17 item 5.1

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I would appreciate it if you could reply to this email and let me know it has been received. Thanks in advance!

Please contact me if you have any questions.

Sincerely,

Alison Kirk, AICP
Senior Environmental Planner
415-749-5169

The Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

ALAMEDA COUNTY
Pauline Russo Cutter
Scott Haggerty
Rebecca Kaplan
Nate Miley

CONTRA COSTA COUNTY
John Gioia
David Hudson
(Vice Chair)
Karen Mitchoff
Mark Ross

MARIN COUNTY
Katie Rice
(Secretary)

NAPA COUNTY
Brad Wagenknecht

SAN FRANCISCO COUNTY
Edwin M. Lee
Hillary Ronen
Jeff Sheehy

SAN MATEO COUNTY
David Canepa
Carole Groom
Doug Kim

SANTA CLARA COUNTY
Margaret Abe-Koga
Cindy Chavez
Liz Kniss
(Chair)
Rod G. Sinks

SOLANO COUNTY
Pete Sanchez
James Spering

SONOMA COUNTY
Teresa Barrett
Shirlee Zane

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

Connect with the
Bay Area Air District:

November 3, 2017

Joan H. Story
President, Board of Port Commissioners
Port of Oakland
30 Water Street
Oakland, CA 94607

Subject: **Ordinance and Resolution to approve Lease with CenterPoint-Oakland Development I, LLC for a Transload and Distribution Facility on the Former Oakland Army Base**

Dear Ms. Story and Members of the Board of Port Commissioners (Board):

The Bay Area Air Quality Management District (Air District) has reviewed Agenda item 5.1 on your November 9, 2017 meeting and is requesting that the Board:

- Delay approval of any resolution or ordinance on this item until the Port of Oakland (Port) has developed and funded the emission reduction programs (in concert with the City of Oakland (City)) identified by the former Oakland Army Base (OAB) Environmental Impact Report (EIR) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP); and

- Developed criteria via a public process to determine when low emission equipment or strategies are "readily available" or "cost effective."

As currently drafted, Agenda item 5.1 seeks to authorize the Port of Oakland (Port) Executive Director to enter a ground lease with CenterPoint-Oakland Development I, LLC, (the Developer) for the design, construction, finance, operation, and maintenance of a transload and distribution facility (Project). The proposed Project seeks to build a 440,800-square foot facility with approximately 140 dock doors, and parking for 365 autos and 70 trailers for warehouse, storage, other maritime trade and logistics uses. The proposed location is approximately 27 acres at the former Oakland Army Base (OAB) land the Port has named the Seaport Logistics Complex.

As stated in the Board's Agenda Report, this and any project on the former OAB is required to comply with the OAB Environmental Impact Report (EIR) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP). As you may recall, the SCA/MMRP was adopted by the Oakland City Council (City) and the Port to mitigate the significant health and air quality impacts expected to occur in the West Oakland community and impacts to regional air quality resulting from the build out of the OAB. However, many the SCA/MMRPs require the City and the Port to develop emission reduction programs that have not been developed, such as:

- MM 4.4-3a: "The Port shall develop and implement a criteria pollutant reduction program aimed at reducing or off-setting Port-related emissions in West Oakland from its maritime and rail operations to less than significant levels..."

- MM 4.4-4 "The City and the Port shall jointly create, maintain and fund on a fair share basis, a truck diesel emission reduction program. The program shall be sufficiently funded to strive to reduce redevelopment related contributions to local West Oakland diesel emissions to less than significant levels ...."

- MM 4.4-5: "Major developers shall fund on a fair share basis BAAQMD – recommended feasible Transportation Control Measures (TCMs) for reducing vehicle emissions from commercial, institutional, and industrial operations, as well as all CAP [Clean Air Plan] TCMs the BAAQMD has identified as appropriate for local implementation ...."

- MM 4.4-6: "...the City and Port shall implement sustainable development policies and strategies related to new development design and construction..."

- MM 5.4-1: "The City and the Port shall encourage, lobby, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality..."

- MM GCC-1: "The project applicant shall retain a qualified air quality consultant to develop a Greenhouse Gas (GHG) Reduction Plan for City review and approval. The applicant shall implement the approved GHG Reduction Plan..."

- Some of the mitigation measures include language that would require emission reduction actions only if low emission equipment or strategies are "readily available" or "cost effective".

To date, neither the City nor the Port has developed or funded the emission reduction programs identified above or developed any criteria to determine when low emission equipment or strategies are "readily available" or "cost effective." The Air District recommends that the Port develop the emission reduction programs and guidance identified above in a forum that seeks public input prior to acting on this Project. The Air District believes that any resolution adopted by the Board relative to this project should include clear language and direction to staff and the proposed tenants/operators that ensures the maximum use of zero and near zero emission equipment at the time of building permit issuance, and requires upgrades into the future as fully zero emissions equipment options become available.

To assist the Board, City and Port in determining what is "readily available" or "cost effective," the Air District has attached its draft "BAAQMD Emissions Reductions Actions for the Port of Oakland/Former Oakland Army Base," (August 2017) document. The Air District is currently finalizing this document in consultation with both Port and City staff and expects some minor changes to it based on those discussions. However, the technology suggestions in this document

have been reviewed by the California Air Resources Board and represent what the Air District believes to be most protective of community health and air quality relative to equipment that is currently and reasonably available.

West Oakland remains the most disproportionately impacted community in the Bay Area due in part to its proximity to the Port. Since 2001, the Air District has invested over 80 million dollars of public funds to reduce diesel particulate matter (DPM) emissions from Port truck, maritime and rail operations and over $50 million to reduce emissions on adjacent highways. In 2018, the Air District projects another approximately $70 million dollars in incentive funds will be available for the purchase of zero and near zero emission equipment and technologies that could be used at the Port and OAB. The Air District stands ready to assist current and prospective tenants/operators at the Port and OAB in taking advantage of these funds.

However, these incentives alone cannot address the air quality related health issues in the West Oakland community. It is important that the Board play a leadership role in reducing the impacts of the Port's operations by directing its staff to honor the spirit and letter of the mitigation measures required in the SCA/MMRP. This includes specifying requirements for zero and near zero equipment and operations as part of new leases and ordinances.

Air District staff is available to assist the Board or Port staff with questions about these comments. If you have any questions, please contact Alison Kirk, Senior Planner, at (415) 749-5169 or akirk@baaqmd.gov.

Sincerely,

Damian Breen
Deputy Air Pollution Control Officer

Attachment: BAAQMD Emissions Reductions Actions for the Port of Oakland/Former Oakland Army Base – Draft Document (August 2017)

cc: BAAQMD Director Pauline Russo Cutter
BAAQMD Director Scott Haggerty
BAAQMD Director Rebecca Kaplan
BAAQMD Director Nate Miley
Cynthia Marvin, California Air Resources Board
Claudia Cappio, City of Oakland
Richard Grow, EPA
Matt Lakin, EPA
Ben Machol, EPA

Oakland Seaport Facilities

Siting or expanding seaport facilities, in, or near, communities already highly impacted by diesel pollution, carries a responsibility to build and operate a state-of-the-art facility with emissions as close to zero as technologically possible. Future port projects should include emerging zero emission technology for the trucks, locomotives, ship, tug boats, transport refrigeration units and support equipment that may serve, or operate, at ports. The City of Oakland (City) and Port of Oakland (Port) should take advantage of the planned construction and operational expansion to introduce changes that will lay the foundation for this technology and reduce regional emissions, minimize criteria pollutants and toxic air contaminants as well as the localized health risk from the Port's current and future operations. All projects should require the use of the cleanest technologies, support and encourage the development and demonstration of advanced technologies, with the ultimate goal of requiring the use of zero and near-zero emission technologies as soon as they are available. This requirement for the cleanest equipment is consistent with the City and the Port commitments made in the 2010 document, *A Bold Vision: Redeveloping the Former Oakland Army Base* ("*A Bold Vision*") and the 2009 *Maritime Air Quality Improvement Plan* (MAQIP).

The following actions need to be taken to ensure that Port operations or construction activities do not increase cumulative air quality impacts now or in the future.

1. <u>Port-Wide Actions</u>

   1.1. Require that all tenants and onsite construction contractors comply with and monitor compliance with all applicable air quality regulations for heavy duty-diesel trucks, including the Air Resources Board's (ARB) Tractor-Trailer Greenhouse Gas Reduction Regulation, Period Smoke Inspection Program, Off-Road Regulation, and Statewide Truck and Bus Regulation. To document compliance, require that fleets provide ARB Certificates of Compliance for the equipment regulations and copies of annual smoke test results.

   1.2. Incorporate contractual language into tenant lease agreements to ensure that tenants comply with all applicable air quality regulations, are using the cleanest technologies for their equipment (in both construction and operations) and understand their responsibilities of building and maintaining a green facility as well as compliance with diesel regulations.

   1.3. Require that the cleanest possible construction practices and equipment are utilized. This should include eliminating idling of diesel powered equipment, requiring the use of zero and near-zero emission equipment and tools to the greatest extent feasible, and providing the necessary infrastructure, like electric hookups, to support that equipment.

   1.4. Implement and plan accordingly for the necessary infrastructure to support zero emission and near-zero emission technology vehicles and equipment at

002535 2020-10-29

the Port. This includes physical, energy, and fueling infrastructure for construction equipment, on-site vehicles, and equipment, and medium-heavy and heavy-heavy duty trucks. ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm.

At a minimum, both the Port and City should adopt targets for electric raceway circuit installation as part of initial facility construction. This will ensure sufficient electrical power is available for EV charging at sites under development and minimizes future costs to install infrastructure for zero and near zero emissions vehicles.

1.5. Develop a Sustainable Leasing Program whereby the Port and City shall work with tenants to develop and implement a policy incentive-based sustainable leasing program to attract the cleanest ships, ships that utilize shore power, zero and near-zero technologies, and otherwise incorporate technological and operational practices that reduce freight related emissions.

1.6. Require tenants to use cleaner technologies over time as they become available and feasible. This can be accomplished by requiring tenants to develop an annual Technology Review Program to identify any new emissions-reduction technologies that may reduce emissions at the Port, including the feasibility of zero and near-zero emissions technologies for heavy-duty trucks, yard equipment, tugs, vessels, and bulk handling equipment. If the technology review demonstrates the new technology will be effective in reducing emissions and the Port or City determines that installation or use of the technology is feasible, the tenant shall implement such technology within 12 months of the Port or City's determination (see Appendix A for examples of possible Technology Review Program projects).

1.7. Ensure existing and future tenants are compliant now and in the future with ARB's Transport Refrigeration Regulation. If not already implemented, incorporate operating practices that eliminate the amount of time that a transport refrigeration system powered by a fossil-fueled internal combustion engine can operate utilizing the combustion system at the Port. Furthermore, plan and design cold storage facilities that incorporate zero emission all-electric plug-in transport refrigeration systems, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration sufficient to meet Port growth.

1.8. Require the use of cargo handling equipment (CHE), including yard trucks, handlers, gantry cranes, fork lifts, that is the cleanest available technology (LPG/LNG, renewable diesel, electric, hydrogen, electric hybrid) and use zero and near- zero emission technology for equipment that is commercially

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available now and in the future, as more zero-emission equipment becomes commercially available, as committed to in *A Bold Vision*. ARB's Technology Assessment: Mobile Cargo Handling Equipment, provides information on current and projected development of CHE, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/che_tech_report.pdf. Additionally, tenants should be required to demonstrate how their yard lay out maximizes their ability to use zero emissions equipment such as electric rail mounted gantry cranes.

1.9. Require the use of commercial harbor craft (CHC) technologies that exceed the Tier 2 or 3 requirements of CARB's CHC Regulation. There are some zero and near- zero emissions technology for equipment that is commercially available now, and additional projects are underway demonstrating the capability of CHC to achieve emission lower than Tier 4 marine and off-road emission standards. Some of these solutions may require retrofit with aftermarket emission control devices. ARB's Technology Assessment: Commercial Harbor Craft, provides information on current and projected development of CHC, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/draft_chc_technology_assessment.pdf.

1.10. Require that all medium-heavy and heavy-heavy duty on-road and yard trucks, including any alternative fuel vehicles, meet or exceed the 2010 emission standards. Support the deployment of zero and near-zero technologies including utilizing zero emission (such as battery electric or fuel cell electric) forklifts, electrified rail mounted gantry cranes, and battery electric and hybrid electric medium-duty trucks to the fullest extent feasible. At a minimum, all forklifts should be required to meet a zero emission standard. As it becomes available, require that medium-heavy and heavy-heavy duty trucks traveling within 100 miles of the site use zero and near-zero technology and require that yard trucks with similar duty cycles (less than hundred miles daily) convert to zero and near-zero technology. ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm.

1.11. During all construction activities, require that off-road construction equipment meet Tier 4 engine standards, if not available, require equipment that meets Tier 3 engine standards. Tenants shall keep a list of available equipment and submit to the Port or City upon request.

1.12. Require that all on-site service vehicles, light-duty vehicles and equipment (operational and during construction activities), and property maintenance

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equipment use zero emission technology and, if zero-emission technology is unavailable, that all vehicles and equipment meet the cleanest applicable emission standard.

1.13. Require that all projects include a robust traffic plan that moves truck traffic away from residents reducing truck traffic in neighborhoods, reduces and enforces truck speeds to reduce exposure to noise and increase safety, and discourages new development near truck routes. Coordinate and consult with the West Oakland community on site-wide truck traffic circulation.

1.14. Properly integrate truck parking, terminal parking, security systems, electronic gates systems, and other freight transport infrastructure to maximize achievable efficiencies.

1.15. Require future project design plans include operational support to demonstrate and deploy zero and near-zero emission freight equipment.

1.16. Require ships that enter the Port area pay emissions-based berthing fees or other user fees. The fees shall be used to reduce emissions and exposure in West Oakland.

1.17. Require that ocean-going vessels comply with fuel requirements for both the California Ocean-Going Vessel Regulation and the North American Emission Control Area Requirements.

1.18. Provide support (logistical and financial) for demonstration projects to encourage the use of alternative and/or advanced technologies. ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source and port equipment technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm.

1.19. Utilize concepts to enhance community engagement as outlined in the U.S. Environmental Protection Agency Draft Environmental Justice Primer for Ports, "The Good Neighbor Guide to Building Partnerships and Social Equity" released in July 2016. This document provides a road map to assess current community engagement and outlines strategies to assist the City and the Port to enhance neighboring community relationships. The document can be found at https://www.epa.gov/ports-initiative/draft-environmental-justice-primer-ports

1.20. Utilize grant funding from Federal, State and local programs to reduce air pollution emissions and health risk from diesel exhaust. Incorporate a collaborative process between tenants and the Port and/or the City to apply for funding to support zero-emission freight related diesel equipment technologies.

1.21. Require that all recycling facilities and metal melting facilities that include re-

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melting furnaces for the melting of alloys, within the Port, the OAB project area, and within 1,000 feet of the West Oakland community meet the best available control technology (BACT) standards as defined by the BAAQMD.

2. Former OAB – Both City of Oakland and Port Owned Areas

Below are measures that will help the City and Port meet the requirements of the Oakland Army Base 2013 Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCA/MM). *Note:* the City and Port must reduce emissions at the OAB property *beyond* what is required by CARB regulations to meet the requirements of the SCA/MM. These measures also are consistent with measures in the *Maritime Air Quality Improvement Plan* (MAQIP), A Bold Vision, the City of Oakland's Standard Condition of Approval, and air quality mitigation measures in the Environmental Impact Report for 2013 *Plan Bay Area*. When measures are adapted from specific sources, these sources are noted in parenthesis.

The City and Port shall implement all measures listed under Item 1 Port-Wide Activities as applicable, and in addition shall implement the following measures:

2.1. All trucks shall be prohibited from idling more than two minutes when loading and unloading, staging or when not in active use for extended periods of time. Exemptions from the two-minute idling rule would be allowed when required for safety or when equipment is in use. (Plan Bay Area)

2.2. An appointment/ITS system shall be implemented that minimizes truck idling and queuing for the movement of containers.

2.3. Prior to implementation of zero-emission harbor craft described in Item 1.9 above:

2.3.1. Prior to 2023, all CHC accessing the new OAB port facilities will meet USEPA Tier 4 standards (or cleaner) for both propulsion and auxiliary engines, or zero emissions technologies such as: batteries, shorepower, or hydrogen fuel cell.

2.3.2. NOx emissions can be controlled with selective catalytic reduction systems. For example, implement emission reduction control measures to replace tugboat engines with low NOx technology (for example, through the expansion of the existing cargo handling equipment re-powering and retrofitting program, part of the Berths 55-58 Project air quality mitigation program).

2.4. All the mobile cargo handling equipment will be electric equipment. (MAQIP) The Air District suggest this be broadened to allow for other zero emissions fuels

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(Hydrogen) and for near zero emissions equipment in the event that full zero emissions equipment in not commercially available.

2.5. Buildings shall meet LEED Platinum certification standards. All buildings shall provide sources of energy. Solar, wind, mechanical, tidal or solar generated hydrogen systems will be investigated to determine their feasibility.

2.6. The developer shall be required to plant trees and/or vegetation throughout the OAB. Trees that are best suited to trapping PM shall be planted, including one or more of the following: Pine (Pinus nigra var. maritima), Cypress (X Cupressocyparis leylandii), Hybrid popular (Populus deltoids X trichocarpa), and Redwoods (Sequoia sempervirens). (Plan Bay Area)

2.8. All existing land uses serving sensitive receptors within 1,000 feet of the Project boundaries shall be equipped with HEPA air filtration systems rated MERV 13 or better. The Port and City will establish a fund and contribute on a fair share basis to the cost of installing and maintaining the MERV 13 systems and provide educational materials to owners and occupants explaining how to maximize the benefits of these systems.

2.9. Consistent with SCA/MM 4.4-5, when redevelopment activity generates more than 20,000 square feet of employment-generating land uses, or generates 100 or more local jobs, the City, Port and developers will fund on a fair share basis Transportation Control Measures (TCMs) for reducing vehicle emissions from commercial, institutional, and industrial operations. See SCA/MM 4.4-5 for a full list of TCMS and include the following:

2.10. Commute Benefits Program

2.10.1 To design and implement a Commute Benefits Program, the City, Port, and private developers need to form a committee and assign a representative to the committee. Committee representatives will include two West Oakland community members, an employee representative, and a representative from the Port and from the City. (Note that all employers with 50 or more full-time employees in the Bay Area are subject to the Bay Area Commuter Benefits Program [BAAQMD regulation 14, Rule 1]. For more information, please see https://commuterbenefits.511.org)

2.10.2 Design and locate buildings to facilitate transit access, e.g., locate building entrances near transit stops, and eliminate building setbacks. Construct transit facilities such as bus turnouts/bus bulbs, benches, shelters, and improving transit bus service to the area. Provide on-site services, such as cafeterias, banks, dry cleaners, and convenience market so that employees can walk to these services. Include bicycle and pedestrian facilities in the design.

2.10.3 Transit, Bicycle and Pedestrian Access: Include sidewalks, multi-use paths and bike lanes in the project design. Provide secure, weather-protected bicycle parking for employees, Provide showers and lockers for employees bicycling or walking to work. Provide safe, direct access for bicyclists to adjacent bicycle routes. Provide direct, safe, attractive pedestrian access from project to transit stops and adjacent development.

2.10.4 Mange Travel Demand and Provide Transit Service: Encourage OAB tenants to use carpools, vanpools, and public transit by providing incentives. Provide a shuttle to and from the West Oakland BART station. Establish mid-day shuttle service for worksite to food service establishments/commercial areas. Provide preferential parking for carpool and vanpool vehicles. Implement parking fees for single occupancy vehicle commuters.

2.11. New Stationary Sources

2.11.1 On the OAB property, new stationary sources that are added as part of the project must reduce emissions beyond what is required by CARB and BAAQMD, whenever possible. For example, the cleanest available stand-by diesel generators and portable generators will be required. The City and Port shall fund this on a fair share basis.

3. Former OAB -City of Oakland Owned Areas

West Gateway Bulk Terminal (Marine Terminal and Rail Expansion)

3.1. Implement all applicable site-wide actions based on specific operations in this subject area.

3.2. Specify the public review release date and expected content for each of the remaining Subject Plans for this project, subject to Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans). It is expected that the remaining Subject Plans will be released in a timeframe that will allow for meaningful public review and response by the City of Oakland, or project developer, prior to when they are scheduled according to the approved SCA/MM. The list of Subject Plans can be found on page 46 in SCA/MM at http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak042281.pdf

3.3. Require that berths providing shore power now or in the future, can accommodate changes to vessel sizes and various berthing configurations. The ARB At-Berth Regulation currently requires 80% compliance of ocean going vessels by 2020. Vessel operations should meet 100 percent shore power compliance rate for all vessels or incorporate other technologies, such as emissions capture and control systems, to maximize emission reductions from

all vessels in advance of the regulation. ARB's Sustainable Freight: Pathways to Zero and Near-Zero Emissions Discussion Document has identified the development and proposal of amendments to the At-Berth that could expand the regulation to include smaller fleets and/or additional vessel types to the current At Berth Regulation. Additionally, hybrid technologies have shown success at achieving emission reductions in certain tugs based on duty, engine size, and location and should be incorporated into operations, where possible.

Accelerate the turnover of line-haul locomotives servicing the Port to Tier 4 line-haul, ARB proposed Tier 5, or Zero emissions locomotives as expeditiously as possible, with the goal of 95 percent of operations to be performed at a minimum Tier 4 standard by 2023. In addition establish standards that require:

3.4.1. All diesel switch engines to have 15-minute idling limit devices installed and operational; and to use emulsified fuels or other equivalently clean alternative diesel fuel.

3.4.2. No non-essential idling. Class 1 helper locomotives will be turned off while on OAB properties. If, for safety reasons, helper locomotives need to be on then they will meet similar control requirements as line haul locomotives.

3.4. The Port, Union Pacific (UP) Railway, and/or BNSF Railway should commit to providing co-funding, facility access, and operational support for the development and demonstration of interstate line-haul locomotive technology with zero-emission capability. This would include, but is not limited to, a hybrid-electric locomotive with all electric capability. ARB's Technology Assessment: Freight Locomotives, provides information on current and projected development of freight locomotives, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/freight_locomotives_tech_report.pdf

3.5. Incorporate conditions into lease agreements with BNSF and/or UP to ensure that switch locomotives meet a minimum Tier 4 emissions level by 2023.

3.6. Phase in the replacement of diesel powered switcher locomotives with electric rail car movers, within the Port or City owned rail properties.

Prologis East and Central Gateway (Ambient Transload/Warehouse/Truck Services)

3.7. Implement all applicable site-wide actions based on specific operations in this subject area.

North Gateway (Recycling and Rail Right Of Way Expansion)

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3.8. Implement all applicable site-wide actions based on specific operations in this subject area.

4. Former OAB Port of Oakland Owned Areas

Central Gateway (Ambient Transload/Warehouse/Rail Yard /Port Logistics/Warfs)

4.1. Implement all applicable site-wide actions based on specific operations in this subject area.

4.2. Specify the public review release date and expected content for each of the remaining Subject Plans for this project, subject to Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans). It is expected that the remaining Subject Plans will be released in a timeframe that will allow for meaningful public review and response by the City of Oakland, or project developer, prior to when they are scheduled per the SCA/MM. The list of Subject Plans can be found on page 46 in SCA/MM at http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak042281.pdf.

5. Port of Oakland (Non-Former OAB Areas)

Cool Ports Oakland, LLC (Temperature Controlled Transload/Warehouse/Rail Expansion)

5.1. Implement all applicable site-wide actions based on specific operations in this subject area.

5.2. Ensure existing and future tenants are compliant now and in the future with ARB's Transport Refrigeration Regulation. Incorporate operating practices that eliminate the amount of time that a transport refrigeration system powered by a fossil-fueled internal combustion engine can operate utilizing the combustion system while at the Port. Require the use of zero emission all-electric plug-in transport refrigeration systems and ensure the design plan includes the necessary infrastructure. ARB's Technology Assessment: Transport Refrigerators, provides information on the current and projected development for transport refrigerators, including current and anticipated costs at widespread deployment. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/tru_07292015.pdf.

5.3. Accelerate the turnover of line-haul locomotives servicing the Port to Tier 4, ARB proposed Tier 5, or Zero emissions locomotives as expeditiously as possible, with the goal of 95 percent of operations to be performed at a minimum Tier 4 standard by 2023. Furthermore, the Port, Union Pacific (UP) Railway, and/or BNSF Railway should commit to providing co-funding, facility access, and operational support for the development and demonstration of

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interstate line-haul locomotive technology with zero-emission capability. This would include, but is not limited to, a hybrid-electric locomotive with all electric capability. ARB's Technology Assessment: Freight Locomotives, provides information on current and projected development of freight locomotives, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/freight_locomotives_tech_report.pdf.

5.4. Incorporate conditions into lease agreements with BNSF and/or UP to ensure that switch locomotives meet a minimum Tier 4 emissions level by 2023.

5.5. Phase in the replacement of diesel powered switcher locomotives with electric rail car movers, within the Port or City owned rail properties.

5.6. Plan and design for the necessary infrastructure to ensure 100 percent, plug-in equipped, to accommodate future growth volumes of TRU's or expansion of this area.

5.7. Implement a policy that limits the amount of time that a transport refrigeration system powered by a fossil-fueled internal combustion engine can operate utilizing the combustion system while on Site.

5.8. Encourage the use of zero emission all-electric plug-in refrigeration systems, hydrogen fuel cell and cryogenic transport refrigeration systems.

5.9.

Port Terminal/Maritime Operations (Inner, Middle, Outer Harbors, and Seventh Street)

5.10. Implement all applicable site-wide actions based on specific operations in this subject area.

5.11. Accelerate the turnover of line-haul locomotives servicing the Port to Tier 4, ARB proposed Tier 5, or Zero emissions locomotives as expeditiously as possible, with the goal of 95 percent of operations to be performed at a minimum Tier 4 standard by 2023. Furthermore, the Port, Union Pacific (UP) Railway, and/or BNSF Railway should commit to providing co-funding, facility access, and operational support for the development and demonstration of interstate line-haul locomotive technology with zero-emission capability. This would include, but is not limited to, a hybrid-electric locomotive with all electric capability. Incorporate conditions into lease agreements with BNSF and/or UP to ensure that switch locomotives meet a minimum Tier 4 emissions level by 2023.ARB's Technology Assessment: Freight Locomotives, provides information on current and projected development of freight locomotives, including current and anticipated costs at widespread development. This

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assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/freight_locomotives_tech_report.pdf.

5.12. Phase in the replacement of diesel powered switcher locomotives with electric rail car movers, within the Port or City owned rail properties.

5.13. Require that berths providing shore power now or in the future, can accommodate changes to vessel sizes and various berthing configurations. The ARB At-Berth Regulation currently requires 80% compliance of ocean going vessels by 2020. Vessel operations should meet 100 percent shore power compliance rate for all vessels or incorporate other technologies, such as emissions capture and control systems, to maximize emission reductions from all vessels in advance of the regulation. ARB's Sustainable Freight: Pathways to Zero and Near-Zero Emissions Discussion Document has identified the development and proposal of amendments to the At-Berth that could expand the regulation to include smaller fleets and/or additional vessel types to the current At Berth Regulation. Additionally, hybrid technologies have shown success at achieving emission reductions in certain tugs based on duty, engine size, and location and should be incorporated into operations, where possible.

Appendix A

Technology Review Program

Development of a Technology Review Program is consistent with the requirements of Mitigation Measures in the Oakland Army Base 2013 Standard Conditions of Approval and Mitigation Monitoring and Reporting (SCA/MM) Program. Below are recommended Technology Review Programs that can be implemented to reach the goals of the SCA/MM.

In consultation with regional agencies and stakeholders, the City and Port shall implement Technology Review Programs, such as:

- The City and Port should administer a minimum of a one year demonstration project, prior to 2020, of zero and near-zero emission truck technology. This demonstration project shall be conducted in cooperation with regional and state agencies and stakeholders.

- Research and funds shall be used to identify and test hybrid diesel electric locomotives and conduct a demonstration of locomotive DOC or DPF retrofits.

- Feasibility studies of electrification of freight/passenger rail from Port intermodal yards to the Bay Area Air Quality Management District's boundaries conducted in conjunction with the Metropolitan Transportation

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Commission, Capital Corridor JPA, Union Pacific, and Burlington Northern Santa Fe railroads.

- Investigation of renewable energy generation via mechanical systems that utilize truck weight to generate electricity.

- Study of a "virtual container yard" system that integrates truck movements with container moves to minimize emissions and maximize efficient use of trucking fleets.

Example TAP Studies

As a possible framework for the Technology Review Program, consider the work of the San Pedro Ports Technology Advancement Program (TAP). TAP is a joint program of the Ports of Long Beach and Los Angeles through the Ports' joint Clean Air Action Plan (CAAP) adopted in 2006. The CAAP guides the Ports in their commitment to reduce the health risks and air emissions associated with port-related operations, while allowing port development and growth to continue. The CAAP focuses on near-term strategies, targeting significant reductions in diesel PM, nitrogen oxides (NOx), and sulfur oxides (SOx). The following is a selected list of demonstration projects completed through the TAP program:

- Balqon E-30 Electric Terminal Tractor Development and Demonstration Project

This vehicle was built as a demonstration vehicle and designed specifically for drayage operations. The prototype E-30 all-electric terminal tractor successfully completed cargo terminal tests in 2008.

Following the completion of cargo terminal tests during 2008, the Los Angeles Harbor Commission approved the purchase of 20 electric trucks from the manufacturer as part of the "Green Terminal" program. The Green Terminal program will also include the production of five on-road electric trucks.

This demonstration project was followed with a project to evaluate and demonstrate a lithium-ion battery as a technological upgrade to the lead-acid battery pack used in the previous TAP demonstration. The advanced technology lithium-ion batteries were anticipated to provide more than double the vehicle range, without adding additional weight. A one-day demonstration of the Nautilus E30 confirmed a range of over 150 miles on a single charge with unloaded conditions at 80% depth of discharge. However, this project was never completed.

- Capacity Plug-In Hybrid Electric Terminal Tractor (2010)

The TAP program conducted a three-week trial of a diesel-electric plug-in hybrid terminal tractor that uses a small diesel generator and a large lead-acid battery pack to provide power for vehicle operation. While this demonstration showed a 44

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percent reduction in NOx emissions and a 56 percent reduction in PM emissions, compared to 2009 diesel yard tractors, the demonstration utilized a Tier 4-interim generator drive engine, and therefore does not meet CARB's Cargo Handling Equipment regulation of Tier 4 engines.

- Hybrid Yard Tractor Development & Demonstration (2010)

This TAP study investigated the feasibility and commercial viability of using advanced technology drive systems in cargo handling equipment. The three hybrid yard hostlers underwent six months of operation and in-use testing and could perform all the tasks required of yard hostlers in real-world port operations, and were well accepted by drivers and maintenance staff. Fuel economy and emissions benefits were evaluated, but a difference discovered in the mechanical specifications of the vehicles limited comparability. Based on all the evaluations and analyses conducted, the hybrid system is estimated to provide a 12 percent to 18 percent improvement in fuel economy. Further development of the hybrid system is underway to improve fuel economy and emissions reductions. A follow-up study was conducted entitled "Hybrid Yard Tractor Development and Demonstration – Beta Test".

- Alternative Petroleum Technologies (APT) Emulsified Biodiesel Fuel Demonstration (2011)

To demonstrate the viability and effectiveness of the emulsified biodiesel fuel in cargo handling equipment, APT performed a two-phased demonstration that consisted of an evaluation of the emulsified fuel with and without a diesel oxidation catalyst (DOC) in a laboratory setting and a real-time demonstration of the fuel in yard equipment at a port terminal.

The demonstration successfully proved that APT's emulsified B-20 blend mitigated an increase in NOx emissions, while also providing additional reductions in PM when coupled with a verified diesel emissions control system. This provides port drayage operators an alternative fuel selection for their existing fleet of container yard equipment.

As of April 2014, APT planned to pursue CARB verification of the emulsified biodiesel fuel for sale to existing cargo handling equipment fleet operations in the State.

- Liquefied Natural Gas Yard Tractor Demonstration (2007)

This Project was designed to develop, test and design a business case for LNG yard tractors. Phase 1 focused on development of LNG yard tractor specifications, procurement, and installation of temporary LNG refueling. Phase 2 included operation of the LNG yard tractors at a marine terminal for a period of eight months. Phase 3 of the project was the development of a business case assessment to

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determine the cost effectiveness and return on investment of using LNG equipment as opposed to diesel.

During emissions testing, the LNG yard tractor produced lower PM emissions than on-road diesel engine equipped with a diesel oxidation catalyst and closed crankcase ventilation system. However, NOx emissions from the LNG yard tractor were approximately 21 percent higher than NOx emissions from this same on-road diesel engine configuration.

- ACTI Advanced Maritime Emission Control System (AMECS) Project (2008)

ACTI developed the AMECS as an alternative pollution control method for ocean-going vessels that are not configured to use shore power, also known as "cold ironing", while at berth. The goal was to demonstrate pollution reduction efficiencies equal to cold ironing for nitrogen oxides (NOx), sulfur oxides (SOx), and particulate matter (PM). The AMECS was demonstrated at Metropolitan Stevedore/Port of Long Beach on multiple vessels with varying exhaust stack configurations. During the demonstration period, two full-scale emission reduction efficiency tests were conducted, the results of which were independently verified by two testing laboratories. During emissions testing, NOx and PM emissions were reduced by 99 percent and 95.5 percent, respectively. In addition, sulfur oxides (SOx) were reduced by 99 percent, and volatile organic compound (VOC) emissions were reduced by greater than 97 percent. Further demonstration of this technology is necessary to determine how it functions in day-to-day operations, including evaluation of costs, durability, integration into operations.

- APL Singapore Slide Valve & Water-In-Fuel (WiFE) Emulsion Demonstration Program (2009)

Two emission control technologies were demonstrated - the use of slide valves in the vessel's main engines, and water-emulsified bunker fuel using an innovative onboard water in fuel emulsifier. The primary objectives of the demonstration projects were to a) evaluate the particulate matter (PM) emission reduction effectiveness of retrofitting OGV main engines with an improved injector design known as a slide valve; and b) demonstrate demand-based onboard water in fuel emulsification system and measure the NOx reduction effectiveness of varying the water content.

Project test conditions resulted in an evaluation that indicated the benefits of slide valves appear to be limited. Testing of the WiFE system aboard the APL Singapore showed water concentrations as high as 48 percent were successfully demonstrated, yielding NOx reductions on the order of 30 percent. A further study was completed in 2012.

- Bluefield Holdings Krystallon Ocean Going Vessel Scrubber (2013)

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The primary focus of this project was to demonstrate the reduction of emissions of sulfur oxides (SOx) from an Ocean Going Vessel using an exhaust gas cleaning device to meet the International Maritime Organization (IMO) fuel sulfur limits in Emission Control Areas (ECA) and further to reduce particulate matter (PM), and volatile organic compound (VOC) emissions. This project demonstrated the potential for PM and SOx reductions that can be achieved through OGV retrofit using commercially available scrubbing technology. Additional research is needed further evaluate the potential for OGV engine emission reductions from scrubbers on main engines to comply with IMO ECA regulations.

- Foss Maritime Green Assist™ Hybrid Tugboat (2010)

Foss Maritime developed this diesel electric hybrid tugboat and named it the *Carolyn Dorothy*. The *Carolyn Dorothy* became a full working member of the Foss Maritime tug fleet on March 1, 2009. Since this time, the hybrid tug demonstrated performance comparable to a conventional Dolphin Class tugboat. The hybrid tugboat achieved emission reductions that exceed original targets (to reduce both NOx and PM by approximately 44 percent) when compared with the Dolphin tugs currently operating in the San Pedro Bay. The *Carolyn Dorothy* reduced PM, NOx and CO2 emissions by 73 percent, 51 percent and 27 percent, respectively. Based on this evaluation, there is evidence that this technology reduces fuel consumption by approximately 20 to 30 percent.

- OGV Slide Valve Low-Load Emissions Evaluation (2013)

This project is a follow up to the 2008 demonstration of a slide-type fuel values, and sought to test a new type of OGV main engine fuel valve (SV C36) designed to improve combustion properties by eliminating sac volume (i.e., fuel drips) at the valve nozzle. The elimination of the sac volume results in lower fuel oil consumption. In addition, slide valve nozzles incorporate an optimized spray pattern designed to improve the combustion process - this is intended to reduce overall emissions, including hydrocarbon, NOx and particulate matter. The visible smoke level is also greatly reduced because of the improved combustion. Among other findings, results showed that SV C26 nozzles did emit less diesel particulate matter (DPM) at low loads compared to the two conventional fuel valve configurations. At low loads, SV emits up to 50 percent less DPM than conventional C3 and C11 fuel valves and up to 65 percent less DPM for cylinder-lubrication-corrected particulate-emission results. Overall, SV C26 nozzles emit over 90 percent less total hydrocarbons compared to the two conventional fuel valve configurations.

California Energy Commission Projects

In addition to the emissions reduction studies that are being undertaken as part of the TAP, the California Energy Commission (Energy Commission) released a Grant Solicitation for “Sustainable Freight Transportation Projects” under the Alternative and Renewable Fuel and Vehicle Technology Program (ARFVTP). This grant

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solicitation funded projects that demonstrate medium- and/or heavy-duty advanced vehicle technologies at California seaports. The three projects selected as part of this solicitation propose to demonstrate:

- 9 zero emissions rubber tired gantry cranes
- 15 battery electric yard tractor's
- 7 natural gas hybrid electric trucks
- 3 zero emissions top handlers
- 20 near zero natural gas trucks

Results of these demonstrations should inform the Technology Review Program established as part of the Oakland Army Base 2013 SCA/MM Program.

DRAFT

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/19/2017 1:56:13 AM
To: Margaret Gordon [margaret.woeip@gmail.com]; Brian Beveridge [brian.woeip@gmail.com]
Subject: T6 Acceptance letters
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - COMPLAINANTS - 7-18-2017 (1).pdf; Final Letter of Acceptance for Investigation - Oakland City and Port - RECIPIENTS - 7-18-2017.pdf

In case these didn't get to you by other means. They went out electronically around 4 pm this aft PDT. Richard

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

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

July 18, 2017

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

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

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

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

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

Accordingly, the investigation will focus on:

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

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

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

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

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

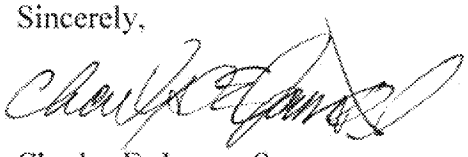
No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual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

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

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

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

Sincerely,



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

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

002554 2020-10-29

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

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

July 18, 2017

The Honorable Libby Schaaf
Mayor, City of Oakland
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Michael Colbruno
President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, CA 94607

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

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

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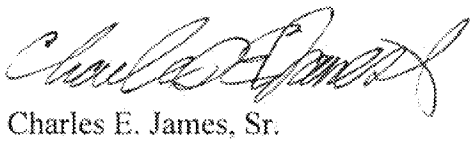
protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with DOCR and ECRCO.

Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's DOCR, or Ericka Farrell, Case Manager in EPA's ECRCO, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Farrell can be reached at (202) 564-0717, or farrell.ericka@epa.gov.

Sincerely,



Charles E. James, Sr.
Director
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cc:

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EPA, Region 9

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Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 2/8/2018 1:01:29 AM
To: McGowan, Patricia [PMcGowan@oaklandnet.com]
CC: Personal Address / Ex. 6 Personal Address / Ex. 6 Brian Beveridge Andrea Gardner [agardner@portoakland.com]; Gilchrist, William [WGilchrist@oaklandnet.com]; Ranelletti, Darin [DRanelletti@oaklandnet.com] Personal Address / Ex. 6
Subject: Clarification: Question: Truck Management Plan - studies and scope

Pat

Thank you. To try to be clear, my suggestion was for the TMP planning process, i.e. the one being conducted by the City and Port, to be modified to incorporate into it (the planning process) the information and implications of these studies. I'm always supportive of WOEIP having even more public forums on these studies, and have appreciated the ones they have already held, but the point of my suggestion had to do with the effect on the TMP project itself.

Richard

From: McGowan, Patricia [PMcGowan@oaklandnet.com]
Sent: Wednesday, February 7, 2018 4:27 PM
To: Grow, Richard
Cc: Margaret Gordon Personal Address / Ex. 6 Andrea Gardner; Gilchrist, William; Ranelletti, Darin
Subject: RE: Question: Truck Managament Plan - studies and scope

Hi Richard,
I am not ignoring your e-mail, just the opposite in fact. I am discussing it again with Bill Gilchrist and Darin Ranelletti. And on a related e-mail Surlene Grant is discussing with Ms. Margaret the content of the public meeting WOEIP is planning to hold regarding the Google/EDF/Aclima study.

We'll get back to you next week.

Thanks,
Pat

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

-----Original Message-----
From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Tuesday, February 06, 2018 8:33 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin <DRanelletti@oaklandnet.com>; Brian Beveridge
Personal Address / Ex. 6
Subject: Question: Truck Managament Plan - studies and scope

Greetings, Patricia

It's been a while since I heard from you on the suggestions in my December 4 email, below. Could you please get back to me regarding the status of these issues ?

Thank you

Richard Grow
US EPA
Region 9
(415) 947-4104

-----Original Message-----
From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, December 13, 2017 11:55 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin <DRanelletti@oaklandnet.com>
Subject: RE: Truck Managament Plan - studies and scope

Hello Richard,

Please excuse my delay in replying to your e-mail. As you may know, City staff was on strike from Dec. 5 - 11, so I was unable to reply during that period.

Thank you for your attendance at the Dec. 2 public meeting and your compliment that you found it to be an excellent public workshop. Your comments/suggestions about the scope of the West Oakland Truck Management Plan are under consideration by the City and Port team. I will be in touch again as the City/Port team work through these suggestions.

Best regards,
Patricia

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

-----Original Message-----
From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Monday, December 04, 2017 11:50 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com
Subject: Truck Managament Plan - studies and scope

Patricia McGowan (cc William Gilchrist, Andrea Gardner, Surlene Grant)

This note is to follow up on the suggestion I put forward at the excellent community workshop on trucks in West Oakland which you hosted this past Saturday. In my remarks Saturday I made reference to a suggestion previously put forward by Ms. Margaret Gordon of the WOEIP at the July 10 meeting at City Hall which you also hosted, and during which EDF presented the findings from its "Street View" project documenting on a fine scale (block by block) the levels and distribution of black carbon. At the July 10 meeting Ms. Gordon suggested that the 20 or so parties gathered around the table, representing perhaps a dozen organizations, agencies and interests, work collaboratively together to assess and address the implications of the studies findings with regard to mitigation of the effects revealed by the study.

My suggestion this past Saturday was that you, along with others carrying out this latest "truck management plan" exercise, incorporate into the current planning effort time to for participants in the planning effort to consider the EDF/Google study as well as a more recent UC Berkeley assisted "100 x 100" West Oakland black carbon monitoring study. As I mentioned Saturday, there may be no community in the country for which there is a richer availability of local scale air pollutant data. It seems here that it would be unfortunate to not make use of this information in coming up with a truck plan addressing the public health impacts of truck-related operations in West Oakland.

Regarding the scope of the TMP, I hope you will be open to the possibility that consideration of this additional information could have some effect on the scope of the plan itself. It was clear from the discussions Saturday that the issue of the scope of the TMP is itself an issue of quite some concern to many stakeholders. This also goes to the assurances I had previously received from both yourself and Claudia Cappio at the August 23 Air Quality Stakeholders meeting, assurances that the scope of the TMP had not already been set, but would rather be set by way of the interactive process which you would be convening this fall. I found this encouraging, as well as consistent with the language of mitigation measure 4.3-7, committing to a truck management plan and enumerating 8 potential "elements", while also including the caveat that the plan "is not limited to" that list of elements.

I understand that you have been assuming the viability of a "five step" planning process as laid out at the Saturday meeting, with the next (i.e. third) meeting to be focused on "prioritization" of measures proposed by City staff based on the first two meetings, and acknowledge that my suggestions might result in the TMP process taking a bit longer, but hope that you will consider whether they might also add to the quality of and support for the plan. There may be some logic in getting a common understanding of, and agreement on, the scope of the plan before moving on to prioritizing components of the plan.

Please feel free to call me directly to discuss this further, and thanks again for the very educational event this past weekend.

Richard Grow
US EPA
Region 9
(415) 947-4104

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:57:47 PM
To: ryan.fitzpatrick@dot.gov
Subject: Port/OAB - events on the ground

Ryan

Welcome back, hope you had a grand time.

You haven't missed much but thank you for kicking the thing out the door today.

Mainly checking in to let you know there have been many meetings, discussions on the ground etc out here involving key players, a fairly dramatic attempt at resetting the table by BAAQMD, RB and Councilperson Rebecca Kaplan last Friday etc etc. I haven't talked at all with ECRCO about this, not wanting to distract them in any way from getting the letter out. There was an EPA-DOT call on 7/6 which Yvette may have caught you up on. We can talk when you're ready, I think the on-the-ground choreography will matter a lot.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/17/2018 11:00:08 PM
To: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: Draft MAQIP agenda
Attachments: Draft MAQIP Agenda Meeting 1_Jan15pm (002).docx

From Greg Nudd from yesterday's co-chairs mtg

Draft Agenda for Review by CoChairs
MAQIP Task Force Meeting #1
January 26, 2018 • Port of Oakland
Half-day Meeting

Time	Topic
9:30 to 10:00 10:00-10:30 am	Arrival and Greetings Welcome and Introductions • Chris Lytle (Executive Director) • Richard Sinkoff (Environmental Programs and Planning) • CONCUR Inc, introduce co-chairs, meeting purpose, agenda review
10:30 – 10:45	MAQIP Refresher – "Where We've Been, Where are Heading" • Planning Framework- MAQIP Initiation • Planning Framework - 2018 • Key Findings of Interviews • Clarifying Questions
10:45 –11:05	MAQIP Setting • Setting in 2006-2008 • Setting in 2018: Regulatory Changes: state is accelerating the regulatory process; AB 617 • Clarifying questions
11:05 – 12:00	MAQIP Implementation • MAQIP Plan • MAQIP Plan achievements • Implementation status: Past, current, and expected emissions reductions • Clarifying Questions
12:00–12:30 pm	Lunch • Opportunity for informal networking
1:00 – 1:40	Preparations for Meeting 2: February 23 • Information Needs, key presentations
1:40 – 1:55	• Additional Public comments • Final comments, next steps, meeting wrap up
2:00	Adjourn

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:48:10 PM
To: Kaplan, Rebecca [RKaplan@oaklandnet.com]
Subject: Re: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

It's out there and public in the sense that all interagency correspondence is (unless marked otherwise, and this isn't). Everyone probably got their electronic copies in the past 1-1/2 hrs, which I would guess they may not all be aware of it yet. Probably the letter to Earthjustice isn't public - that's up to them. EPA didn't do a release though did prepare a "desk statement", meaning a statement for use in responding to any public inquiries. I don't see any reason you can't make use of it.

Richard

From: Kaplan, Rebecca <RKaplan@oaklandnet.com>
Sent: Tuesday, July 18, 2017 4:42 PM
To: Grow, Richard
Subject: Re: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Thanks very much.

P.S. Is this public?

Best wishes,
-RK

From: Grow, Richard <Grow.Richard@epa.gov>
Sent: Tuesday, July 18, 2017 4:13:40 PM
To: Kaplan, Rebecca
Cc: Thao, Sheng
Subject: Fw: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Rebecca

Separate letter to complainants to follow.

Richard

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 3:52 PM
To: officeofthemayor@oaklandnet.com; colbruno@portcommissioner.com
Cc: Rivera, Yvette (OST); Charles.james@dot.gov; Jang, Deeana (OST); Fitzpatrick, Ryan (OST); Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin

Subject: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Dear Mayor Schaaf and Mr. Colbruno:

I am writing on behalf of the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), to notify you that, per the attached Letter of Acceptance, the agencies have accepted for investigation the above-referenced civil rights complaint. The attached Letter of Acceptance has also been mailed to you via certified mail. Please let us know if you have any questions.

Sincerely,

Lilian S. Dorka

Lilian Sotolongo Dorka, Esq.
Director, External Civil Rights Compliance Office
EPA, Office of General Counsel
202-564-9649
WJC-N Room 2450

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 2/7/2018 7:02:02 PM
To: Margaret Gordo Personal Address / Ex. 6
Subject: Goals: Air Mapping Workshop to the West Oakaland Community

Ms. Margaret, Brian

Hopefully we can meet soon, but in the meantime I want to offer a thought or two on the role of the studies vis a vis the TMP. When I raised the question of the use of the studies in the TMP in the December 2 meeting, I did not have in mind something directed at the community for the communities education, but rather something directed at the City and Port in a way that would have an effect on the TMP. My recollection is that many conclusions or implications have already been drawn, by EDF, UCB, WOEIP as to the implications of the study. Those implications, and yes others also, now need to be pulled into and addressed within the planning process. Any process that doesn't commit the City/Port to addressing the issues implicated by the studies – ie beyond thank you for your input – would be of questionable value in my view.

Richard

From: Margaret Gordon Personal Address / Ex. 6
Sent: Wednesday, February 07, 2018 10:29 AM
To: Thomas Kirchstetter <twkirchstetter@lbl.gov>; Chelsea Preble <cvpreble@berkeley.edu>; Fern Uennatornwaranggoon <puennatornwaranggoon@edf.org>; Maria Harris <mharris@edf.org>; Gabriela Zayas del Rio <gzayasdelrio@edf.org>; Brian Beveridge Personal Address / Ex. 6
Subject: Air Mapping Workshop to the West Oakaland Community

Dear Everyone,

Good morning, WOEIP as taken the lead, for the City and Port regarding introduction of the update data and research from EDF and UC Berkeley to the Truck Management Plan. I've good news, Surlene the facilitator Truck Management Plan has agreed that there will a workshop on the data and research to the participates of TMP from EDF and UC Berkeley. There no date, time or location set. We all do need to meet to fre a possible a poplar education program for the West Oakland community. Will have more details by Thursday or Friday. Can you'll please forward dates and times we can come together to structure the workshop.

Ms.M

--
Ms. Margaret Gordon/Co-Director
West Oakland Environmental Indicators Project

349 Mandela Parkway
Oakland, CA 94607
510-257-5647 Direct line
www.woeip.org

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/11/2017 7:51:58 PM
To: Machol, Ben [Machol.Ben@epa.gov]
CC: McDaniel, Penelope [MCDANIEL.PENELOPE@EPA.GOV]; Donez, Francisco [Donez.Francisco@epa.gov]
Subject: RE: Kaplan/BAAQMD initiative: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

BTW Alexis' chief of staff Doug Luehe plans to attend and I have been providing him with general background on the players, likely attendees, background on the Port/OAB issues etc. Richard

---

From: Machol, Ben
Sent: Wednesday, June 28, 2017 10:53 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: McDaniel, Penelope <MCDANIEL.PENELOPE@EPA.GOV>; Donez, Francisco <Donez.Francisco@epa.gov>
Subject: RE: Kaplan/BAAQMD initiative: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hi Richard,

Hopefully they will get more traction this time. I assume the port will be in attendance as well, correct? I couldn't tell from the email from Aloha.

Let's set up a time for you and Penny, Francisco, and me to talk beforehand, to make sure you're adequately prepared.

Ben Machol, P.E.
Manager, Technology & Partnerships Office
U.S. Environmental Protection Agency, Region 9
75 Hawthorne St. (AIR-9)
San Francisco, CA 94105
machol.ben@epa.gov
(415) 972-3770

From: Grow, Richard
Sent: Wednesday, June 28, 2017 10:16 AM
To: Machol, Ben <Machol.Ben@epa.gov>
Cc: McDaniel, Penelope <MCDANIEL.PENELOPE@EPA.GOV>; Adams, Elizabeth <Adams.Elizabeth@epa.gov>; Lakin, Matt <Lakin.Matthew@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>
Subject: FW: Kaplan/BAAQMD initiative: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Ben

Deliberative Process / Ex. 5

Richard

From: Grow, Richard
Sent: Wednesday, June 28, 2017 10:09 AM
To: Strauss, Alexis <Strauss.Alexis@epa.gov>
Cc: Miller, Amy <Miller.Amy@epa.gov>; LUEHE, DOUGLAS <luehe.douglas@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>
Subject: Kaplan/BAAQMD initiative: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Deliberative Process / Ex. 5

Richard

From: Aloha Galimba [mailto:agalimba@baaqmd.gov]
Sent: Wednesday, June 28, 2017 8:48 AM
To: abockelman@mtc.ca.gov; Grow, Richard <Grow.Richard@epa.gov>; cynthia.marvin@arb.ca.gov; Karen Schkolnick <kschkolnick@baaqmd.gov>; muntu.davis@acgov.org; anna.lee@acgov.org
Cc: Sheng Thao <sthao@oaklandnet.com>
Subject: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hello,

The Bay Area Air Quality Management District is inviting you – or a representative from your organization - to attend a working meeting on solutions for reducing emissions and health impacts in the West Oakland Community from current operations at the Port of Oakland and future operations at the former Oakland Army Base.

This meeting will be hosted by Oakland Council Member at Large, Rebecca Kaplan, at the Alameda County Transportation Commission, which is located at 11th and Broadway in Downtown Oakland on **Friday July 14, 2017 between 12 pm – 2 pm**.

The goal of this meeting is to devise a workplan that harnesses and coordinates the resources of the participating entities.

Please confirm your participation with me with a CC to Ms. Kaplan' assistant Sheng Thao at Sthao@oaklandnet.com. If you have any questions or concerns, please feel free to reach out to me directly.

Thank you and have a great rest of the day!

Regards,

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782| Cell: 415.745.5633
agalimba@baaqmd.gov| www.baaqmd.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/11/2017 7:46:20 PM
To: LUEHE, DOUGLAS [luehe.douglas@epa.gov]
Subject: Attendees: Info on Friday Port mtg: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Deliberative Process / Ex. 5

Richard

From: Grow, Richard
Sent: Tuesday, July 11, 2017 9:51 AM
To: LUEHE, DOUGLAS <luehe.douglas@epa.gov>
Subject: Info on Friday Port mtg: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting
Importance: High

Doug – Here's the info on the Friday 12-2 meeting being convened by BAAQMD and Councilwoman Kaplan. I won't be coming in that day but will be coming to the meeting from Berkeley. The office is very close to the Oakland City Center BART station.

Richard

From: Aloha de Guzman [mailto:adeguzman@baaqmd.gov]
Sent: Monday, July 10, 2017 4:03 PM
To: abockelman@mtc.ca.gov; Grow, Richard <Grow.Richard@epa.gov>; cynthia.marvin@arb.ca.gov; Karen Schkolnick <kschkolnick@baaqmd.gov>; muntu.davis@acgov.org; anna.lee@acgov.org; MDNichols@oaklandnet.com
Cc: Sheng Thao <sthao@oaklandnet.com>; dbreen@baaqmd.gov; Maricela Martinez <mmartinez@baaqmd.gov>; Vanessa Johnson <vjohnson@baaqmd.gov>; Beba Sanchez <BSanchez@mtc.ca.gov>
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting
Importance: High

Hello everyone,

Here is the address of the meeting location:
ACTC
1111 Broadway, Oakland, CA 94607 -- Room D

If you have any questions or concerns, please feel free to reach out to me or Ms. Kaplan's assistant Sheng Thao at sthao@oaklandnet.com or 510-238-7082.

Thank you!

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600
San Francisco, Ca 94105
Office: 415.749.4782| Cell: 415.745.5633
adeguzman@baaqmd.gov

From: Aloha Galimba
Sent: Wednesday, June 28, 2017 8:48 AM
To: 'abockelman@mtc.ca.gov' <abockelman@mtc.ca.gov>; 'grow.richard@epa.gov' <grow.richard@epa.gov>; 'cynthia.marvin@arb.ca.gov' <cynthia.marvin@arb.ca.gov>; Karen Schkolnick <kschkolnick@baaqmd.gov>; 'muntu.davis@acgov.org' <muntu.davis@acgov.org>; 'anna.lee@acgov.org' <anna.lee@acgov.org>
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Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:25:19 PM
To: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: Re: Ltr to City/Port: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

30 days for city and port to respind, emanwhile we work with hq to put together an "investigative plan". But what really happens is Ryan is back from India and I need to catch him and others up on developments at BAAQMD, ARB and City Council coming out of all of last week's meetings. Spoke with Kaplan for nearly an hour yesterday. In in the morning.

From: BANDROWSKI, MIKE
Sent: Tuesday, July 18, 2017 4:21 PM
To: Grow, Richard
Subject: RE: Ltr to City/Port: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Thanks Richard. What happens next?

Mike Bandrowski | Manager, Office of Air Toxics, Radiation and Indoor Air
U.S. Environmental Protection Agency | Region 9| Air Division, Air-6 | 75 Hawthorne St | San Francisco, CA 94105 |Tel 415.947-4194 | bandrowski.mike@epa.gov

---

From: Grow, Richard
Sent: Tuesday, July 18, 2017 4:07 PM
To: LUEHE, DOUGLAS <luehe.douglas@epa.gov>; Adams, Elizabeth <Adams.Elizabeth@epa.gov>; Lakin, Matt <Lakin.Matthew@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Miller, Amy <Miller.Amy@epa.gov>
Cc: Johnson, Kathleen <Johnson.Kathleen@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>; Israels, Ken <Israels.Ken@epa.gov>
Subject: Ltr to City/Port: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Importance: High

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 3:52 PM
To: officeofthemayor@oaklandnet.com; colbruno@portcommissioner.com
Cc: Rivera, Yvette (OST); Charles.james@dot.gov; Jang, Deeana (OST); Fitzpatrick, Ryan (OST); Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin
Subject: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Dear Mayor Schaaf and Mr. Colbruno:

I am writing on behalf of the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), to notify you that, per the attached Letter of Acceptance, the agencies have accepted for investigation the above-referenced civil rights complaint. The attached Letter of Acceptance has also been mailed to you via certified mail. Please let us know if you have any questions.

Sincerely,

Lilian S. Dorka

Lilian Sotolongo Dorka, Esq.
Director, External Civil Rights Compliance Office
EPA, Office of General Counsel
202-564-9649
WJC-N Room 2450

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/11/2017 7:28:55 PM
To: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Buss, Jeffrey [Buss.Jeffrey@epa.gov]; Chew, Andrew [Chew.Andrew@epa.gov]; Davidson, Ken [Davidson.Ken@epa.gov]; Donez, Francisco [Donez.Francisco@epa.gov]; Freed, Rachel [freed.rachel@epa.gov]; Gutierrez, Roberto [Gutierrez.Roberto@epa.gov]; Kelly, Shaheerah [Kelly.Shaheerah@epa.gov]; Law, Nicole [Law.Nicole@epa.gov]; Lopez, Mariela [Lopez.Mariela@epa.gov]; LOWE, DEBBIE [Lowe.Debbie@epa.gov]; Mays, Rory [Mays.Rory@epa.gov]; Pathak, Priyanka [Pathak.Priyanka@epa.gov]; Reyes, Deldi [Reyes.Deldi@epa.gov]; Stewart, Kathleen [Stewart.Kathleen@epa.gov]; Vallano, Dena [Vallano.Dena@epa.gov]; Zellinger, Andrew [Zellinger.Andrew@epa.gov]
Subject: West (and East) Oakland community a.q. monitoring study

Per this morning's AT/EJ Team meeting below are links to the EDF study and to the ES&T paper on the study. For yesterday's presentation at City Hall, led by EDF, we also had Josh Apte from UT/Austin, one of the principle authors of the paper and technical advisor for the study, tied in by phone.

Richard

https://www.edf.org/airqualitymaps

Link to ES&T paper:

http://pubs.acs.org/doi/pdf/10.1021/acs.est.7b00891

Broader info

https://www.edf.org/airqualitymaps/pollution-and-health-concerns-west-oakland

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 2/7/2018 3:50:01 PM
To: Margaret Gordon Personal Address / Ex. 6 ; Brian Beveridg Personal Address / Ex. 6
Subject: RE: Question: Truck Managament Plan - studies and scope

Excellent. But I'll still look to the City to do me the courtesy of responding to my query.

From: Margaret Gordon [mailto Personal Address / Ex. 6
Sent: Tuesday, February 06, 2018 7:14 PM
To: Grow, Richard <Grow.Richard@epa.gov>; Brian Beveridge Personal Address / Ex. 6
Subject: Re: Question: Truck Managament Plan - studies and scope

Richard,

I've update on the regarding the "Air Mapping Workshop", I had a conversation with Surlene, she in agreement that WOEIP, EDF and Berkeley hold a workshop on the update data to support giving information to the community before the "the proiorizing workshop" for the Truck Management Plan. No date or time has been set and stay tune.

Ms.M

On Tue, Feb 6, 2018 at 8:47 AM, Margaret Gordon Personal Address / Ex. 6 wrote:

Thanks Pat and Richard,

WOEIP met with EDF, agreed that a community workshop is need to be held to inform residents on the update data from the "Air Mapping Project with the Google" and to include any draft information that the consultant hired by City of Oakland for the Truck Management Plan. WOEIP see before any prioritizing, everyone involved must have all update data, research and information. We see having such a workshop in the next four weeks on a Saturday. WOEIP interested in developing the workshop with City of Oakland staff and Surlene to shape the program for the workshop. Please reply.

Ms.Margaret Gordon

On Tue, Feb 6, 2018 at 8:32 AM, Grow, Richard <Grow.Richard@epa.gov> wrote:

Greetings, Patricia

It's been a while since I heard from you on the suggestions in my December 4 email, below. Could you please get back to me regarding the status of these issues ?

Thank you

Richard Grow
US EPA
Region 9
(415) 947-4104

-----Original Message-----
From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, December 13, 2017 11:55 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com; Ranelletti, Darin <DRanelletti@oaklandnet.com>
Subject: RE: Truck Managament Plan - studies and scope

Hello Richard,
Please excuse my delay in replying to your e-mail. As you may know, City staff was on strike from Dec. 5 - 11, so I was unable to reply during that period.

Thank you for your attendance at the Dec. 2 public meeting and your compliment that you found it to be an excellent public workshop. Your comments/suggestions about the scope of the West Oakland Truck Management Plan are under consideration by the City and Port team. I will be in touch again as the City/Port team work through these suggestions.

Best regards,
Patricia

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 |
Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

-----Original Message-----
From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Monday, December 04, 2017 11:50 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com
Subject: Truck Managament Plan - studies and scope

Patricia McGowan (cc William Gilchrist, Andrea Gardner, Surlene Grant)

This note is to follow up on the suggestion I put forward at the excellent community workshop on trucks in West Oakland which you hosted this past Saturday. In my remarks Saturday I made reference to a suggestion

previously put forward by Ms. Margaret Gordon of the WOEIP at the July 10 meeting at City Hall which you also hosted, and during which EDF presented the findings from its "Street View" project documenting on a fine scale (block by block) the levels and distribution of black carbon. At the July 10 meeting Ms. Gordon suggested that the 20 or so parties gathered around the table, representing perhaps a dozen organizations, agencies and interests, work collaboratively together to assess and address the implications of the studies findings with regard to mitigation of the effects revealed by the study.

My suggestion this past Saturday was that you, along with others carrying out this latest "truck management plan" exercise, incorporate into the current planning effort time to for participants in the planning effort to consider the EDF/Google study as well as a more recent UC Berkeley assisted "100 x 100" West Oakland black carbon monitoring study. As I mentioned Saturday, there may be no community in the country for which there is a richer availability of local scale air pollutant data. It seems here that it would be unfortunate to not make use of this information in coming up with a truck plan addressing the public health impacts of truck-related operations in West Oakland.

Regarding the scope of the TMP, I hope you will be open to the possibility that consideration of this additional information could have some effect on the scope of the plan itself. It was clear from the discussions Saturday that the issue of the scope of the TMP is itself an issue of quite some concern to many stakeholders. This also goes to the assurances I had previously received from both yourself and Claudia Cappio at the August 23 Air Quality Stakeholders meeting, assurances that the scope of the TMP had not already been set, but would rather be set by way of the interactive process which you would be convening this fall. I found this encouraging, as well as consistent with the language of mitigation measure 4.3-7, committing to a truck management plan and enumerating 8 potential "elements", while also including the caveat that the plan "is not limited to" that list of elements.

I understand that you have been assuming the viability of a "five step" planning process as laid out at the Saturday meeting, with the next (i.e. third) meeting to be focused on "prioritization" of measures proposed by City staff based on the first two meetings, and acknowledge that my suggestions might result in the TMP process taking a bit longer, but hope that you will consider whether they might also add to the quality of and support for the plan. There may be some logic in getting a common understanding of, and agreement on, the scope of the plan before moving on to prioritizing components of the plan.

Please feel free to call me directly to discuss this further, and thanks again for the very educational event this past weekend.

Richard Grow
US EPA
Region 9
(415) 947-4104

Ms. Margaret Gordon/Co-Director
West Oakland Environmental Indicators Project

349 Mandela Parkway
Oakland, CA 94607
510-257-5647 Direct line
www.woeip.org

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Message

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Sent: 7/11/2017 6:36:12 PM
To: Margaret Gordon Personal Address / Ex. 6
Subject: FW: Oakland Army Base & Port of Oakland
Attachments: Copy of FFA to Oakland CA Stakeholders.pdf

Ms. Margaret and Brian

This went out yesterday afternoon from Acting Regional Administrator Alexis Strauss to Ken Alex, Director of the Governor's Office of Planning and Research.

Richard Grow
US EPA
Region 9
(415) 947-4104

From: Strauss, Alexis
Sent: Monday, July 10, 2017 4:00 PM
To: 'Ken.Alex@gov.ca.gov' <Ken.Alex@gov.ca.gov>
Subject: Oakland Army Base & Port of Oakland

Dear Ken,

Thank you for our recent discussion of environmental and public health issues associated with development of the Port of Oakland and Oakland Army Base (OAB). As requested, following are our main concerns and a list of potential federal funding opportunities.

West Oakland, a largely minority community, experiences a disproportionate exposure to toxic air contaminants. While diesel particulate emissions have been significantly reduced in recent years, substantial progress is still needed and within reach. One key barrier is the lack of resolution of concerns raised by various environmental and public health agencies regarding inadequacies in the OAB mitigation plan, approved by the City in 2012. The shortcomings of the mitigation plan date to the City's expedited CEQA process in 2012 which bypassed the normal interagency and public discussion of whether the many "significant but unavoidable" impacts were in fact avoidable. Since then, there has been an ongoing reluctance to further develop or implement the measures in the plan, in particular those applicable to the operational phase of the project. This is at the heart of understanding why the past five years of discussions have not yielded progress.

This is the right time for the City, Port and developer to avail themselves of existing opportunities to adopt state-of-the-art low-or-zero emissions strategies, making use of many public and private funding opportunities. BAAQMD and CARB's technical advice has been invaluable to date. Now, other catalysts may be needed to bring about resolution of outstanding issues. As you know, the community has filed a complaint under Title VI of the Civil Rights Act, based on obligations which the City and Port incurred through receipt of federal funds.

As requested, here is a list of federal funding opportunities that may be relevant to the OAB and Port. Substantial federal funding has previously been provided to the City and Port as described on the attached spreadsheet. The list is incomplete, covering $153 million from DOT, EPA and Homeland Security for FY 2009 through FY 2014, but does not include the monetary value of the OAB transfer from the federal government to the City in 2001.

US EPA: Diesel Emission Reductions Act Grant program Funding - $34M available. Due date – July 5, 2017.https://www.epa.gov/cleandiesel/clean-diesel-national-grants#rfp

www.epa.gov

US DOT: https://www.transportation.gov/grants

www.transportation.gov

u.s. department of transportation. 1200 new jersey avenue, se. washington, dc 20590. 855-368-4200

FASTLANE funding: https://www.transportation.gov/buildamerica/FASTLANEgrants

www.transportation.gov

Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) Grants program

US DOE: Clean Cities Coalitions sometimes have funding: https://cleancities.energy.gov/funding-opportunities/

cleancities.energy.gov

Securing funding is critical to the success of efforts to cut petroleum use in transportation. Funding opportunities for Clean Cities projects are available from many ...

Volkswagen settlement information: https://www.epa.gov/vw. Note: Port cargo handling equipment, ferries/tugs, shorepower, rail, truck and bus eligibility in Appendix D of the partial CD: https://www.epa.gov/enforcement/third-partial-and-30l-second-partial-and-20l-partial-and-amended-consent-decree (see Appendix D-2 of 2.0L partial CD).

www.epa.gov

This is the third partial, 3.0 liter second partial consent decree, 2.0 liter partial and amended partial consent decree for the Volkswagen Clean Air Act Settlement ...

I hope this is helpful. I'm hopeful we can work together to bring about resolution of these issues.
Kind regards,
Alexis

Alexis Strauss
Acting Regional Administrator
E.P.A. Region 9
75 Hawthorne Street
San Francisco, CA 94105
415-972-3572

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
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Subject: Question: Truck Managament Plan - studies and scope

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(415) 947-4104

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Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

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Cc: Gilchrist, William <WGilchrist@oaklandnet.com>; sggrant@envirocommunications.com; agardner@portoakland.com
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Richard Grow
US EPA
Region 9
(415) 947-4104

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From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/11/2017 4:51:15 PM
To: LUEHE, DOUGLAS [luehe.douglas@epa.gov]
Subject: Info on Friday Port mtg: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Importance: High

Doug – Here's the info on the Friday 12-2 meeting being convened by BAAQMD and Councilwoman Kaplan. I won't be coming in that day but will be coming to the meeting from Berkeley. The office is very close to the Oakland City Center BART station.

Richard

From: Aloha de Guzman [mailto:adeguzman@baaqmd.gov]
Sent: Monday, July 10, 2017 4:03 PM
To: abockelman@mtc.ca.gov; Grow, Richard <Grow.Richard@epa.gov>; cynthia.marvin@arb.ca.gov; Karen Schkolnick <kschkolnick@baaqmd.gov>; muntu.davis@acgov.org; anna.lee@acgov.org; MDNichols@oaklandnet.com
Cc: Sheng Thao <sthao@oaklandnet.com>; dbreen@baaqmd.gov; Maricela Martinez <mmartinez@baaqmd.gov>; Vanessa Johnson <vjohnson@baaqmd.gov>; Beba Sanchez <BSanchez@mtc.ca.gov>
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting
Importance: High

Hello everyone,

Here is the address of the meeting location:
ACTC
1111 Broadway, Oakland, CA 94607 -- Room D

If you have any questions or concerns, please feel free to reach out to me or Ms. Kaplan's assistant Sheng Thao at sthao@oaklandnet.com or 510-238-7082.

Thank you!

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600
San Francisco, Ca 94105
Office: 415.749.4782| Cell: 415.745.5633
adeguzman@baaqmd.gov

From: Aloha Galimba
Sent: Wednesday, June 28, 2017 8:48 AM
To: 'abockelman@mtc.ca.gov' <abockelman@mtc.ca.gov>; 'grow.richard@epa.gov' <grow.richard@epa.gov>; 'cynthia.marvin@arb.ca.gov' <cynthia.marvin@arb.ca.gov>; Karen Schkolnick <kschkolnick@baaqmd.gov>; 'muntu.davis@acgov.org' <muntu.davis@acgov.org>; 'anna.lee@acgov.org' <anna.lee@acgov.org>
Cc: Sheng Thao <sthao@oaklandnet.com>

Subject: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hello,

The Bay Area Air Quality Management District is inviting you – or a representative from your organization - to attend a working meeting on solutions for reducing emissions and health impacts in the West Oakland Community from current operations at the Port of Oakland and future operations at the former Oakland Army Base.

This meeting will be hosted by Oakland Council Member at Large, Rebecca Kaplan, at the Alameda County Transportation Commission, which is located at 11th and Broadway in Downtown Oakland on **Friday July 14, 2017 between 12 pm – 2 pm**.

The goal of this meeting is to devise a workplan that harnesses and coordinates the resources of the participating entities.

Please confirm your participation with me with a CC to Ms. Kaplan' assistant Sheng Thao at Sthao@oaklandnet.com. If you have any questions or concerns, please feel free to reach out to me directly.

Thank you and have a great rest of the day!

Regards,

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782| Cell: Personal Address / Ex. 6
agalimba@baaqmd.gov| www.baaqmd.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/11/2017 3:02:30 PM
To: Israels, Ken [Israels.Ken@epa.gov]
Subject: FW: Oakland Army Base & Port of Oakland
Attachments: Copy of FFA to Oakland CA Stakeholders.pdf

From: Strauss, Alexis
Sent: Monday, July 10, 2017 4:00 PM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: LUEHE, DOUGLAS <luehe.douglas@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>
Subject: Oakland Army Base & Port of Oakland

From: Strauss, Alexis
Sent: Monday, July 10, 2017 4:00 PM
To: 'Ken.Alex@gov.ca.gov' <Ken.Alex@gov.ca.gov>
Subject: Oakland Army Base & Port of Oakland

Dear Ken,

Thank you for our recent discussion of environmental and public health issues associated with development of the Port of Oakland and Oakland Army Base (OAB). As requested, following are our main concerns and a list of potential federal funding opportunities.

West Oakland, a largely minority community, experiences a disproportionate exposure to toxic air contaminants. While diesel particulate emissions have been significantly reduced in recent years, substantial progress is still needed and within reach. One key barrier is the lack of resolution of concerns raised by various environmental and public health agencies regarding inadequacies in the OAB mitigation plan, approved by the City in 2012. The shortcomings of the mitigation plan date to the City's expedited CEQA process in 2012 which bypassed the normal interagency and public discussion of whether the many "significant but unavoidable" impacts were in fact avoidable. Since then, there has been an ongoing reluctance to further develop or implement the measures in the plan, in particular those applicable to the operational phase of the project. This is at the heart of understanding why the past five years of discussions have not yielded progress.

This is the right time for the City, Port and developer to avail themselves of existing opportunities to adopt state-of-the-art low-or-zero emissions strategies, making use of many public and private funding opportunities. BAAQMD and CARB's technical advice has been invaluable to date. Now, other catalysts may be needed to bring about resolution of outstanding issues. As you know, the community has filed a complaint under Title VI of the Civil Rights Act, based on obligations which the City and Port incurred through receipt of federal funds.

As requested, here is a list of federal funding opportunities that may be relevant to the OAB and Port. Substantial federal funding has previously been provided to the City and Port as described on the attached spreadsheet. The list is incomplete, covering $153 million from DOT, EPA and Homeland Security for FY 2009 through FY 2014, but does not include the monetary value of the OAB transfer from the federal government to the City in 2001.

US EPA: Diesel Emission Reductions Act Grant program Funding - $34M available. Due date – July 5, 2017.https://www.epa.gov/cleandiesel/clean-diesel-national-grants#rfp

www.epa.gov

US DOT: https://www.transportation.gov/grants

www.transportation.gov

u.s. department of transportation. 1200 new jersey avenue, se. washington, dc 20590. 855-368-4200

FASTLANE funding: https://www.transportation.gov/buildamerica/FASTLANEgrants

www.transportation.gov

Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) Grants program

US DOE: Clean Cities Coalitions sometimes have funding: https://cleancities.energy.gov/funding-opportunities/

cleancities.energy.gov

Securing funding is critical to the success of efforts to cut petroleum use in transportation. Funding opportunities for Clean Cities projects are available from many ...

Volkswagen settlement information: https://www.epa.gov/vw. Note: Port cargo handling equipment, ferries/tugs, shorepower, rail, truck and bus eligibility in Appendix D of the partial CD: https://www.epa.gov/enforcement/third-partial-and-30l-second-partial-and-20l-partial-and-amended-consent-decree (see Appendix D-2 of 2.0L partial CD).

www.epa.gov

This is the third partial, 3.0 liter second partial consent decree, 2.0 liter partial and amended partial consent decree for the Volkswagen Clean Air Act Settlement ...

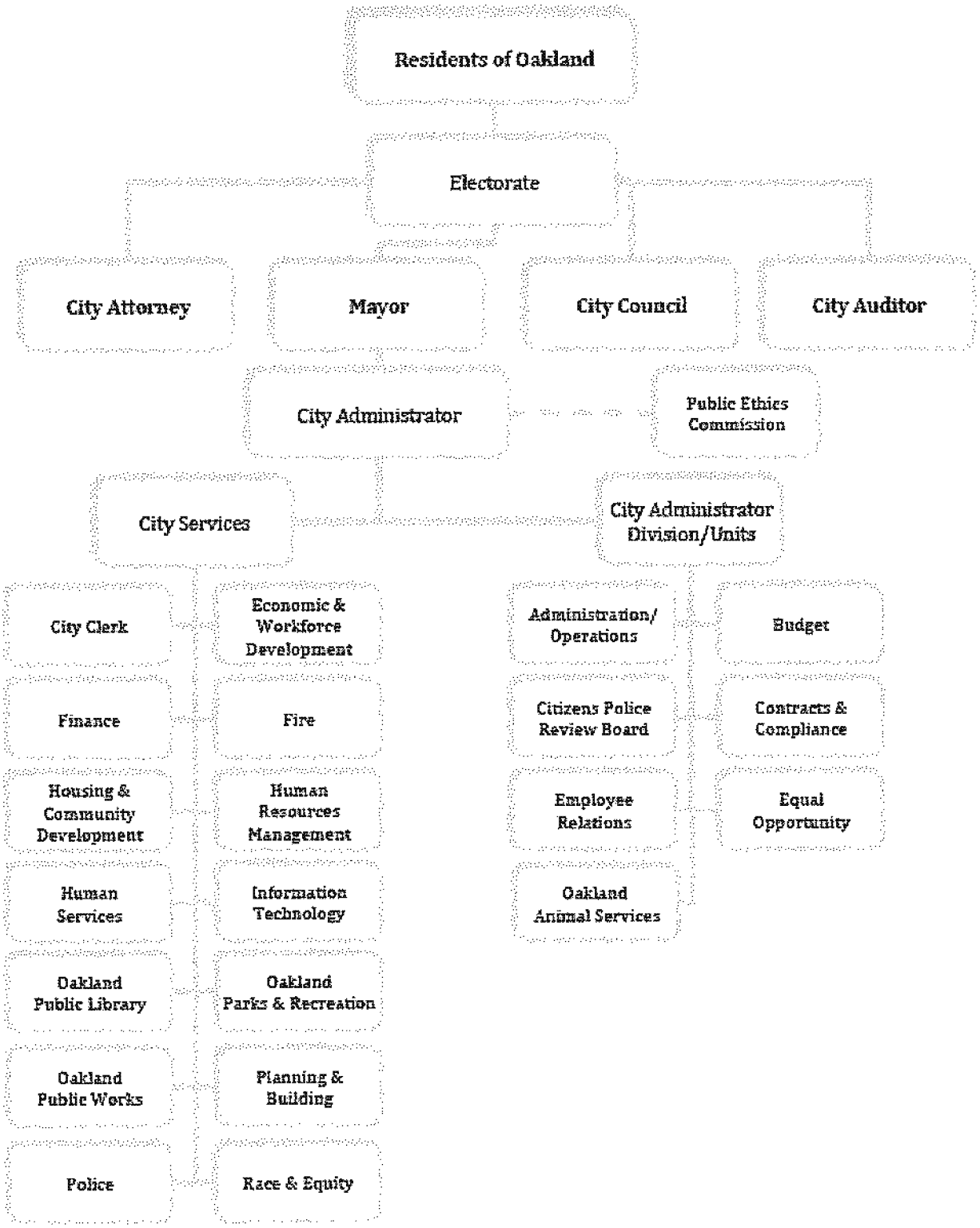
I hope this is helpful. I'm hopeful we can work together to bring about resolution of these issues.
Kind regards,
Alexis

Alexis Strauss
Acting Regional Administrator
E.P.A. Region 9
75 Hawthorne Street
San Francisco, CA 94105
415-972-3572

FEDERAL FINANCIAL ASSISTANCE TO OAKLAND OAB STAKEHOLDERS

Fed Agency	Recipient	Amount	Program	Project	Year	POP End Date
EPA	CALSTART	$85,473	DERA	Oakland Airport for DPFs on transit buses	FY2008	
EPA	BAAQMD	$2,000,000	DERA ARRA	Trucks at Port of Oaklnad	FY2009	
EPA	BAAQMD	$1,557,987	DERA	Trucks at Port of Oakland	FY2011	
EPA	BAAQMD	$898,933	DERA	Trucks at Port of Oakland	FY2012	
EPA	Port of Oakland	$277,885	DERA	Crane retrofits and repowers	FY2013	
Total EPA		**$4,820,278**				
DOT/FAA	Port of Oakland	$7,324,827	Airport Improvement Program		FY2016	
DOT/FAA	Port of Oakland	$11,395,060	Airport Improvement Program		FY2015	
DOT/FAA	Port of Oakland	$41,578,114	Airport Improvement Program		FY2014	
DOT/FAA	Port of Oakland	$18,245,770	Airport Improvement Program		FY2013	
DOT/MARAD	Port of Oakland	$15,000,000	National Infrastructure Investments (TIGER grant)		FY2013	
DOT/FHWA	CA DOT / Port of Oakland (Sub)	$312,263			FY2015	
DOT/FHWA	CA DOT / Port of Oakland (Sub)	$983,928			FY2013	
Total DOT		**$94,839,962**				
DHS	Port of Oakland	$7,620,950.00	Port Security Grant		FY2009	6/30/2013
DHS	Port of Oakland	$3,543,750.00	Port Security Grant		FY2012	3/31/2015
DHS	Port of Oakland	$2,204,000.00	Port Security Grant		FY2013	4/30/2017
DHS	City of Oakland	$144,679.00	Port Security Grant		FY2013	12/31/2015
DHS	City of Oakland	$25,000.00	Port Security Grant		FY2013	8/31/2015
DHS	Port of Oakland	$1,326,938.00	Port Security Grant		FY2014	8/31/2016
DHS	City of Oakland	$578,527.00	Port Security Grant		FY2014	8/31/2016
DHS	Marine Exchange of the San Francisco Bay Area / Port pf Oakland (Sub)	$1,392,557	Port Security Grant		FY2009	
DHS	Marine Exchange of the San Francisco Bay Area / City of Oakland (OES) (Sub)	$525,300	Port Security Grant		FY2009	
DHS	Marine Exchange of the San Francisco Bay Area / Port of Oakland (Sub)	$221,560	Port Security Grant		FY2010	
DHS	Marine Exchange of the San Francisco Bay Area / Port of Oakland (Sub)	$2,329,512	Port Security Grant		FY2010	
DHS	Marine Exchange of the San Francisco Bay Area / City of Oakland (OES) (Sub)	$682,694	Port Security Grant		FY2010	
DHS	Marine Exchange of the San Francisco Bay Area / City of Oakland (OES) (Sub)	$190,808	Port Security Grant		FY2011	
DHS	Marine Exchange of the San Francisco Bay Area / City of Oakland (OES) (Sub)	$210,000	Port Security Grant		FY2011	
DHS	City of Oakland	$1,001,910	National Urban Search and Rescue (US&R) Response System		FY2009	
DHS	City of Oakland	$1,045,500	National Urban Search and Rescue (US&R) Response System		FY2010	
DHS	City of Oakland	$13,671	National Urban Search and Rescue (US&R) Response System		FY2010	
DHS	City of Oakland	$921,734.33	Staffing for Adequate Fire & Emergency Response Grants (SAFER)		FY 2009	
DHS	City of Oakland	$300,000.00	Fire Grants		FY 2009	
DHS	City of Oakland	$307,223.90	Staffing for Adequate Fire & Emergency Response Grants (SAFER)		FY 2010	
DHS	City of Oakland	$272,000.00	Fire Grants		FY 2010	
DHS	City of Oakland	$1,167,078.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2011	
DHS	City of Oakland	$210,642.00	Fire Grants		FY 2011	
DHS	City of Oakland	$789,360.00	Fire Grants		FY 2011	
DHS	City of Oakland	$1,261,108.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2012	
DHS	City of Oakland	$7,782,240.00	Staffing for Adequate Fire & Emergency Response Grants (SAFER)		FY 2012	
DHS	City of Oakland	$11,928.00	Fire Grants		FY 2012	
DHS	Port of Oakland	$3,414,315.91	Port Security Grant Program		FY 2012	
DHS	City of Oakland	$1,167,154.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2013	
DHS	City of Oakland	$33,001.95	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2013	
DHS	City of Oakland	$246,514.00	Fire Grants		FY 2013	
DHS	Port of Oakland	$2,204,000.00	Port Security Grant Program		FY 2013	
DHS	City of Oakland	$144,678.00	Port Security Grant Program		FY 2013	
DHS	City of Oakland	$0.00	Port Security Grant Program		FY 2013	
DHS	City of Oakland	$1,258,131.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2014	
DHS	City of Oakland	$4,268,112.00	Staffing for Adequate Fire & Emergency Response Grants (SAFER)		FY 2014	
DHS	Port of Oakland	$1,326,938.00	Port Security Grant Program		FY 2014	
DHS	City of Oakland	$578,527.00	Port Security Grant Program		FY 2014	
DHS	City of Oakland	$1,229,582.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2015	
DHS	City of Oakland	$49,151.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2015	
DHS	City of Oakland	$1,269,582.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2016	
Total DHS		**$53,270,357**				
Grand total		**152,930,597**				

CITY OF OAKLAND ORGANIZATION CHART



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CITY OF OAKLAND

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OFFICE OF THE CITY CLERK
OAKLAND

2016 NOV 22 AM 11:09

AGENDA REPORT

TO:	Sabrina B. Landreth City Administrator	**FROM:**	Darin Ranelletti Interim Director, PBD
SUBJECT:	Informational Report on Army Base Northeast Gateway Construction-Related Air Quality Plan	**DATE:**	November 14, 2016

City Administrator Approval Date: 11/21/16

RECOMMENDATION

Staff Recommends That The City Council Receive An Informational Report On The Construction-Related Air Quality Plan Prepared by Prologis And Approved By The City Administrator For The Northeast Gateway Site Of The Oakland Army Base Redevelopment Project.

EXECUTIVE SUMMARY

Prologis, one of the developers of the Oakland Army Base Redevelopment Project, has prepared an Air Quality Plan to reduce potential air quality impacts during construction of the proposed trade and logistics warehouse located in the Northeast Gateway. The City Administrator approved the Air Quality Plan on October 4, 2016. The mitigation measures for the project require an informational report be submitted to the City Council following the City Administrator's approval.

The City Administrator's approval is attached to this report and contains the approved Air Quality Plan, public comment letters, and additional background information.

BACKGROUND / LEGISLATIVE HISTORY

The Standard Conditions of Approval / Mitigation Monitoring and Reporting Program ("SCA/MMRP") approved on July 16, 2013, by the City Council for the Army Base project contains requirements for reducing the potential environmental impacts of the project, including requirements to reduce impacts related to air quality and trucking.

Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans) requires the City to conduct a public process in the development and review of the plans to comply with the above requirements and requires City Administrator approval of these plans.

Item: _____
CED Committee
December 6, 2016

On December 5, 2013, the City Administrator approved the plan to comply with construction-related air quality requirements for the horizontal infrastructure phase of the project (e.g., new streets and utilities).

As the Army Base project is developed over time, individual developers of the project's vertical elements (e.g., new buildings and permanent activities) will submit plans to meet these air quality requirements. The first vertical development being implemented is the trade and logistics warehouse project by Prologis at the Northeast Gateway.

ANALYSIS

The process to develop and approve the Construction-Related Air Quality Plan followed the requirements specified by the City Council in Mitigation Measure PO-1 and included a public outreach component, as further discussed below under the "Public Outreach / Interest" section of this report.

Public comments received on the draft Air Quality Plan ranged from detailed comments targeting a specific issue to larger, general comments about the overall project. Comments could be loosely grouped into the following three categories: Overall Army Base Project Implementation; Construction vs. Operational Phases; and Details Regarding Construction-Phase Compliance. These categories are further discussed below.

Overall Army Base Project Implementation

Some stakeholders sought clarity on how the different Air Quality Plans and environmental requirements are being implemented over the construction phases and operational phases of the different elements of the overall Army Base project being developed at different times by different parties. The attached City Administrator approval contains an exhibit prepared by staff to better identify the different Air Quality Plans associated with the project.

In order to better track the construction and operational phases of the overall Army Base project, and their corresponding Air Quality Plans, the Bay Area Air Quality Management District and the California Air Resources Board requested notification when construction of the subject Prologis building begins. The City Administrator included this requirement in the approval of the Plan.

Construction vs. Operational Phases

The air quality requirements for the Army Base project address both the construction phase and operational phase of the project. Prologis received approval of an Air Quality Plan for the construction phase of the first building; it will seek approval of an Air Quality Plan for the operational phase of the first building at a later date, prior to operation of the facility. Like the construction-phase Air Quality Plan, the operational-phase Air Quality Plan will also require public outreach, stakeholder review/comment and City Administrator review/comment/approval.

Many of the strategies recommended in the public comments to reduce air quality impacts relate to the operational phase of the development that are implemented when a tenant occupies the

building and property. According to Prologis a tenant has not yet been identified for the property. Prologis is proposing to construct a "cold shell," meaning improvements for the individual tenant (e.g., office-restroom buildouts, equipment, and electrical, plumbing, and mechanical systems) will be installed later depending upon the needs of the tenant. Many of the strategies to reduce air emissions, such as electrification of warehouse and transportation equipment, can be implemented with the future tenant improvements and are not being precluded by the current design and construction of the building. Prologis will have guidelines for tenant improvements ("TI Guidelines") in individual leases that specify environmental and other requirements that the tenant must meet. Along with the environmental requirements from the Army Base SCA/MMRP, the proposed building is also subject to the City's green building regulations requiring the building to meet Leadership in Energy and Environmental Design ("LEED") Gold standards. Operational-related SCA/MMRP and LEED requirements can be adequately fulfilled by individual future tenants through the TI Guidelines or other lease-related, functionally equivalent mechanism. It is important for the operational-phase Air Quality Plan, particularly the elements related to individual tenant operations, to be in place before tenant operations begin. Accordingly, the City Administrator's approval included a requirement that the operational-phase Air Quality Plan be approved before any leases for the project are executed or operational activities at the site commence

Details Regarding Construction-Phase Compliance

Some stakeholders raised questions on the initial draft Air Quality Plan regarding how specific construction-related air quality requirements will be met. In response, Prologis added more specificity to the Plan. Below are some examples of where the Plan has been enhanced.

- Dust Monitoring: To control fugitive dust from the site, exposed dirt surfaces will be watered regularly. A wind speed sensor will be installed on the site and monitored periodically. Watering will be adjusted based on wind speed with increased watering during high winds (over 15 mph) and activities suspended during excessive wind (over 20 mph). Watering will occur until adequate moisture is achieved when the earth becomes tacky.

- Off-Road Equipment: To reduce emissions associated with off-road equipment, all contractors will use late-model equipment with lower-emission Tier 4 engines if available. At a minimum, Tier 3 engines will be required if Tier 4 engines are not available. The Air Quality Plan provides additional details on equipment compliance and monitoring. For example, contractors can provide documentation from the California Air Resources Board's Diesel Off-Road Online Reporting System ("DOORS") indicating engine specifications for equipment brought on-site. To assist with monitoring project performance with this requirement, the City Administrator's approval requires Prologis to submit the list of equipment brought on-site and the corresponding engine tier upon request by the City.

- Electric Power: Portable equipment will be powered by electricity from the project site's grid instead of diesel-powered generators thereby reducing emissions.

- Compliance: The Air Quality Plan identifies a Compliance Manager that will monitor and facilitate implementation of construction-related environmental requirements. All

contractors will maintain daily logs that can be submitted to the Compliance Manager. The Compliance Manager will complete training courses offered by the California Air Resources Board for emissions evaluation. To further promote compliance, the City Administrator's approval requires Prologis to obligate its construction contractor to comply with the Air Quality Plan and the requirements of the SCA/MMRP through the construction contract, agreement, or other functionally equivalent and enforceable mechanism.

FISCAL IMPACT

There are no fiscal impacts of the City Council's action to receive this informational report; the City Administrator has already approved the Air Quality Plan. Furthermore, there are no fiscal impacts of implementing the Air Quality Plan since the Plan will be implemented and funded by Prologis.

PUBLIC OUTREACH / INTEREST

On March 3, 2016, Prologis presented an initial version of a plan to comply with air quality requirements during construction (referred to as the "Air Quality Plan") at a quarterly meeting attended by air quality stakeholders, including community-based organizations, community residents, and interested government agencies.

On April 25, 2016, Prologis formally submitted the first draft of the Air Quality Plan to the City. On May 13, 2016, the draft Air Quality Plan was released to stakeholders for a 17-day public review period as required by Mitigation Measure PO-1. The City received comments from the following organizations: West Oakland Environmental Indicators Project; Ditching Dirty Diesel; Alameda County Public Health Department; Bay Area Air Quality Management District; and California Air Resources Board.

City staff met with Prologis numerous times to discuss potential enhancements to the Air Quality Plan to address public comments and reduce potential air quality impacts. In addition, staff conducted a visit to the site with staff from the Port of Oakland and the California Air Resources Board on July 21, 2016, and had a follow-up conference call with Prologis, the project contractor, the Bay Area Air Quality Management District, and the California Air Resources Board on August 3, 2016. In response to feedback from City staff and stakeholders, Prologis submitted revisions to the Air Quality Plan on July 18, July 27, and August 30, 2016. The latest draft of the Air Quality Plan, dated August 30, 2016, includes a cover letter from Prologis that responds to the public comments on the previous version of the Plan.

COORDINATION

The preparation of this report and the approved Air Quality Plan involved coordination between the Planning and Building Department and Army Base project staff in the City Administrator's Office.

SUSTAINABLE OPPORTUNITIES

Economic: The Air Quality Plan will facilitate implementation of the Army Base project. In addition to the construction and operation jobs typically associated with new development, the Army Base project includes a Community Benefits Program with beneficial contracting and jobs requirements including funding for local jobs programs and construction wage and labor requirements.

Environmental: The Air Quality Plan will facilitate implementation of the Army Base project which the City Council determined to have beneficial environmental effects including the remediation of site contamination and increased access to open space. The Plan itself will reduce potential air quality and trucking impacts related to the construction at the Northeast Gateway. The project will also be subject to other environmentally-friendly construction and operation requirements, such as stormwater management requirements and green building requirements. The potential adverse environmental impacts of the project have also been analyzed under the California Environmental Quality Act ("CEQA") as discussed below.

Social Equity: The Air Quality Plan will facilitate implementation of the Army Base project which includes the Community Benefits Program and environmental benefits discussed above and the Air Quality Plan itself will reduce potential air quality and trucking impacts on nearby residents of West Oakland.

CEQA

An Environmental Impact Report was certified in 2002 when the Oakland Army Base Area Redevelopment Plan was adopted. An Initial Study/Addendum was prepared in 2012 when the City Council approved the master plan for the project and the Lease Disposition and Development Agreement with Prologis CCIG Oakland Global, LLC, the master developer of the site. The action of the City Administrator to approve the Air Quality Plan implements the environmental requirements previously imposed by the SCA/MMRP.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive an informational report on the construction-related Air Quality Plan prepared by Prologis and approved by the City Administrator for the Northeast Gateway site of the Oakland Army Base Redevelopment Project.

For questions regarding this report, please contact me at (510) 238-3663.

Respectfully submitted,

DARIN RANELLETTI
Interim Director, Planning and Building Department

Attachments (5):

A. *City Administrator's October 4, 2016, Approval of Construction-Related Air Quality Plan by Prologis for Northeast Gateway (without attachments, which are contained below)*
B. *Initial Draft Air Quality Plan for Construction Prepared by Prologis (titled "Northeast Gateway Construction Management Plan [Air Quality Elements]; dated April 25, 2016)*
C. *Public Comment Letters Received in Response to Draft Air Quality Plan dated April 25, 2016*
D. *Revised Air Quality Plan for Construction Prepared by Prologis (titled "Northeast Gateway A-D. Construction Management Plan" including related documents; dated August 30, 2016)*
E. *Air Quality Plan Implementation at Army Base – Tentative Timeline*

Attachment A

City Administrator's October 4, 2016, Approval of Construction-Related Air Quality Plan by Prologis for Northeast Gateway

CITY OF OAKLAND

INTER OFFICE MEMORANDUM

TO: Sabrina B. Landreth
City Administrator

FROM: Rachel Flynn

SUBJECT: Construction-Related Air Quality Plan by Prologis for Northeast Gateway at Army Base site

DATE: September 8, 2016

City Administrator Approval

Date 10/4/16

RECOMMENDATION

Approve the construction-related Air Quality Plan for the Prologis development site located in the Northeast Gateway area of the former Oakland Army Base subject to the following conditions:

1. Prologis shall inform the Bay Area Air Quality Management District and the California Air Resources Board when construction commences at the site and provide contact information for a project representative at the site.

2. No lease for the development shall be executed and no operational activities at the site shall commence until the City Administrator approves the Air Quality Plan for the operational phase of the site.

3. Prologis shall submit the list of off-road construction equipment brought on-site and the corresponding engine tier upon request by the City.

4. Prologis shall obligate its construction contractor to comply with the Air Quality Plan and the requirements of the Standard Conditions of Approval / Mitigation Monitoring and Reporting Program through the construction contract, agreement, or other functionally equivalent and enforceable mechanism.

EXECUTIVE SUMMARY

Prologis, one of the developers of the Oakland Army Base redevelopment project, has prepared an Air Quality Plan to reduce potential air quality impacts during construction of the proposed trade and logistics warehouse located in the Northeast Gateway. The mitigation measures for the project require City Administrator approval of the Air Quality Plan.

BACKGROUND

The Standard Conditions of Approval / Mitigation Monitoring and Reporting Program ("SCAMMRP") for the Army Base project contains requirements for reducing the potential environmental impacts of the project, including requirements for the following plans and strategies to reduce impacts related to air quality and trucking:

- Construction Management Plan (SCA AIR-1)
- Construction-Related Air Pollution Controls (SCA AIR-2)
- Truck Management Plan (Mitigation 4.3-7)
- Maritime and Rail-Related Emissions Reduction Plan (Mitigation 4.4-3b)
- Truck Diesel Emission Reduction Plan (Mitigation 4.4-4)
- Transportation Control Measures (Mitigation 4.4-5)
- Energy-Conserving Fixtures and Designs (Mitigation 4.4-6)
- Demonstration Projects (Mitigation 5.4-1)
- Parking and Transportation Demand Management (SCA TRANS-1)
- Construction Traffic and Parking (SCA TRANS-2)
- Traffic Control Plan – Hazardous Materials (Mitigation 4.3-13)

Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans) requires the City to conduct a public process in the development and review of the plans to comply with the above requirements and requires City Administrator approval of these plans.

On December 5, 2013, the City Administrator approved the plan to comply with construction-related air quality requirements for the horizontal infrastructure phase of the project (e.g., new streets and utilities).

As the Army Base project is developed over time, individual developers of the project's vertical elements (e.g., new buildings and permanent activities) will submit plans to meet these air quality requirements. The first vertical development being implemented is the trade and logistics warehouse project by Prologis at the Northeast Gateway.[1]

On March 3, 2016, Prologis presented an initial version of a plan to comply with air quality requirements during construction (referred to as the "Air Quality Plan") at a quarterly meeting attended by air quality stakeholders, including community-based organizations, community residents, and interested government agencies.

On April 25, 2016, Prologis submitted the first draft of the Air Quality Plan to the City (see ***Attachment A***). On May 13, 2016, the draft Air Quality Plan was released to stakeholders for a 17-day public review period as required by Mitigation Measure PO-1. The City received comments from the following organizations: West Oakland Environmental Indicators Project; Ditching Dirty Diesel; Alameda County Public Health Department; Bay Area Air Quality

[1] The "Northeast Gateway" is a term used by Prologis to refer to the northern portion of the East Gateway area.

Management District; and California Air Resources Board (see ***Attachment B***). The comments are summarized and discussed in the "Key Issues" section below.

City staff met with Prologis numerous times to discuss potential enhancements to the Air Quality Plan to address public comments and reduce potential air quality impacts. In addition, staff conducted a visit to the site with staff from the Port of Oakland and the California Air Resources Board on July 21, 2016, and had a follow-up conference call with Prologis, the project contractor, the Bay Area Air Quality Management District, and the California Air Resources Board on August 3, 2016. In response to feedback from City staff and stakeholders, Prologis submitted revisions to the Air Quality Plan on July 18, July 27, and August 30, 2016.[2] The latest draft of the Air Quality Plan, dated August 30, 2016, is attached along with a cover letter from Prologis that responds to the public comments on the previous version of the Plan (see ***Attachment C***).

KEY ISSUES

Public comments received on the draft Air Quality Plan ranged from detailed comments targeting a specific issue to larger, general comments about the overall project. Comments could be loosely grouped into the following three categories: Overall Army Base Project Implementation; Construction vs. Operational Phases; and Details Regarding Construction-Phase Compliance. These categories are further discussed below. Also, refer to the cover letter prepared by Prologis (in ***Attachment C***) that contains a detailed response to the public comments.

Overall Army Base Project Implementation

Some stakeholders sought clarity on how the different Air Quality Plans and environmental requirements are being implemented over the construction phases and operational phases of the different elements of the overall Army Base project being developed at different times by different parties. Staff has prepared an exhibit to better identify the different Air Quality Plans associated with the project (see ***Attachment D***).

In order to better track the construction and operational phases of the overall Army Base project, and their corresponding Air Quality Plans, the Bay Area Air Quality Management District and the California Air Resources Board have requested notification when construction of the subject Prologis building begins. Staff believes this request is appropriate and recommends a corresponding condition to this effect when the City Administrator approves the subject Air Quality Plan (see Condition #1 in "Recommendation" section above).

[2] The initial draft Air Quality Plan submitted on April 25, 2106, only pertained to compliance with air quality requirements as required by the project mitigation measures. However, due to stakeholder interest in construction issues related to other topics besides air quality, Prologis submitted its entire Construction Management Plan – which addresses other topics in addition to air quality – when it submitted revisions to the Air Quality Plan.

Construction vs. Operational Phases

The air quality requirements for the Army Base project address both the construction phase and operational phase of the project. Prologis is currently seeking approval of an Air Quality Plan for the construction phase of the first building; it will seek approval of an Air Quality Plan for the operational phase of the first building at a later date. Like the construction-phase Air Quality Plan, the operational-phase Air Quality Plan will also require stakeholder review and City Administrator approval.

Many of the strategies recommended in the public comments to reduce air quality impacts relate to the operational phase of the development that are implemented when a tenant occupies the building and property. According to Prologis a tenant has not yet been identified for the property. Prologis is proposing to construct a "cold shell," meaning improvements for the individual tenant (e.g., office-restroom buildouts, equipment, and electrical, plumbing, and mechanical systems) will be installed later depending upon the needs of the tenant. Many of the strategies to reduce air emissions, such as electrification of warehouse and transportation equipment, can be implemented with the future tenant improvements and are not being precluded by the current design and construction of the building. Prologis will have guidelines for tenant improvements ("TI Guidelines") in individual leases that specify environmental and other requirements that the tenant must meet. Along with the environmental requirements from the Army Base SCAMMRP, the proposed building is also subject to City green building regulations requiring the building to meet Leadership in Energy and Environmental Design ("LEED") Gold standards. Operational-related SCAMMRP and LEED requirements can be adequately fulfilled by individual future tenants through the TI Guidelines or other lease-related, functionally equivalent mechanism. It is important for the operational-phase Air Quality Plan, particularly the elements related to individual tenant operations, to be in place before tenant operations begin. Accordingly, staff recommends a condition be attached when the City Administrator approves the subject Air Quality Plan that requires City Administrator approval of the operational-phase Air Quality Plan before any leases for the project are executed or operational activities at the site commence (see Condition #2 in "Recommendation" section above).

Details Regarding Construction-Phase Compliance

Some stakeholders raised questions on the initial draft Air Quality Plan regarding how specific construction-related air quality requirements will be met. In response, Prologis added more specificity to the Plan. Below are some examples of where the Plan has been enhanced.

- Dust Monitoring: To control fugitive dust from the site, exposed dirt surfaces will be watered regularly. A wind speed sensor will be installed on the site and monitored periodically. Watering will be adjusted based on wind speed with increased watering during high winds (over 15 mph) and activities suspended during excessive wind (over 20 mph). Watering will occur until adequate moisture is achieved when the earth becomes tacky.

- Off-Road Equipment: To reduce emissions associated with off-road equipment, all contractors will use late-model equipment with lower-emission Tier 4 engines if available. At a minimum, Tier 3 engines will be required if Tier 4 engines are not available. The Air Quality Plan provides additional details on equipment compliance and monitoring. For example, contractors can provide documentation from the California Air Resources Board's Diesel Off-Road Online Reporting System ("DOORS") indicating engine specifications for equipment brought on-site. To assist with monitoring project performance with this requirement, staff recommends a condition be attached when the City Administrator approves the subject Air Quality Plan that requires Prologis to submit the list of equipment brought on-site and the corresponding engine tier upon request by the City (see Condition #3 in "Recommendation" section above).

- Electric Power: Portable equipment will be powered by electricity from the project site's grid instead of diesel-powered generators thereby reducing emissions.

- Compliance: The Air Quality Plan identifies a Compliance Manager that will monitor and facilitate implementation of construction-related environmental requirements. All contractors will maintain daily logs that can be submitted to the Compliance Manager. The Compliance Manager will complete training courses offered by the California Air Resources Board for emissions evaluation. To further promote compliance, staff recommends a condition be attached when the City Administrator approves the subject Air Quality Plan that requires Prologis to obligate its construction contractor to comply with the Air Quality Plan and the requirements of the SCAMMRP through the construction contract, agreement, or other functionally equivalent and enforceable mechanism (see Condition #4 in "Recommendation" section above).

CONCLUSION

The stakeholder review requirements for the proposed Air Quality Plan have been satisfied and the Air Quality Plan has been revised in response to comments received from the public. Staff believes the Air Quality Plan is adequate and recommends that the City Administrator approve the Plan.

Pursuant to Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans), following the City Administrator's approval of the Air Quality Plan staff will make an informational presentation on the Air Quality Plan to the City Council.

Please contact Darin Ranelletti, Deputy Director, at (510) 238-3663, if you have any questions.

RACHEL FLYNN
Director, Planning and Building Department

Prepared by:
Darin Ranelletti
Deputy Director, Planning and Building Department

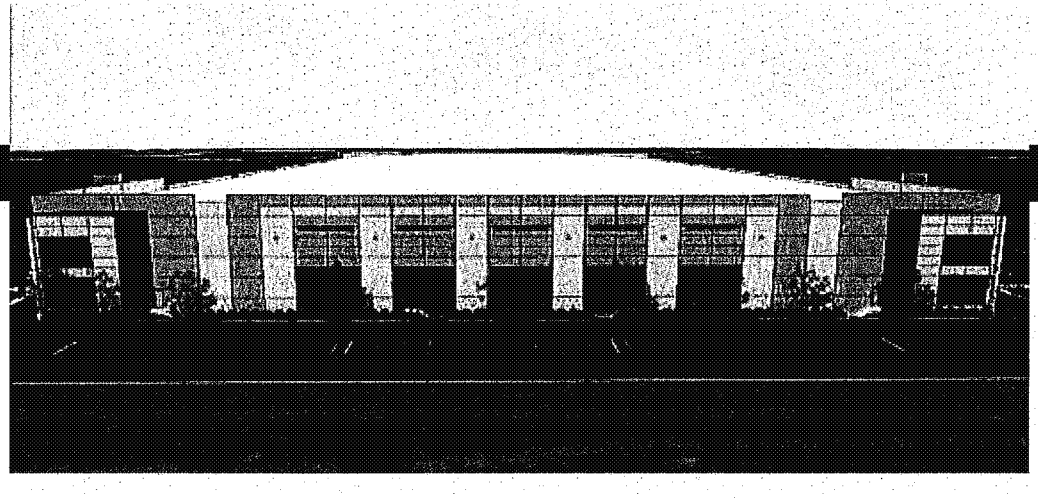
Attachments:

A. *Initial Draft Air Quality Plan for Construction Prepared by Prologis (titled "Northeast Gateway Construction Management Plan [Air Quality Elements]; dated April 25, 2016)*
B. *Public Comment Letters Received in Response to Draft Air Quality Plan dated April 25, 2016*
C. *Revised Air Quality Plan for Construction Prepared by Prologis (titled "Northeast Gateway Construction Management Plan" including related documents; dated August 30, 2016)*
D. *Air Quality Plan Implementation at Army Base – Tentative Timeline*

Attachment B

Initial Draft Air Quality Plan for Construction Prepared by Prologis (titled "Northeast Gateway Construction Management Plan [Air Quality Elements]; dated April 25, 2016)

NORTHEAST GATEWAY
CONSTRUCTION MANAGEMENT PLAN
(AIR QUALITY ELEMENTS)



Initial Submittal: April 25, 2016

PROLOGIS

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WHITING-TURNER

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1- Project Overview and General Information.....1

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C. Project Schedule.....
D. Project Logistics Plan.....
E. Approved Traffic Control Plan-*TBD*...
F. Approved Truck Haul Route.....
G. Signage: Speed Limit.....
H. Sigange: Dust Reporting, Noise Complaints, and Construction Work Hours.....
I. Log: Dust and Noise Complaints..
J. Signage: Equipment Idle Time Restrictions.....
K. Sample Public Notice.....
L. Project Truck Log.....
M. Daily Site Inspection Log.....

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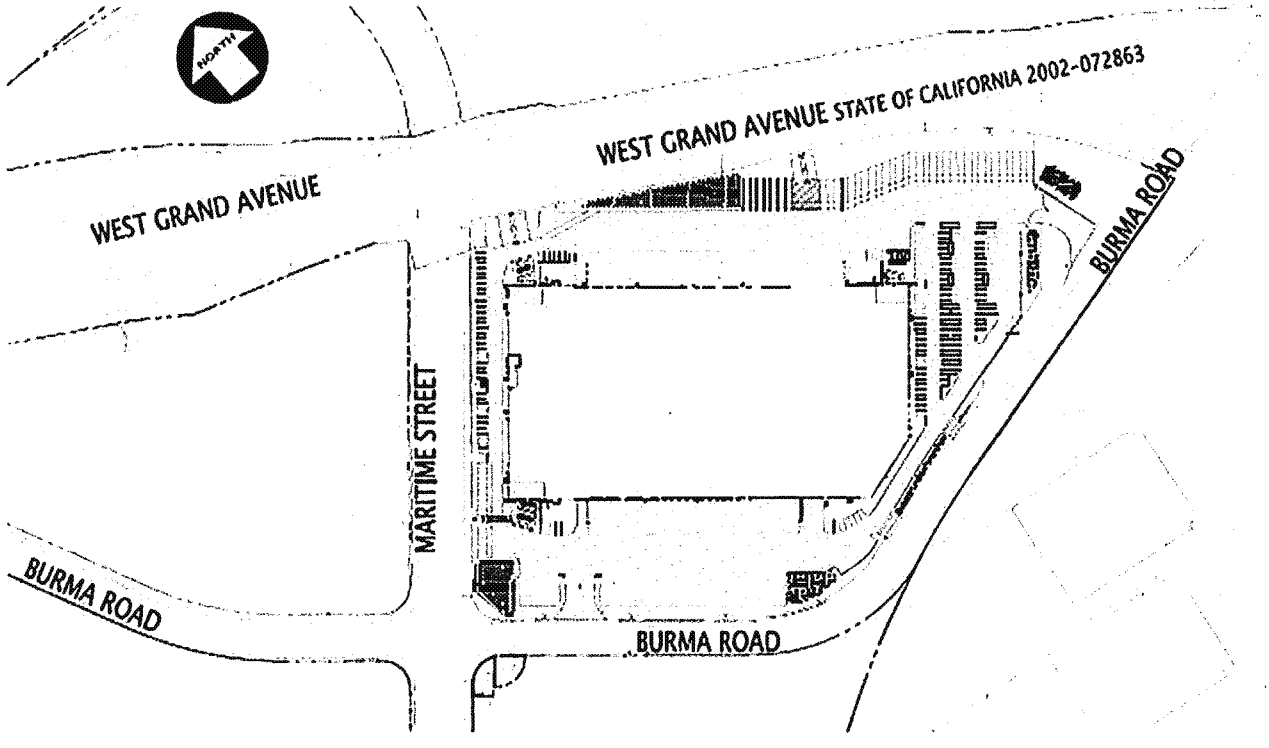


On the Northeast Gateway site Prologis will construct a new 256,000 sf warehouse on a site covering approximately 702,000sf bordered by Maritime Street, Burma Road and West Grand Ave. The project site improvements will include new underground utilities, landscaping, concrete and ac paving and bio-swales. The new warehouse building will include 55 truck docks, 78 trailer parking stalls, 171 auto parking stalls and two electric vehicle charging stations.

SCA-AIR-2 Construction Related Air Pollution Controls

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading and/or construction.

Requirements:

During Construction, the project applicant shall require the construction contractor to implement all of the following applicable measures recommended by the Bay Area Air Quality Management District (BAAQMD):

a. Water all exposed surfaces of active construction areas at least twice daily (using reclaimed water if possible). Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.

b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).

c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

d. Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.

e. Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).

f. Requirement: Limit vehicle speeds on unpaved roads to 15 miles per hour.

g. Idling times on all diesel-fueled commercial vehicles over 10,000 lbs. shall be minimized either by shutting equipment off when not is use or reducing the maximum idling time to five minutes (as required by Title 13, Section 2485, of the California Code of Regulations. Clear signage to this effect shall be provided for construction workers at all access points.

h. Idling times on all diesel-fueled off-road vehicles over 25 horsepower shall be shall be minimized either by shutting equipment off when not is use or reducing the maximum idling time to five minutes and fleet operators must develop a written idling policy (as required by Title 13, Section 2449 of the California Code of Regulations.)

i. All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.

j. Post a publicly visible sign that includes the contractor's name and telephone number to contact regarding dust complaints. When contacted, the contractor shall respond and take corrective action within 48 hours. The telephone numbers of contacts at the City and the BAAQMD shall also be visible. This information may be posted on other required on-site signage.

k. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.

l. All excavation, grading, and demolition activities shall be suspended when average wind speeds exceed 20 mph.

m. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

n. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for one month or more).

o. Designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress.

p. Install appropriate wind breaks (e.g., trees, fences) on the windward side(s) of actively disturbed areas of the construction site to minimize wind blown dust. Wind breaks must have a maximum 50 percent air porosity.

q. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.

r. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.

s. All trucks and equipment, including tires, shall be washed off prior to leaving the site.

t. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel.

u. All equipment to be used on the construction site and subject to the requirements of Title 13, Section 2449 of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations") must meet Emissions and Performance Requirements one year in advance of any fleet deadlines. The project applicant shall provide written documentation that the fleet requirements have been met.

v. Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., BAAQMD Regulation 8, Rule 3: Architectural Coatings).

Dust Control Mitigation Plan:

The Erosion Control Plan (Exhibit B) was submitted to the City as part of the 02/08/2016 Issue for Permit Drawings. In addition to the dust control measures included in The Erosion Control Plan the following items will be implemented to control dust -

a. Use water trucks to water exposed surfaces during construction activities at least twice daily or more frequently if winds exceed 15 mph. Suspend excavation, grading, and demolition activities when average wind speed exceeds 20 mph. Maintain minimum soil moisture of 12% as indicated by laboratory samples or a moisture meter. Use reclaimed water for dust mitigation whenever feasible.

b. Cover truck loads with tarpaulins or keep loads 2 feet below the sideboard of the truck bed to eliminate wind contact with soil or other loaded materials.

c. Require all operators tracking dirt/mud onto public roadways to have a wet power vacuum sweeper present daily during these activities and remove tracked dirt/mud at the end of each day or more frequently if needed.

d. Install construction area entrances at all ingress and egress sites to ensure dirt is kept off of public roads. Construction area entrances will be built using fabric and 3x5 rock to facilitate tire soil removal prior to leaving the site (or as defined by the guidelines in the Best Management Practice Handbook). Ingress/egress sites will also provide dry brushing of loose soil from tires and fenders.

e. As soon as practical and prior to rainy season, cover all access roads and/or permanent roads and building pads with aggregate or asphalt concrete to mitigate tracking of dirt and/or mud offsite.

f. Cover all inactive soil material stockpiles with plastic sheeting or non-toxic soil binders. Water all active stockpiles to maintain 12% moisture.

g. Install fencing with attached windscreen fabric on the windward side of the actively disturbed area of the construction site.

h. Replant vegetation in disturbed areas as quickly as possible.

i. Limit simultaneous occurrence of excavation, grading, and ground disturbance activities on the same area at any one time when feasible.

j. Draft and implement a Project SWPPP. The onsite QSP (Randy Knaus) will monitor runoff before, during, and after rain events. Deficiencies will be logged and corrected immediately. Inactive construction areas will be properly addressed with BMPs to eliminate erosion. Required BMPs will be outlined in the SWPPP and enforced with reporting and inspection.

k. Post signage and enforce 15 mph speed limit requirement for unpaved roads (Exhibit G).

l. Post signage and enforce dust complaint reporting requirement (Exhibit H). Take corrective action to remedy complaints within no more than 48 hours after receiving the complaint.

m. The Project Dust Compliance Manager (Randy Knaus) will monitor and facilitate the implementation of mitigation measures. The Contractor will maintain Daily Inspection Logs throughout the Project.

Emission Control Mitigation Plan:

To reduce emissions generated by equipment operating onsite the following protocols will be implemented –

a. Use late model heavy-duty diesel-powered equipment at the Project Site to the extent that it is readily available in the San Francisco Bay Area. Use low-emission diesel fuel for all heavy-duty diesel-powered equipment.

b. Utilize alternative fuel construction equipment (i.e., compressed natural gas, liquid petroleum gas, and

unleaded gasoline) to the extent that the equipment is readily available and cost effective in the San Francisco Bay Area.

c. Rely on the electricity infrastructure surrounding the construction sites rather than electrical generators powered by internal combustion engines to the extent feasible.

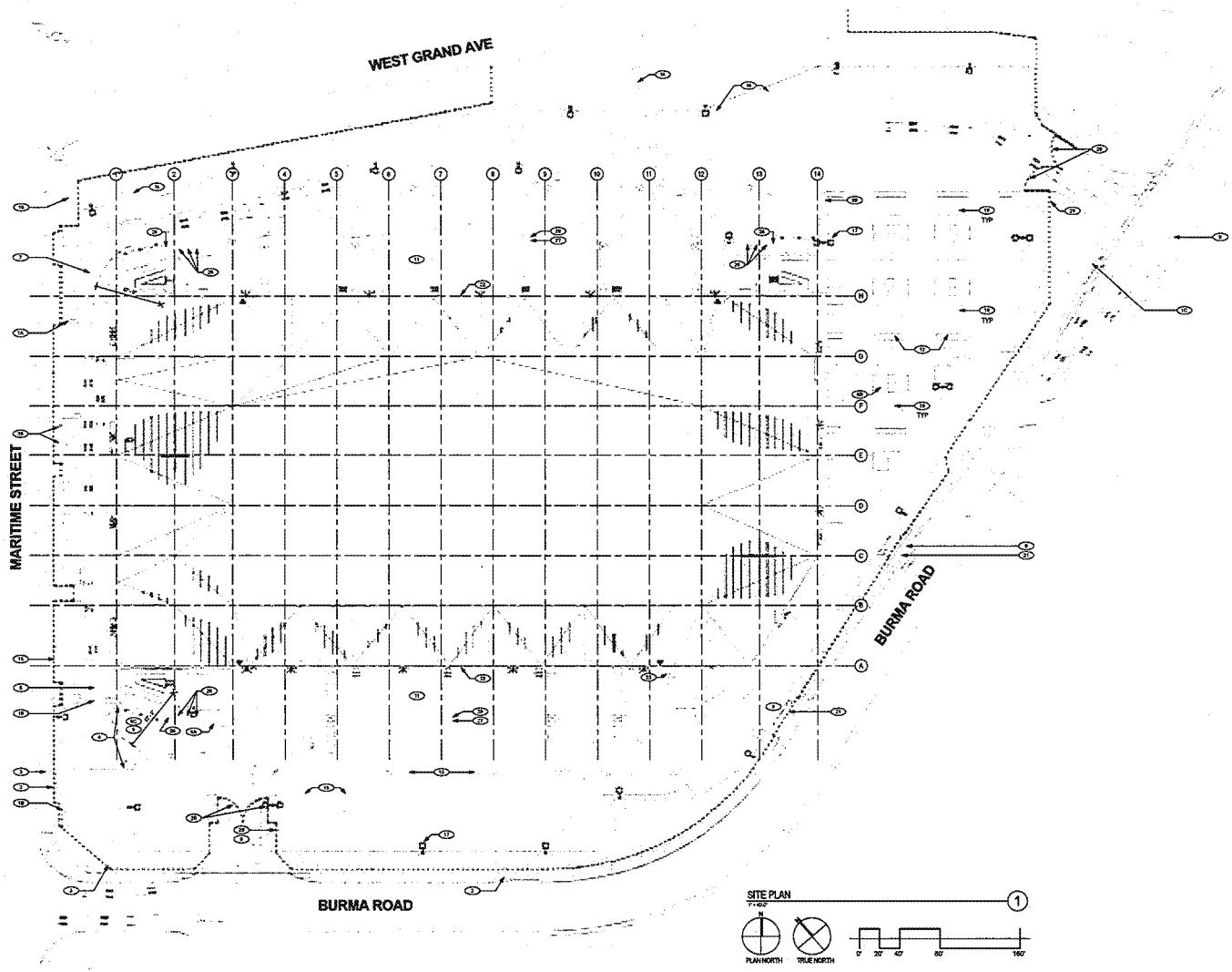
d. Keep all construction equipment properly tuned by a certified mechanic in accordance with the manufacturer's specifications. Operators will provide the Contractor with written documentation of equipment maintenance for all equipment to be used onsite.

e. Enforce requirements of CCR Title 13, Section 2449 (CARB OffRoadDiesel Regulations) and Title 13, Section 2485 with reporting and/or inspection and enforce construction equipment maintenance requirements.

f. The Project Compliance Manager (Randy Knaus) will to monitor and facilitate the implementation of mitigation measures. All contractors subject this provision will maintain Daily Inspection Logs throughout the Project.

g. Post signage limiting truck and equipment idling time to five minutes or less. (Exhibit J)

Exhibit A- Site Plan and Elevation



SITE STATISTICS

PARCEL NUMBER:	018 050701000
ZONING:	D-OI
HEIGHT - CENTRAL BUSINESS DISTRICT:	N/A
HEIGHT - COMMERCIAL CORRIDOR:	N/A
MAXIMUM BUILDING HEIGHT:	85'-0" (PER OAKLAND ZONING 17.101F.050)
MAXIMUM FLOOR AREA RATIO:	5 (PER OAKLAND ZONING 17.101F.050)
GENERAL PLAN:	BUSINESS MIX
CONDO CONVERSION IMPACT AREA:	NO
CITY COUNCIL DISTRICT:	CCD3
SDS SERVICE DISTRICT:	1
PORT OF OAKLAND JURISDICTION:	NO
LOCAL HISTORIC PROPERTY CATEGORY:	LOCAL REGISTER
LOCAL HISTORIC DISTRICT:	
OCHS RATING:	
CONSTRUCTION DATE:	
LOCAL LANDMARK:	NO
NATIONAL HISTORIC LANDMARK :	NO
HERITAGE PROPERTY:	NO
DESIGNATED HISTORIC DISTRICT:	NO
MILLS ACT	NO
WHIPSNAKE CRITICAL HABITAT:	NO
FLOOD ZONE:	NO
HAYWARD FAULT ZONE:	NO
LIQUEFACTION HAZARD ZONE:	YES, LIQUEFACTION SEVERITY 5
WILD FIRE ASSESSMENT DISTRICT:	NO
TOTAL SITE AREA =	702,071.2175 G.S.F. = 16.12 ACRES
TOTAL BLDG AREA =	256,536 G.S.F.
SITE COVERAGE =	36.48 %
TOTAL VEHICLE PARKING =	214 STALLS = .84 / 1000 S.F.
TOTAL TRAILER PARKING =	71 TRAILER STALLS (12' X 55')
PARKING STANDARDS (17.116.200):	
STANDARD PARKING STALLS	18' DEEP X 8.5' WIDE
COMPACT PARKING STALLS	15' DEEP X 7.5' WIDE (50% MAX)
PARALLEL PARKING STALLS	20.5' DEEP X 7.5' WIDE
DRIVE ISLE WIDTH (17.116.210) AT 90 DEGREE PARKING:	21 FEET MINIMUM
REQUIRED PARKING PER ZONING CODE:	
OFFICE (17.116.080 C. BUSINESS):	1 / 600 S.F.
INDUSTRIAL ACTIVITIES (17.116.090):	1 / 1500 S.F. OR 1 FOR EACH 3 EMPLOYEES (WHICHEVER IS GREATER)
REQUIRED PARKING BY USE:	
OFFICE = (8,368 S.F. @ 1/600 S.F.)	14 STALLS
WAREHOUSE = (247,767 S.F. @ 1/1,500 S.F.)	165 STALLS
TOTAL PARKING REQUIRED =	179 STALLS = .70 / 1000 S.F.
TOTAL PARKING PROVIDED =	179 STALLS = .70 / 1000 S.F.
BIORETENTION AREAS	12' X 14' GRADE LEVEL SECTIONAL ROLL UP DOOR
	9' X 10' DOCK LEVEL SECTIONAL ROLL UP DOOR

KEY NOTES

1A SITE SIGNAGE FOR REFERENCE ONLY - OVERALL DEVELOPMENT PROVIDED BY
1B SITE SIGNAGE FOR REFERENCE ONLY - BUILDING MOUNTED SIGN
1C SITE SIGNAGE FOR REFERENCE ONLY - DUAL FACED DIRECTORY SIGNS (2 TOTAL)
2 PROPERTY LINES TO REMAIN
3 5'-0" WIDE MINIMUM SIDEWALK AT MARITIME AND BURMA RD
4 TYPICAL 6" TALL 18" WIDE CONCRETE CURBS
5 TYPICAL 4" WIDE TRAFFIC STRIPING
6A TYPICAL PARKING - STANDARD STALLS 18' X 8.5' MIN, 9' X 18' SHOWN THROUGHOUT
6B TYPICAL PARKING - COMPACT STALLS 15' X 7.5' MIN, 15' X 9' SHOWN THROUGHOUT, (50%)
6C TYPICAL PARKING - ACCESSIBLE PARKING STALLS 9' X 18' WITH 7' PARKING OVERHANG WITH 5' DRIVE ISLE (1 MORE CLOSE AS SHOWN)
7 TYPICAL DRIVE ISLE, 25'-0" MIN ACTUAL DRIVE ISLE WIDTH
8 PARKING AND DRIVE ISLES TO BE ASPHALTIC CONCRETE
9 PROPOSED LOCATION OF NEW SITE ACCESS DRIVE CURB CUT AT BURMA RD
10 NEW CONC PEDESTRIAN WALKS TO BE 5' WIDE MIN, ADJACENT ALL SIDEWALKS TO BE ACCESSIBLE PATHOF TRAVEL, SLOPE NOT TO EXCEED 1:20 (5%) IN DIRECTION OF TRAVEL, CROSS SLOPE NOT TO EXCEED 1:48 (2%) WHERE PARKING OVERHANG OCCURS, INCREASE WIDTH OF SIDEWALK TO 6'-0" MIN
11 TRUCK DOCK
12 TYP LANDSCAPE PLANTER AREA
13 16M TRACTOR TRAILER TEMPLATE SHOWN FOR REFERENCE ONLY
14 ON SITE BILLBOARD LOCATION (2 TOTAL)
15 8' TALL PAINTED WROUGHT IRON FENCE, SEE SPECS
16 TYP 12' x 55' TRAILER PARKING STALL
17 SITE LIGHTING, POLE MOUNTED LIGHT FIXTURE
18 SEE CIVIL DRAWINGS FOR EASEMENT LOCATIONS AND INFORMATION
19 PLANNED FLEXIBLE STORAGE ZONES
20 SWINGING SECURITY GATES
21 ROLLING SECURITY GATE
22 PROPOSED BUILDING EXTERIOR WALLS TO BE BE CAST IN TILTED CONCRETE WALLS WITH REVEALS & TEXTURED ELASTOMERIC COATING AND A MILL FINISH OR EARTH TONE PAINT PALETTE. EXTERIOR WALLS ARE ACCENTED WITH GLAZING, STEEL, COMPOSITE ALUMINUM PANELS AND ARCHITECTURAL METAL PANELS. SEE EXTERIOR ELEVATIONS
23 LOCATION OF BICYCLE PARKING TO ACCOMMODATE A TOTAL OF 16 BICYCLES, PER CALGREEN REQUIREMENTS
24 AREA OF ASSISTED RESCUE
25 ELECTRIC VEHICLE CHARGING STATIONS (2 TOTAL, SERVICING 4 PARKING SPOTS. PROVIDE CHARGE STATION CHARGE.
26 3 HIGH EFFICIENCY VEHICLE STALLS (4% = 9 TOTAL IN PROJECT, GREATER THAN THE REQUIREMENT 6% OF TOTAL)
27 PROVIDE BOLLARDS AT FOUR CORNERS OF PH. CONTRACTOR TO COORD BOLLARDS TO NOT CONFLICT WITH PH
28 PREMA DRAINS, TYP, SEE CIVIL DWGS
29 FIRE BANDS HIGH SIGN INTEGRATED INTO FENCE

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LICENSED ARCHITECT PROJECT ARCHITECT WILLIAM TAYLOR No. C-25,127 STATE OF CALIFORNIA

stamp :

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No.	Description	Date
	ISSUE FOR PERMIT	14.06.20

ISSUE : ISSUE FOR PERMIT FEB 09 2018

OAKLAND GLOBAL LOGISTICS CENTER

PHASE 1: NORTH BAY GATEWAY
OAKLAND, CALIFORNIA

PROLOGIS

1363 GATEWAY BLVD
FREMONT, CALIFORNIA
94538

TELEPHONE: 510.659.1800

Date Project No.:
DATE: 16024.00

Sheet Title:
SITE PLAN

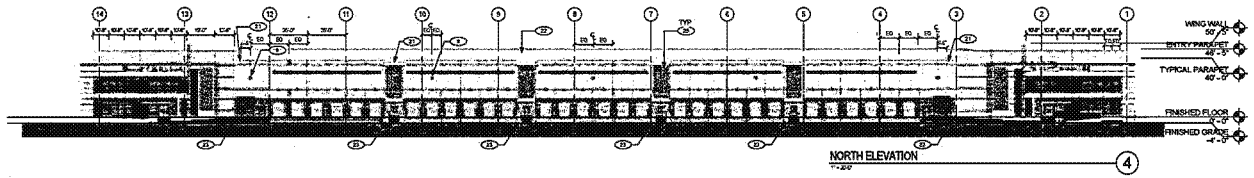
Sheet No. :
A1.0.1

Released for Construction
Not Released for Construction

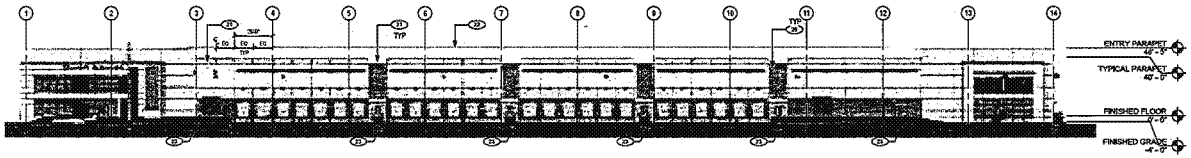
PROLOGIS WT

002613 2020-10-26

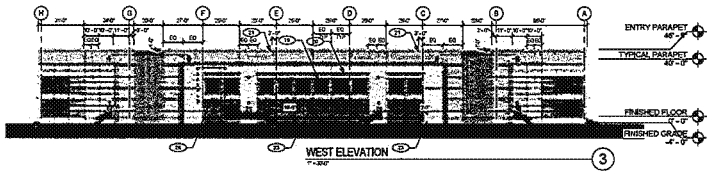
Exhibit A- Site Plan and Elevation



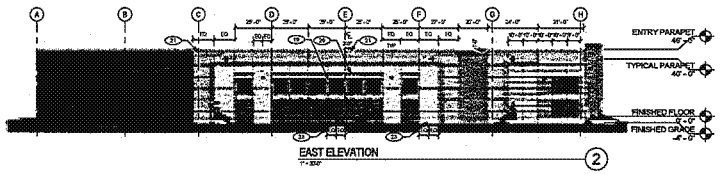
NORTH ELEVATION 4



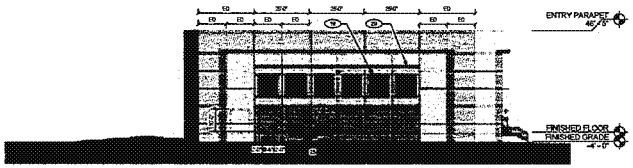
SOUTH ELEVATION 1



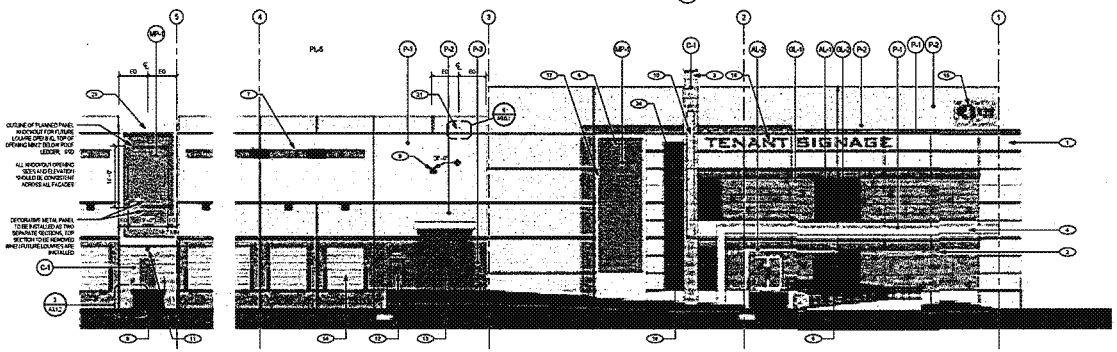
WEST ELEVATION 3



EAST ELEVATION 2



SOUTH EAST - OBLIQUE CORNER 6



PARTIAL NORTH ELEVATION 5

KEY NOTES

1. EXTERIOR WALLS CONSIST OF TILT-UP CONCRETE PANELS WITH REVEALS AND A TEXTURED COATING SYSTEM
2. DUAL PANE VISION GLAZING AND VINYL 2 PANE SPANDREL GLAZING IN ALUMINUM FRAMES, GL1 & GL2, FRAMES TO BE AL1
3. BACK TO BACK TILT-UP WINGWALL PANEL WITH SIMULATED CAST IN PLACE FINISH, FINISH C1
4. 24" WIDE STEEL OVERHANG, OVERLENTERED OFF BUILDING FACE WITH TUBE STEEL SUBGIRDERS
5. 12" THICK ENTRY CANOPY FINISHED TO AL2
6. ARCHITECTURAL METAL PANELS OVER TILT-UP WALL, P3 & HLP1
7. 36" TALL X 60" WIDE CLERESTORY WINDOWS, DUAL PANE GL1 GLAZING & AL1 FRAMES
8. STEEL STAIR, GUARDS AND HANDRAILS, PAINT P5
9. WALL PACK TYPE LIGHTING FIXTURE,
10. LINEAR LIGHT FIXTURE, SEE ELECTRICAL DWGS,
11. SURFACE MOUNTED EMERGENCY LIGHT FIXTURE,
12. STEEL FRAME AND MAN DOOR, PAINT TO MATCH ADJACENT BUILDING COLOR
13. 12' X 14' SECTIONAL ROLLUP DOOR, PAINT TO MATCH ADJACENT BUILDING COLOR
14. 10' X 10' SECTIONAL ROLLUP DOOR, PAINT TO MATCH ADJACENT BUILDING COLOR
15. 10' TALL ADDRESS SIGNAGE AND 30" TALL OWNER LOGO, FOR REFERENCE ONLY
16. 24' TALL TENANT SIGNAGE - ONE AT EACH OF THREE PRIMARY ENTRIES MAXIMUM, FOR REFERENCE ONLY
17. FIRESTANDING TILT-UP PANEL 12" INSET FROM WINGWALL FACE
18. VERTICAL WINDOW GL2 & AL2 SURFACE MOUNTED TO CONCRETE TILT-UP PANEL
19. 36" REVEALS TO SIMULATE WINDOW NULLEDGE WITH PAINTED FALSE WINDOW PATTERN, PAINTED TO MATCH GL2 SPANDREL GLASS & ALUMINUM FRAMES
20. FOAM WINDING ABOVE EAST AND WEST SIDE CLERESTORY WINDOWS,
21. OVERFLOW SCUPPER
22. ROOF BEYOND
23. DAYLIGHTING PAN,
24. VERTICAL WINDOW GL2 & AL2 SURFACE MOUNTED TO CONCRETE TILT-UP PANEL
25. FUTURE KNOCKOUT OPENINGS
26. AREA OF MOCKUP FOR FALSE WINDOW, SEE SPEC

EXTERIOR FINISH SCHEDULE

- P1: TO MATCH PROLOGIS STANDARD COLOR; PLD-9 Pure White
- P2: TO MATCH PROLOGIS STANDARD COLOR; PLD-8 Sable
- P3: TO MATCH PROLOGIS STANDARD COLOR; PLD-6 Jaguar
- P4: TO MATCH PROLOGIS STANDARD COLOR; PLD-3 New Dark Green
- P5: TO MATCH PROLOGIS STANDARD COLOR; PLD-11 Extra White
- GL1: GREEN VISION GLAZING 1 PPG ATLANTICA 1/4" DUAL PANE GLAZING
- GL2: GREEN SPANDREL GLAZING 2 PPG CLEAR FLOAT 1/4" SINGLE PANE WITH LCZ2 OPACS-COAT 2-1964 ATLANTIC WATERS
- AL1: ALUMINUM STOREFRONT FRAMES CLEAR ANODIZED ALUMINUM
- AL2: COMPOSITE ALUMINUM PANELS ALUCOBOND OR EQUAL SILVER METALLIC A3000 COILE
- MP1: ARCHITECTURAL METAL PANELS AEP SPAN HR 36 RIB COLOR: Cool Zinc/Bogue II
- C1: CONCRETE TILT-UP PANEL WITH SIMULATED CAST-IN-PLACE APPEARANCE CONSISTING OF:
  1) A GRID OF 1/2" WIDE HORIZONTAL AND VERTICAL REVEALS,
  2) CAST IN PLACE, 3/4" IDIMOTS SET 4' FROM GRID CORNERS AND
  3) A BARE FUNFINISHED CONCRETE FINISH

GENERAL NOTE: PROVIDE REVEALS @ ALL PAINT TRANSITIONS ON EXTERIOR WALL, PAINT INTO REVEAL AND TRANSITION @ INSIDE V, SEE: 11/A3.1.1

160 Pine Street
San Francisco, CA 94111

Tel 415.781.9800
Fax 415.788.3216
www.wtr.com

LICENSED ARCHITECT
WILLIAM TUCKER
No. C 13600
Reg. 12/31/17
STATE OF CALIFORNIA

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#	Description	Date
	ISSUE FOR PERMIT	10.26.20

ISSUE : ISSUE FOR PERMIT PDR 96 2019

OAKLAND GLOBAL LOGISTICS CENTER

PHASE 1, NORTH 59-97 GATEWAY
OAKLAND, CALIFORNIA

PROLOGIS

3353 GATEWAY BLVD
FREMONT, CALIFORNIA
94538

TELEPHONE: 510.494.1000

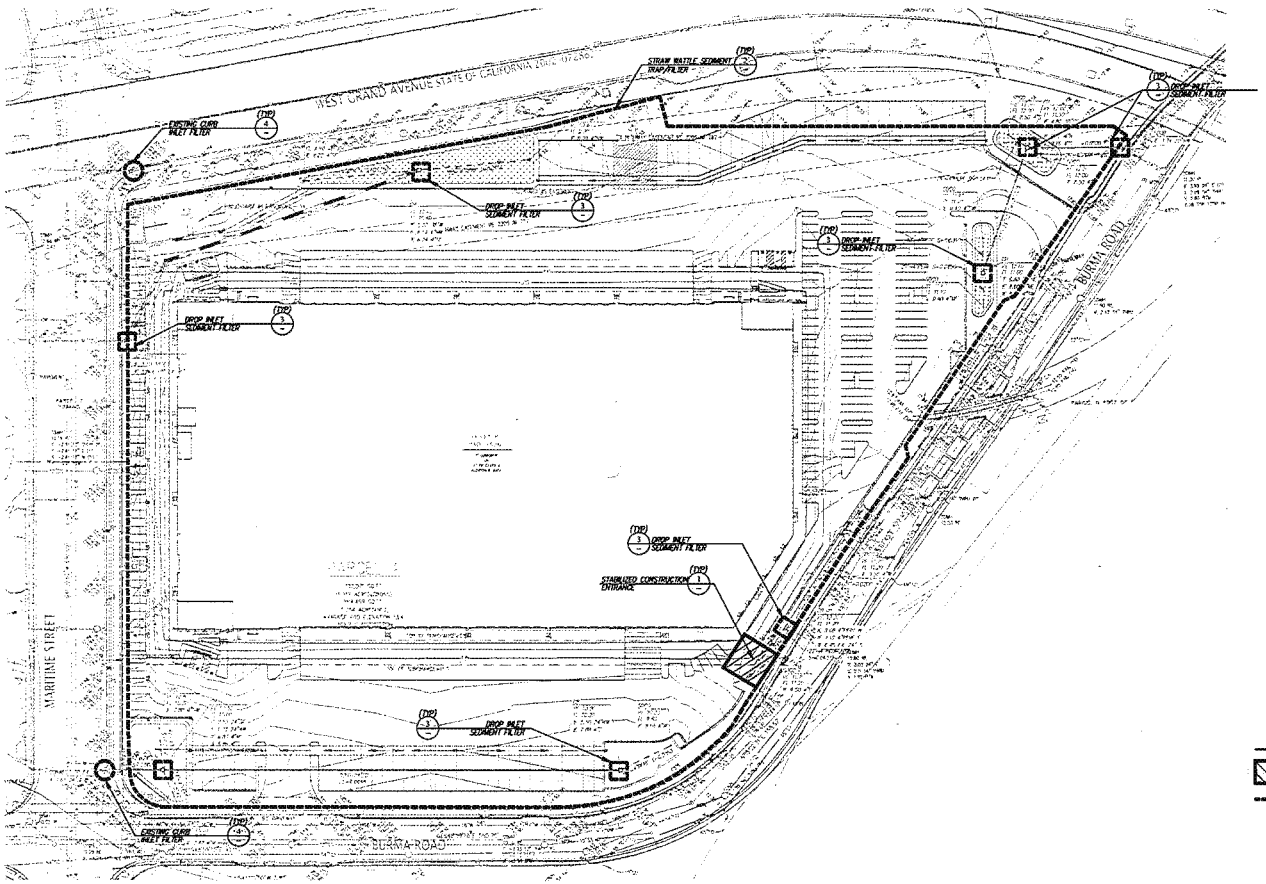
Date: DATE: Project No.: 19024.00

Sheet Title: EXTERIOR ELEVATIONS

Sheet No.: A3.1.1

Released for Construction
Not Released for Construction

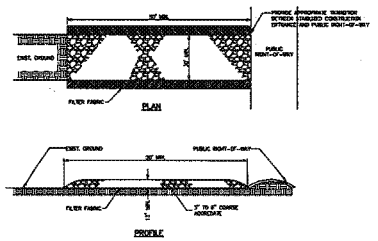
Exhibit B- Erosion Control Plan



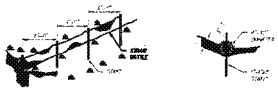
0 25 50 100 150
Scale 1" = 50 ft

LEGEND

- STABILIZED CONSTRUCTION ENTRANCE
- STRAW WATTLE SEDIMENT TRAP/FILTER
- DROP INLET SEDIMENT FILTER
- EXISTING CURB INLET FILTER



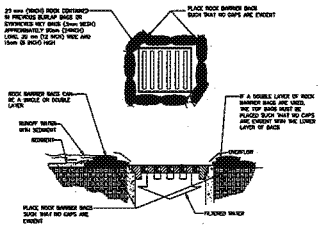
STABILIZED CONSTRUCTION ENTRANCE (1)
NOT TO SCALE



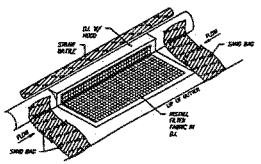
NOTE:
1. STRAW WATTLES ARE MADE FROM STRAW BOUND WIRE-ENTWINED NETTING. MAY BE APPROX. 8"-10" DIA AND 20-30 FT LONG.
2. STRAW WATTLES TRAP SEDIMENT AND REDUCE SHEET AND RILL EROSION BY REDUCING SLOPE GRADIENT, INCREASING INFILTRATION RATES AND BY PROVIDING A FAVORABLE ENVIRONMENT FOR PLANT ESTABLISHMENT.
3. STRAW WATTLE PRECIPITATION REQUIRES THE PLACEMENT AND SECURE STAKING OF THE WATTLE IN A TRENCH 2"-3" DEEP, DUG ON CONTOUR. RUNOFF MUST NOT BE ALLOWED TO RUN UNDER OR AROUND WATTLE.

STRAW WATTLE SEDIMENT TRAP/FILTER (2)
NOT TO SCALE

Z:\STANDARDS\DETAILS\ EROSION CONTROL\EC07.DWG



DROP INLET SEDIMENT FILTER UTILIZING ROCK BARRIER BAGS (3)
NOT TO SCALE



EXISTING CURB INLET FILTER DETAIL (4)
NOT TO SCALE

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
Phone (925) 245-6786
Fax (925) 245-6796

Description	Date
PERMIT SUBMITTAL	3-6-19

ISSUE: ISSUE FOR PERMIT FEB 19 2019

OAKLAND GLOBAL LOGISTICS CENTER

PHASE 1, NORTH EAST GATEWAY
OAKLAND, CALIFORNIA

PROLOGIS

3353 GATEWAY BLVD
FREMONT, CALIFORNIA 94538
TELEPHONE: 510.896.1900

Date: JAN. 2019
Project No.: A13633-1

Sheet Title: EROSION CONTROL PLAN

Sheet No.: C6

Released for Construction
Not Released for Construction

PROLOGIS

WT

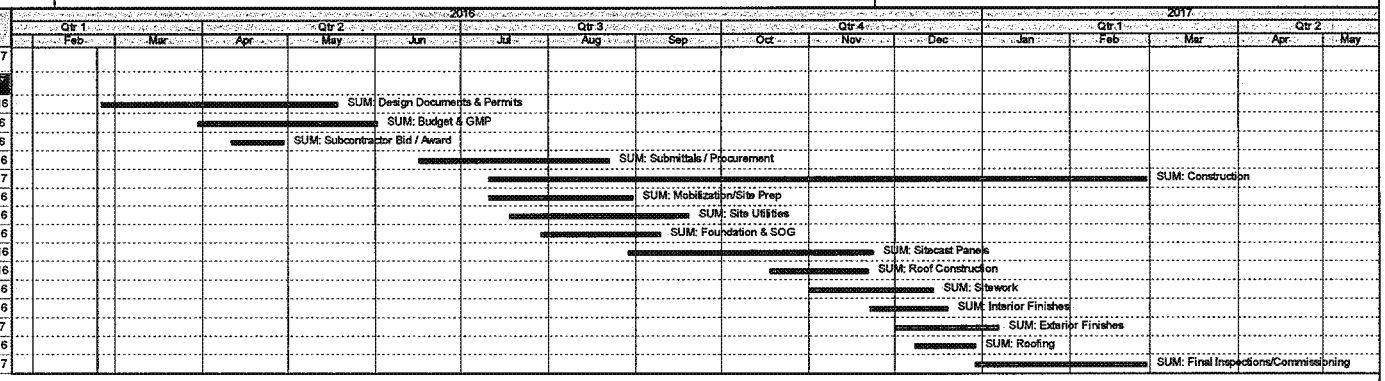
Exhibit C- Project Schedule

WHITING-TURNER

PROLOGIS - OAB NORTHEAST GATEWAY
PROJECT SUMMARY SCHEDULE: 31-Mar-16

PROLOGIS

#	Activity ID	Activity Name	OD	Start	Finish
1	**PROLOGIS PHASE 1**		256	25-Feb-16	27-Feb-17
2	PROJECT SUMMARY		256	25-Feb-16	27-Feb-17
3	SUM-1130	SUM: Design Documents & Permits	60	25-Feb-16	18-May-16
4	SUM-1120	SUM: Budget & GMP	46	30-Mar-16	01-Jun-16
5	SUM-1140	SUM: Subcontractor Bid / Award	15	11-Apr-16	29-Apr-16
6	SUM-1150	SUM: Submittals / Procurement	47	16-Jun-16	22-Aug-16
7	SUM-1110	SUM: Construction	160	11-Jul-16	27-Feb-17
8	SUM-1180	SUM: Mobilization/Site Prep	37	11-Jul-16	30-Aug-16
9	SUM-1160	SUM: Site Utilities	45	18-Jul-16	19-Sep-16
10	SUM-1190	SUM: Foundation & SOG	30	29-Jul-16	09-Sep-16
11	SUM-1170	SUM: Sitecast Panels	62	29-Aug-16	23-Nov-16
12	SUM-1200	SUM: Roof Construction	25	18-Oct-16	21-Nov-16
13	SUM-1230	SUM: Sitework	30	01-Nov-16	14-Dec-16
14	SUM-1220	SUM: Interior Finishes	18	22-Nov-16	19-Dec-16
15	SUM-1210	SUM: Exterior Finishes	25	01-Dec-16	06-Jan-17
16	SUM-1250	SUM: Roofing	15	08-Dec-16	29-Dec-16
17	SUM-1240	SUM: Final Inspections/Commissioning	41	29-Dec-16	27-Feb-17



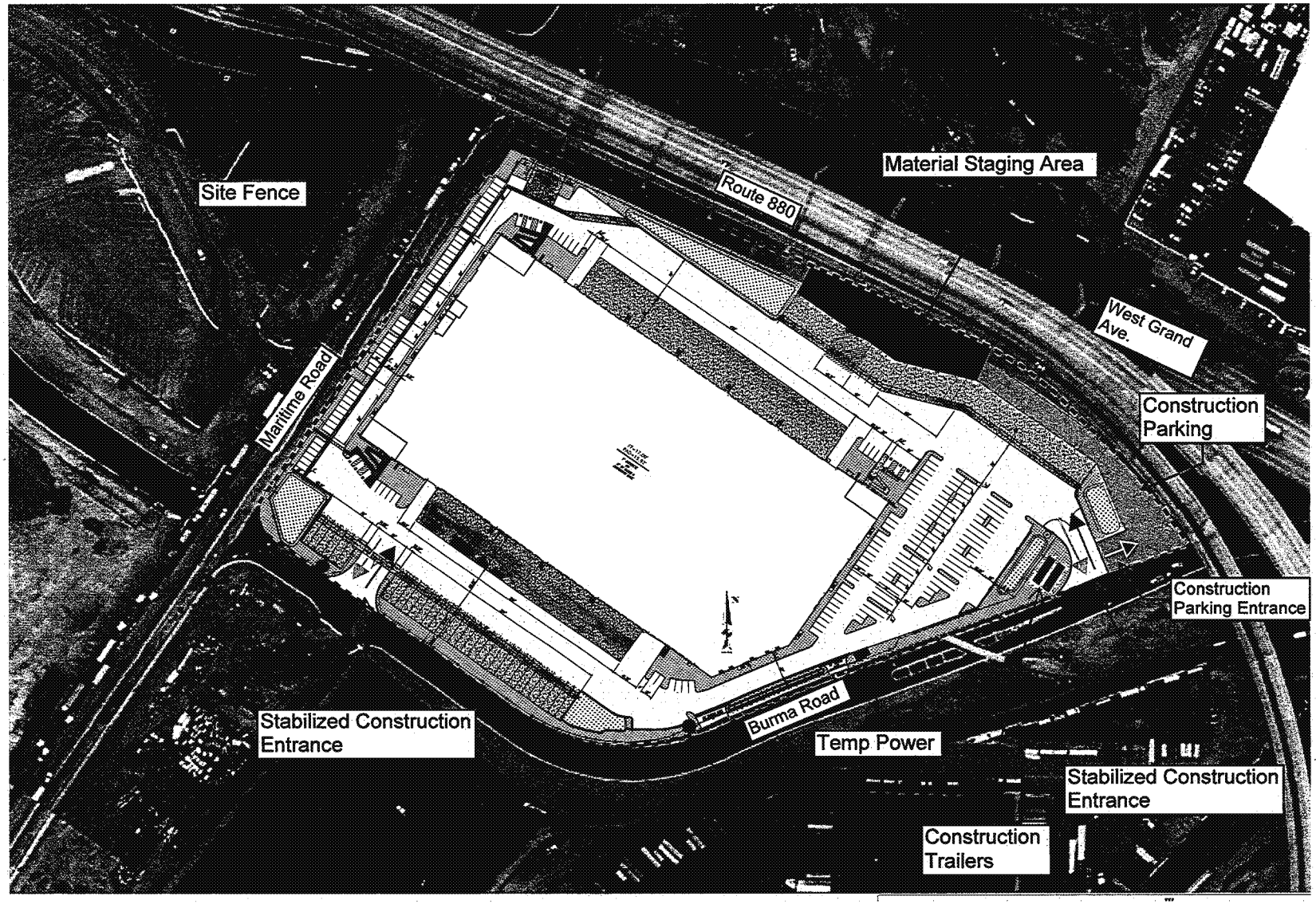
Project ID: PROLOGIS-P1, Project Name: PROLOGIS PHASE 1
Data Date: 24-Feb-16

Layout: WT Large Project Layout
Filter: TASK filter: Submittals.

PROLOGIS WT

002610 2020-10-29

Exhibit D- Project Logistics Plan



- Fire Hydrant
- Construction Signage
- Construction Fence

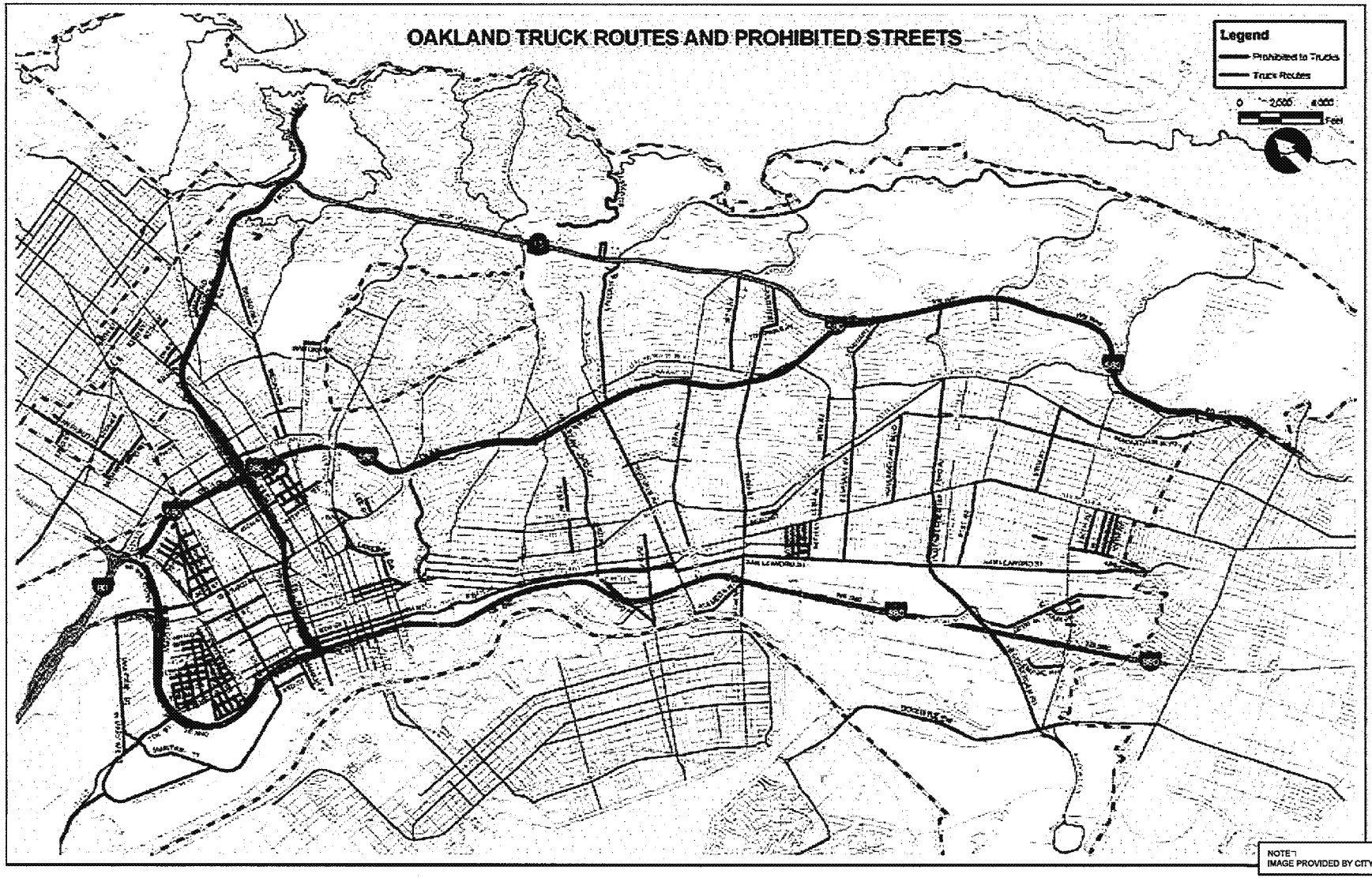
WT

2020-10-29

Exhibit E- Approved Traffic Control Plan

The Developer, its Contractor, or its consultant will prepare a Traffic Control Plan if encroachment into the public right-of-way is required. When required, a Traffic Control Plan will be submitted to EBMUD, the Port, and CalTrans for review and comment no less than 10 days prior to submittal to the City. Incorporate comments and revise plan as appropriate.

Exhibit F- Approved Truck Haul Route



NOTE:
IMAGE PROVIDED BY CITY OF OAKLAND

OAKLAND GLOBAL

ARCHITECTURAL DIMENSIONS

ARCHITECTURAL DIMENSIONS
JAMES HEILBRONNER
510-465-8300
300 FRANK H. OGAWA PLAZA, SUITE 375
OAKLAND, CA 94612

PROJECT INFO.
CITY OF OAKLAND TRUCK ROUTES AND PROHIBITED STREETS
CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

CAT. NO	25945
INV. NO.	AD-0335.01

REV	DATE	COMMENT

JOB NO.	OAB02
SCALE:	1" = 100'
DATE:	8/23/2013
DRAWN BY:	J. ARMADA
CHECKED BY:	E. ROSSO

DRAWING NO.
TCP-2
SHEET 1 OF 1

G:\Civil Files\OAB\OAB02\ARCHITECTURAL DIMENSIONS\X-Dwgs\X-702.dwg

WT

Exhibit G- Signage: Speed Limit

PROLOGIS WT

ATTENTION

PERMITTED CONSTRUCTION HOURS:
Monday-Friday 7AM-7PM

There will be no work on site outside of permitted hours without written permission from City of Oakland.

FOR CONCERNS REGARDING DUST, CONSTRUCTION NOISE, EROSION OR ANY CONSTRUCTION ACTIVITY ON THIS PROJECT PLEASE CONTACT:

During Construction Hours – Randy Knaus (925)-271-6023
After Construction Hours – Steve Rodriguez (925-)-271-6590

CITY OF OAKLAND CODE COMPLIANCE:
(510) 238-3381

OAKLAND POLICE DEPARTMENT 24 HR LINE:
(510) 777-3333

BAY AREA AIR QUALITY MANAGEMENT DISTRICT:
(800) 334-6367

PROLOGIS WT

Project Name: Prologis Northeast Gateway

Complaint Log

Name and Address of Notifier	Telephone Number and/or Email	Date and Time of Call/Email	Nature of Complaint (Traffic/Noise/Dust/Etc.)
	Received By	Directed To	
	Received By	Directed To	
	Received By	Directed T	

date: June, 2016

PROLOGIS

IDLING POLICY

IDLING TIMES ON ALL DIESEL-FUELED COMMERCIAL VEHICLES OVER 10,000 LBS AND DIESEL-FUELED OFF-ROAD VEHICLES OVER 25 HORSEPOWER SHALL BE MINIMIZED EITHER BY SHUTTING EQUIPMENT OFF WHEN NOT IN USE OR REDUCING THE MAXIMUM IDLING TIME TO FIVE MINUTES.
(CCR TITLE 13, SECTION 2485 & 2449)

VIOLATIONS SUBJECT TO MINIMUM FINE OF $300.

G.W.C. WHITING
(1883-1974)

WILLARD HACKERMAN
PRESIDENT AND CEO

FOUNDED 1909

THE WHITING-TURNER CONTRACTING COMPANY

(INCORPORATED)

ENGINEERS AND CONTRACTORS

4690 CHABOT DRIVE, SUITE 120
PLEASANTON, CALIFORNIA 94588
925-485-0800
FAX 925-485-0854
www.whiting-turner.com

CONSTRUCTION MANAGEMENT
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SPECIALTY CONTRACTING
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RETAIL/SHOPPING CENTERS
HEALTHCARE
BIOTECH/PHARMACEUTICAL
HIGH TECH/CLEANROOM

INSTITUTIONAL
DATA CENTERS
SPORTS AND ENTERTAINMENT
INDUSTRIAL
WAREHOUSE/DISTRIBUTION
MULTI-FAMILY RESIDENTIAL
ENVIRONMENTAL
BRIDGES, CONCRETE

WRITER'S DIRECT NUMBER IS
925-271-6606

Dear Neighbors,

I am writing to inform you of the upcoming work at the Prologis Northeast Gateway project located in the City of Oakland. The project site is located on the cross streets of Maritime and Burma Road.

Commencement of construction work is scheduled to begin on or around 7/15/2016. Your property address is within a 300' radius of the project site and this letter is providing notice that construction activities involved with construction may exceed the 90dBA level for a period of 10 working days between 7/28/2016 and 8/11/16.

Any construction work over 90dBA is considered an extreme noise generating activity. The City of Oakland requires all property owners within 300' of the project to be notified 30 days prior to any extreme noise activities taking place. Any work over 90dBA will be performed between the hours of 8:00 a.m. and 4:00 p.m. Monday thru Friday. Construction work that may exceed 90dBA will include:

1. The installation and erection of concrete panels.
2. Removal of construction debris into trucks via excavators and front loader equipment.
3. Construction equipment including, but not limited to, excavators, loaders, mobile crane, and dump trucks.

Whiting-Turner looks forward to working closely with our new neighbors and would like to create a solid relationship with them. If a complaint shall arise, please contact the undersigned below, and all complaints received will be noted in a Complaint Log. The log will include at a minimum the following information: The date of complaint, contact information for all complainant(s), reason for complaint, action taken, and resolution notes. Corrective measures will be immediately taken to address any and all complaints, should they occur. Copies of the Complaint Log will be submitted to Inspections Services monthly and, if so desired, upon request. These noise complaint procedures will be posted along the perimeter of the construction site prior to the commencement of construction. Should you have any noise complaints during construction please follow these procedures.

Most of the extreme noise generating activities will take place during the excavation work during the early stages of the project. We will send additional notices as required for additional upcoming work. If you would like to receive email notifications in lieu of or in addition to a hard copy please provide your email address to Steve.Rodriguez@whiting-turner.com.

Additional project information may be requested should you have any questions by contacting the undersigned.

Sincerely,

Steve Rodriguez
Whiting-Turner Contracting Company
925-271-6590
Steve.Rodriguez@whiting-turner.com

PROLOGIS WT

G.W.C. WHITING
(1883-1974)

WILLARD HACKERMAN
PRESIDENT AND CEO

FOUNDED 1909

THE WHITING-TURNER CONTRACTING COMPANY

(INCORPORATED)

ENGINEERS AND CONTRACTORS

4690 CHABOT DRIVE, SUITE 120
PLEASANTON, CALIFORNIA 94588
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CONSTRUCTION MANAGEMENT
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INSTITUTIONAL
DATA CENTERS
SPORTS AND ENTERTAINMENT
INDUSTRIAL
WAREHOUSE/DISTRIBUTION
MULTI-FAMILY RESIDENTIAL
ENVIRONMENTAL
BRIDGES, CONCRETE

WRITER'S DIRECT NUMBER IS
925-271-6606

Dear Neighbors,

Due to safety reasons, pedestrian traffic will be periodically shut down on Maritime Street between Tuesday 9/15/2016 and Friday 10/16/2016 while demolition and excavation activities are in progress. Pedestrian barricades will be set in place to re-route all pedestrian traffic to the detour per the approved Traffic Control Plan. Please reference the included closure plan exhibit from our Traffic Control Plan that shows the areas that will be closed. The shutdown dates will be posted on our website within 2 days prior to shut down.

If you should have any problems or questions we encourage you to call or stop by our construction trailer located on site.

Additional project information may be requested should you have any questions using the contact below.

Sincerely,
Steve Rodriguez
Whiting -Turner Contracting Company
925-271-6590
Steve.Rodriguez@whiting-turner.com

PROLOGIS WT

Exhibit L- Project Truck Log

Project: Prologis Northeast Gateway
Date:

Truck Information Form

Time In	Time Out	Vehicle Type	License Plate Number	Trucker's Name	Driver's Name	Material	Documentation [1]	Destination	Quantity

Documentation carried by the driver will include:

- Bills of lading or non-hazardous or hazardous waste manifests;
- Proof of insurance, valid registration, and current driver's license;
- Material profile information (reflecting chemical analysis results);
- Material weight records; and
- Complete copy of the Traffic Control Plan.

date: May 8, 2016

Project Name: Prologis Northeast Gateway

Construction Site Condition Log

Location:	Decription of Damage:	Date:	Inspected

date: June, 2016

Attachment C

Public Comment Letters Received in Response to Draft Air Quality Plan dated April 25, 2016

From: Margaret Gordon
To: Ranelletti, Darin; robbie.morris@arb.ca.gov; Marvin, Cynthia@ARB; dvintze@baaqmd.gov; Richard Grow; Lee, Anna, Public Health, CAPE
Subject: Comments Standard Conditions of Approval/Mitigation Measures for the Prologtis:
Date: Monday, May 23, 2016 11:52:06 AM

Comments Standard Conditions of Approval/Mitigation Measures for the Prologtis:

1. Nothing about Solar
2. Shuttle Services to not bring cars into West Oakland
3. No traffic study cars or trucks
4. There's not an emission reduction plan
5. EIR is over ten years old
6. No Zero emission plan or new technology
7. No Green Infrastructure
8. No use of electric truck for local freight transportation
9. No spraying of water from an enclosed fence during construction
10. No hours of operation
11. Nothing in the plan green house gases reduction
12. The item on the warehouse is not subject to Planning Commission
13. We don't if there will be indoor air filtration for workers.
14. There nothing about recycling and no waste added to the project

Thank you,

Ms. Margaret Gordon/Co-Director
West Oakland Environmental Indicators Project
349 Mandela Pkwy.
Oakland, Ca. 94607
510-257-5645
WWW.WOEIP.ORG

DITCHING DIRTY DIESEL

Robbie Morris
California Air Resources Board
Freight Transport Branch
Transportation and Toxics Division

May 25, 2016

Dear Robbie ,

Thank you for providing us the documents and opportunity to comment on the Pologis project in West Oakland . As you undoubtedly know, West Oakland has long been suffering cumulative impacts from the Freight Industry and as such was designated by BAAQMD as one of their CARE communities .

Given the existing conditions and forecasts for expanded freight operations (rail, maritime, air, and trucking), we ask that CARB take an extra critical look at this project and determine what measures can be implemented to eliminate or at least reduce impacts on this community from this company's operations.

Following are our comments and recommendations on the project:

* The AQ measures outlined in the documents to control dust seem adequate if they are actually implemented for the duration of the construction project. We have had examples of large scale projects (Bay View/Hunters Point) where the measures were initially implemented but later dropped. The affected residents had little recourse and suffered health hazards as a result.

* The designated person or persons assigned to monitor the dust control program and to order the increased watering to prevent transport of dust should be identified to the public along with their phone numbers. That their duties should include holidays and weekend periods

when construction work is not in progress demonstrates a more serious commitment to mitigation and is welcomed.

* The Construction Signage near the Construction Parking Entrance appears to be set back too far into property – one should not have to go behind the fence to be able to read it . The sign should be easily readable from the street.

* This document is primarily about outlining and regulating construction procedures. However, there are important considerations in the design of the building and development of the project that should be addressed. For example, will the building and finished property create yet another Heat Island that will raise energy demands, elevate emissions of air pollutants and Green House gases, and impair water quality? This is a very large project that has a significant footprint in the area and should be required to incorporate cool roofs, cool pavement, and vegetation to mitigate its impacts on the area.

* This Prologis project includes 55 Trucks, 78 trailer parking stalls, 171 parking stalls and only 2 electric charging stations (for passenger vehicles only we believe).

There is no mention of utility design , planning , and infrastructure for future Heavy Duty charging stations , forklifts, and cargo handling equipment. It would be very helpful to have ARB provide aggressive guidance here in accordance with its Sustainable Freight Policy. If this policy is to be "Transformative" as the governor has declared it must seriously weigh in on projects such as this in a comprehensive manner. If the current plans do not account for the future energy needs of zero emission HD trucks it will probably be prohibitively expensive to install these needed technologies later.

We have many concerns about this project and believe it needs more scrutiny and adaptations to be up to date with current thinking and compliance with reducing GHG and a Sustainable Freight Policy. Please consider the following :

1. The EIR for the Prologis project is over 10 years old. Freight in all sectors has risen dramatically during this time and is on track to continue; hence projects such as this. It is inappropriate to pretend that it is still accurate and valid.
2. This project has not used any Green Infrastructure. There is an opportunity here to follow the example the Port has shown works. One example being the solar panel carports .
3. West Oakland is a very busy hub of Freight activity yet there has not been a Traffic Study for cars and trucks for this project.
4. We would like Prologis to establish Shuttle Services for their employees in order to reduce the number of cars coming into West Oakland. This should not be an undue

burden as BART is nearby and measures to reduce VMT are an important part of the Region's and State's Freight Policies.

5. The hours of operation might be a problem and we have not been informed if there are any limits.
6. We are uncertain of the extent of the Planning Commission's rulings here.
7. We have no information about conditions for workers at this site. Will there be indoor air filtration?
8. An Emission Reduction Plan has not been presented or formulated as far as we know.
9. As previously stated, there is no plan presented for the future use of Zero emission vehicles and their associated infrastructure. We understand that Prologis is primarily in the Short Haul Freight business and would therefore be an ideal candidate for Zero emission Trucks or hybrids.
10. We have not seen how Prologis plans to handle recycling and not add waste to the project.

Before it's too late, we really need a pro-active push by ARB here to get our decision makers, planners, and developers to be "Transformative" with a Sustainable Freight System we are striving to achieve.

Sincerely,

Frank Gallo	Ms Margaret Gordon	Brian Beveridge
Ditching Dirty Diesel	WOEIP	WOEIP
CCFC	CCFC	

Sincerely,

Frank Gallo

Ditching Dirty Diesel

CCFC

From: Lee, Anna, Public Health, OOD
To: Ranelletti, Darin
Cc: Davis M.D., Muntu, Public Health, OOD; Galvez, Sandi, Public Health, OOD
Subject: RE: Notice of Availability of Northeast Gateway Air Quality Plan for Construction (Prologis)
Date: Tuesday, May 31, 2016 5:04:36 PM

Dear Darin:

My comments on the Air Quality Plan for Construction prepared by Prologis are below. I'm sorry if some of this is already addressed. I wasn't back from maternity leave when they gave their presentation, so I'm just going off of what I gathered from the written materials and checking in with Jen Lucky. I hope these comments are helpful to strengthening the measures to reduce air pollution at the Prologis site.

Please let me know if you have any questions.

Best,
Anna

Sustainable Attributes

- Given the proximity of the Prologis site to the Bay, I wonder if the developer is aware and has thought about site design features that could help thwart sea level rise and flooding. This is a reality we need to consider and it could be a preventative cost saving and safety measure.

Green Building

- Pleased to see the green building aspects of the plan and hope that if Prologis hasn't already, that they align this with the City's Green Building Checklist to ensure the plan promotes Oakland's vision and meets the requirements around Sustainability. Doing this exercise could also help showcase how the project measures against the goals of the City.

Dust

- Dust is a major concern especially because of the weather patterns and existing health inequities in West Oakland; the prevailing wind carries visible dust and air pollution into the West Oakland community.
- It is unclear if there will be demolition of any structures on the site. If so, ensure that watering measures are included in the dust mitigation plan.

Diesel emissions

- Diesel emissions are also a major concern given the existing health burdens in West Oakland.
- Question for the City: How does the Prologis plan align or support the development of the Standard Condition of Approval Mitigation 4.4-3b (West Gateway Rail and Maritime Emissions Reduction Program) and Mitigation 4.4-4 (City and Port truck diesel emission program)? I didn't see any mention of these programs in the Prologis Plan.
- The plan includes ensuring maintenance of the diesel equipment used during construction and operations. The plan does not explicitly say that the developer and sub-contractors must comply with the engine requirements from CARB. Please ensure that it does.
- Although the regulatory limit for idling is 5 minutes, it would be beneficial to reducing air pollution if the developer and sub-contractors minimized idling to 2 minutes when feasible.
- Another way to minimize idling, particularly for highly polluting refrigerated truck units (so

this might be an operations measure), is utilizing truck plug-in capability. If it is feasible, it would be great to include this into the Plan as a pollution reduction measure.

Truck Routes and Circulation

- Truck hauling routes should be designed to minimize exposure to community from emissions, fugitive dust, potential hazardous materials, vibrations and traffic safety issues.
- There is a West Oakland Truck Route that should be noted and included in the Plan.
- Concerning Exhibit F, Truck Haul Route, it should be noted that there is an updated East Oakland truck route that occurred in 2015 that includes 98th Avenue and a number of other revisions. They can contact the City's Transportation Services Division for these revisions.

Community Engagement

- Public Notice - Sending notification and giving opportunity to engage neighbors is important to ensuring immediate health and safety concerns from the development are addressed and gaining community confidence and support of the project. In West Oakland, there are a number of community organizations and institutions that would be great places to post information and engage, including sending the letter about the project and phone numbers for project managers and making regular presentations. The developer should contact local community leaders for a comprehensive list, but some places and groups to include are: West Oakland Senior Center, libraries, the West Oakland Youth Center and the Hoover Resident Action Council (I can help connect to the Council).
- Public Process - A question for the City: After City Administrator approval, will there be a public process for the Planning Commission and City Council to review and adopt the plan or is this an administrative process moving forward?

Anna Lee
Local Policy Coordinator
Place Matters, Office of the Director
Alameda County Public Health Department
1000 Broadway, Suite 500
Oakland, CA 94607
anna.lee@acgov.org | Phone: (510) 267-8019
Like us on Facebook | Visit our Website

Please consider the environment **before** printing this email.

From: Ranelletti, Darin [mailto:DRanelletti@oaklandnet.com]
Sent: Friday, May 20, 2016 12:37 PM
To: 'Jahmese Myres'; Cole, Doug; Cappio, Claudia; 'Mark McClure'; 'Megan Morodomi'; 'Joanne Park'; 'Jack Broadbent'; 'Hhilken@baaqmd.gov'; 'akirk@baaqmd.gov'; 'jroggenkamp@baaqmd.gov'; 'David Vintze'; 'jkitowski@arb.ca.gov'; 'Cynthia Marvin'; McElhaney, Lynette; Cook, Brigitte; Thao, Sheng; 'rebecca.flournoy@acgov.org'; 'Jared Blumenfeld'; 'Richard Grow'; 'stew.sonnerberg@dot.gov'; 'Richard Sinkoff'; 'Anne Whittington'; 'tleong@portoakland.com'; 'Brent Bucknum'; 'bill@oaklandmss.com'; 'brian.woeip@gmail.com'; 'Margaret Gordon'; 'Cory'; 'jmajor@prologis.com'; 'robbie.morris@arb.ca.gov'; 'sydney.vergis@arb.ca.gov'; Klein, Heather; 'Maile.smith@ngem.com'; 'James Heilbronner'; Kaplan, Rebecca; Lee, Anna, Public Health, OOD; 'Jess@sfbaysc.org'; Jones, Andre
Subject: RE: Notice of Availability of Northeast Gateway Air Quality Plan for Construction (Prologis)

Dear Army Base Air Quality Stakeholders:

In my previous email to you (see below), I stated that the deadline for comments on the Air Quality

Pan for Construction prepared by Prologis for the Northeast Gateway site is 5:00 pm on Monday, May 30, 2016, which is Memorial Day. Pursuant to the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program for the Oakland Army Base Project, if the deadline falls on a holiday, the deadline is extended to the next business day. Therefore, the deadline for comments is **5:00 pm on Tuesday, May 31, 2016**.

Please contact me at 510-238-3663 or dranelletti@oaklandnet.com if you have any questions.

Regards,

Darin Ranelletti

Darin Ranelletti, Deputy Director | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3663 | Fax: (510) 238-6538 | Email: dranelletti@oaklandnet.com | Website: www.oaklandnet.com/planning

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From: Ranelletti, Darin
Sent: Friday, May 13, 2016 12:51 PM
To: 'Jahmese Myres'; Cole, Doug; Cappio, Claudia; 'Mark McClure'; 'Megan Morodomi'; 'Joanne Park'; 'Jack Broadbent'; 'Hhilken@baaqmd.gov'; 'akirk@baaqmd.gov'; 'jroggenkamp@baaqmd.gov'; 'David Vintze'; 'jkitowski@arb.ca.gov'; 'Cynthia Marvin'; McElhaney, Lynette; Cook, Brigitte; Thao, Sheng; 'rebecca.flournoy@acgov.org'; 'Jared Blumenfeld'; 'Richard Grow'; 'stew.sonnerberg@dot.gov'; 'Richard Sinkoff'; 'Anne Whittington'; 'tleong@portoakland.com'; 'Brent Bucknum'; 'bill@oaklandmss.com'; 'brian.woeip@gmail.com'; 'Margaret Gordon'; 'Cory'; 'jmajor@prologis.com'; 'robbie.morris@arb.ca.gov'; 'sydney.vergis@arb.ca.gov'; Klein, Heather; 'Maile.smith@ngem.com'; 'James Heilbronner'; Kaplan, Rebecca; 'Anna.lee@acgov.org'; 'Jess@sfbaysc.org'; Jones, Andre
Subject: Notice of Availability of Northeast Gateway Air Quality Plan for Construction (Prologis)

Dear Army Base Air Quality Stakeholders:

The City of Oakland has received a draft of the Air Quality Plan for Construction at the Northeast Gateway from the developer, Prologis. Prologis presented an overview of this Plan at the Quarterly Air Quality Stakeholder Meeting on March 3, 2016. Pursuant to the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program for the Oakland Army Base Project, the City is providing 17 calendar days for public review and comment on the draft Plan.

The draft Plan is available on the City's website:
http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak058692.pdf

Written comments must be received no later than **5:00pm on Monday, May 30, 2016**. Written comments should be sent via email, mail or fax to:

Darin Ranelletti, Deputy Director
City of Oakland, Planning and Building Department
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612
Email: dranelletti@oaklandnet.com
Fax: 510-238-6538

The Plan is subject to approval by the City Administrator. The City will review the written comments that are received and revise or supplement the draft Plan as appropriate prior to approval by the City Administrator. Within 90 days of the approval, there will be an informational presentation to the City Council concerning the Plan.

Please contact me at 510-238-3663 or dranelletti@oaklandnet.com if you have any questions.

Regards,

Darin Ranelletti

Darin Ranelletti, Deputy Director | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3663 | Fax: (510) 238-6538 | Email: dranelletti@oaklandnet.com | Website: www.oaklandnet.com/planning

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

June 3, 2016

Darin Ranelletti
City of Oakland
Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

ALAMEDA COUNTY
Tom Bates
Scott Haggerty
Rebecca Kaplan
Nate Miley

CONTRA COSTA COUNTY
John Gioia
David Hudson
(Secretary)
Karen Mitchoff
Mark Ross

MARIN COUNTY
Katie Rice

NAPA COUNTY
Brad Wagenknecht

SAN FRANCISCO COUNTY
John Avalos
Edwin M. Lee
Eric Mar
(Chair)

SAN MATEO COUNTY
David J. Canepa
Carole Groom
Warren Slocum

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Liz Kniss
(Vice-Chair)
Jan Pepper
Rod G. Sinks

SOLANO COUNTY
James Spering
Osby Davis

SONOMA COUNTY
Teresa Barrett
Shirlee Zane

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

Connect with the
Bay Area Air District:

Subject: Northeast Gateway Construction Management Plan

Dear Mr. Ranelletti,

Bay Area Air Quality Management District (Air District) staff appreciates the opportunity to review the Northeast Gateway Construction Management Plan (Plan) submitted to the City of Oakland (City) by Prologis for construction of a 256,000 square foot warehouse (Project) within a portion of the Oakland Army Base. As part of the former Oakland Army Base, the site and therefore this Project is subject to eight air quality mitigation measures described in the Oakland Army Base Project (OAB) 2002 Final Environmental Impact Report, the 2012 Initial Study/Addendum, the Mitigation Monitoring and Reporting Program, and the Lease Disposition and Development Agreement (LDDA). Air District staff understands that approval of the Plan by the City Administrator will allow construction to proceed without any further discretionary approvals from the City.

Air District staff is concerned that the Plan submitted by the developer, Prologis, only addresses air quality impacts associated with construction activity and does not address long term operational emissions associated with the Project. The Plan for this Project does not implement six of the eight air quality mitigation measures that future development is required to implement within the OAB. It should be noted that the eight air quality mitigation measures, which include the City's Standard Conditions of Approval, and which were approved by the Oakland City Council, were expected to be applied to future development within the OAB to lessen significant air quality impacts identified in the environmental documents for the OAB. Approval of the Northeast Gateway Construction Management Plan in its current form would preclude this Project from being required to implement legally binding mitigation measures promised to the surrounding community and approved by the Oakland City Council.

In the Attachment to this letter, Air District staff has provided specific comments on the proposed strategies in the Plan to ensure that construction related

emissions are reduced to the extent feasible. In addition, Air District staff is also recommending that the Plan be amended to include the other adopted air quality mitigation measures identified in the previous environmental documents to reduce the significant air quality impacts anticipated to occur in the West Oakland community, including impacts from Project operations. Air District staff believes that full implementation of all previously adopted mitigation measures is needed for the Project as proposed to assure that West Oakland air quality is not adversely affected. This was the promise of *A Bold Vision: Redeveloping the Former Oakland Army Base,* which was approved by the Oakland City Council.

Air District staff is available to assist the City in addressing these comments. If you have any questions, please contact Alison Kirk, Senior Environmental Planner at (415) 749-5169 or akirk@baaqmd.gov.

Sincerely,

Jean Roggenkamp
Deputy Executive Officer

Cc: Director Tom Bates
Director Scott Haggerty
Director Rebecca Kaplan
Director Nate Miley
Oakland Mayor Libby Schaaf
Heather Arias, California Air Resources Board

Attachment

Attachment

The comments provided below are in response to the Northeast Gateway Construction Management Plan (Plan) recently submitted to the City of Oakland by Prologis; and in relation to the California Environmental Quality Act (CEQA) mitigation requirements adopted by the City of Oakland to lessen the impacts from operational activities associated with development within the Oakland Army Base. As identified in the comments below, the Plan only addresses the CEQA mitigation requirements related to construction activity and does not address the mitigation requirements for operational activities at the Oakland Army Base.

SCA-AIR-1 and SCA-AIR-2

SCA-AIR-1 requires the project applicant to submit a construction management plan that "identifies the conditions of approval and mitigation measures to construction impacts of the project and explains how the project applicant will comply." SCA-AIR-2 provides the list of conditions of approval and mitigation measures that projects are required to implement to lessen significant air quality impacts related to construction and operation.

The Northeast Gateway Construction Management Plan submitted to comply with SCA-AIR-1 includes all the construction related mitigation measures listed in SCA-AIR-2, but does not provide the specificity needed to "explain how the project applicant will comply". There are a number of measures that provide an "option" for compliance; in these instances, Air District staff recommends that the applicant identify the criteria for choosing one option over another and identify the process for making that decision. For example, measure (a) requires the Project to increase dust control watering when wind speeds exceed 15 miles per hour; and measure (k) requires soil moisture to be maintained at a minimum of 12 percent; and measure (l) requires all excavation, grading, and demolition activities to be suspended when wind speeds exceed 20 miles per hour. The Plan should identify specifically how wind speeds and soil moisture will be monitored and who is required to maintain compliance logs.

Measure (u) requires all equipment used on the construction site and subject to Title 13, Section 2449 of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations") to meet emissions requirements one year in advance of any fleet deadlines. To comply, the proposed Plan indicates that "The project applicant shall provide written documentation that fleet requirements have been met." It is not clear who the written documentation will be submitted to and who will ensure that the appropriate equipment is used at the construction site. Air District staff recommends that this and all projects at the Oakland Army Base submit off-road registration documents approved by the Air Resources Board to determine a fleet's compliance with this requirement. In addition, Air District staff also recommends that only Tier 4 off-road engines be used at the OAB, and if Tier 4 off-road engines are not available for a particular use, then Tier 3 off-road engines be used.

Measure (v) requires the use of low VOC "coatings beyond local requirements (i.e., BAAQMD Regulation 8, Rule 3: Architectural Coatings)." Air District staff recommends that the Plan identify what the current regulations require and demonstrate how the Project will reduce VOC emissions beyond these requirements.

002640 2020-10-29

SCA-AIR-3

SCA-AIR-3 is not currently proposed to be implemented by the Project. This measure addresses public exposure to toxic air contaminants (TACs) and requires measures be implemented by new development to reduce indoor and outdoor concentrations to TACs. The Air District recommends that the Plan be amended to include the requirements of SCA AIR-3.

Mitigation 4.4-3

Mitigation 4.4-3 3 is not currently proposed to be implemented by the Project. This measure requires the Port of Oakland to implement a criteria pollutant reduction program aimed at reducing or off-setting Port-related emissions in West Oakland from its maritime and rail operations to less than significant levels *prior to the start of operations*. Since this Project will facilitate operations at the Port of Oakland, the Air District recommends that the Project include measures within the Plan to comply with this requirement. These measures could include electrification of the 55 loading docks within the Project, and requiring the Port of Oakland to use only the lowest emitting off-road cargo handling equipment to load trucks using the Project site.

Mitigation 4.4-4

Mitigation 4.4-4 3 is not currently proposed to be implemented by the Project. This measure requires the City of Oakland and the Port of Oakland to jointly create, maintain, and fund on a fair share basis a truck diesel emission reduction program *prior to the start of operations*. The program shall be sufficiently funded to strive to "reduce redevelopment related contributions to local West Oakland diesel emissions to less than significant levels". This Project will have 55 truck loading docks and 78 trailer parking stalls. Diesel particulate matter emissions, a known toxic air contaminant, will substantially increase in the West Oakland community. The environmental documents identified significant air quality impacts from exactly this type of development. Air District staff recommends that the Plan be amended to include the development of an off-site mitigation program such that there is no net increase in emissions from this Project within the West Oakland community.

Mitigation 4.4-5

Mitigation 4.4-5 3 is not currently proposed to be implemented by this project. This measure requires major developers to fund feasible Transportation Control Measures (TCMs) for reducing vehicle emissions from commercial, institutional, and industrial operations. Air District staff recommends that the Plan be amended to include this mitigation measure and specifically identify this Project's share of funding for the TCMs listed below

- Provide incentives to encourage workers to carpool or use public transportation (TCM 4)
- Provide shuttles to and from the West Oakland BART station, and mid-day shuttles to food service establishments/commercial areas (TCM 5 and 8)
- Provide preferential parking for carpool and vanpool vehicles (TCM 9)
- Charge parking fees for single occupancy vehicle commuters (TCM 10)
- Install weather-protected bicycle parking for employees (TCM 11)
- Provide safe, direct access for bicycles to adjacent bicycle routes (TCM 12)

- Provide showers and lockers for employees bicycling or walking to work (TCM 13)
- Provide direct, safe, attractive pedestrian access from the project to transit stops and adjacent developments (TCM 14).

Mitigation 4.4-6

Mitigation 4.4-6 3 is not currently proposed to be implemented by this Project. This measure requires the City of Oakland and the Port of Oakland to implement sustainable development policies and strategies related to new development design and construction. Air District staff recommends that the Plan include this mitigation measure and explain how the construction practices at the Project are consistent with this measure. In addition, Air District staff recommends that the Plan include measures to address sustainable development, such as installation of on-site renewable energy generation, use of ground source space heating, and thermal hot water heating.

Mitigation 5.4-1

Mitigation 5.4.-1 3 is not currently proposed to be implemented by this project. This measure requires the City of Oakland and the Port of Oakland to encourage, lobby, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality. Air District staff recommends that the Project identify potential new technological advances that could be demonstrated at this Project.

Air Resources Board

Mary D. Nichols, Chair
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov

Matthew Rodriquez
Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

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JUN 03 2016

CITY OF OAKLAND
BUREAU OF PLANNING

May 31, 2016

Mr. Darin Ranelletti
City of Oakland
Planning and Building Department
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, California 94612

Dear Mr. Ranelletti:

Thank you for providing the Air Resources Board (ARB) the opportunity to comment on the Northeast Gateway Construction Management Plan (Air Quality Elements) (Plan). This Plan provides an opportunity to ensure the cleanest possible construction practices while constructing the Northeast Gateway site. Eliminating and minimizing air quality impacts from the construction of this project is vital to protecting the health of nearby communities.

Overall, we find that the Plan contains measures that will achieve reductions in emissions generated by onsite construction activity. Specifically, the Dust Control Mitigation Plan and the use of the electricity infrastructure surrounding the construction site over electrical generators powered by internal combustion are helpful in reducing emissions.

Documents like this Plan are important to the public as they can help to provide transparency and accountability while following through with commitments made during the environmental review period. It is important to develop specific actions to ensure that the public is well informed about the project and proposed solutions to the project's potential impacts. Although several measures in the Plan provide sufficient detail, others need further clarification in order to ensure proper implementation and enforcement of the measures included in the Plan as well as ensure meaningful public engagement. This further clarification will help ensure the project ultimately avoids or substantially lessens the significant and unavoidable impact to air quality identified in the 2002 Draft Environmental Impact Report and Final Environmental Impact Report, and achieves the less-than-significant impacts determination made in the 2012 Addendum, by implementing all feasible mitigation.

General Recommendations

For both this and subsequent Subject Plans, consider the following:

1) Coordinate and consult with the community on construction and operations related vehicle circulation, identify selected routes that divert traffic away from neighborhood streets and is least impactful to the surrounding communities. Include details of the agreed upon truck routes in the Plan. Meaningful coordination with the community takes time, and to ensure that project development stays on schedule, we recommend that this work be initiated as soon as possible if you have not already done so.

2) Specify the public review release date and expected content for each of the remaining Subject Plans for this project, subject to Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans). It is expected that the remaining Subject Plans will be released in a timeframe that will allow for meaningful public review and response by the City of Oakland and project developer prior to when they are scheduled according to the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program.

3) Include Plan requirements in the contractual agreement between Prologis and the construction management company in order to strengthen enforceability.

Construction Related Recommendations

To ensure that the Plan meets the goals of Mitigation Measure SCA Air-2, and to ensure that the project's construction-related impacts to air quality remain less than significant, ARB recommends clarifying several measures, strengthening enforceability, and including additional measures that ARB staff finds feasible and critical to reducing emissions and protecting public health. Details of these recommendations are below:

1) Define "late model" under Emission Control Mitigation Plan, protocol "a". We suggest requiring all medium-heavy and heavy-heavy duty trucks, including any alternative fuel vehicles, meet or exceed 2010 emission standards. In addition, consider clarifying the parameters of this measure by requiring all off-road vehicles and equipment meet Tier 4 engine standards. If Tier 4 is not available, the off-road equipment should meet Tier 3 engine standards. Also, consider requiring each contracted fleet to provide an ARB Certificate of Compliance to the onsite Project Compliance Manager prior to commencing operations.

2) Clarify the intention of "low-emission diesel fuel" in the Emission Control Mitigation Plan, protocol "a". This type of fuel is already standard in California; therefore, it is unclear what additional control this measure is offering. As written, this protocol also seems to limit equipment onsite to diesel power. Please consider editing to allow for the flexibility to use zero and near-zero emission equipment as well.

3) Define "alternative fuel construction equipment" under Emission Control Mitigation Plan protocol "b". Without specifying equipment type, it is difficult to determine if this protocol provides appropriate mitigation. We recommend requiring the use of electric construction tools or amending the Plan to identify a target for the minimum amount of electric power tools that will be used onsite, explaining how this measure will be enforced, and clarifying for the public how the target was derived. In addition, we suggest requiring all off-road vehicles and equipment meet Tier 4 engine standards. If Tier 4 is not available, the off-road equipment should meet Tier 3 engine standards.

4) In Emission Control Mitigation Plan measure "f", there are several areas where further clarification and strengthening of the provision is needed:

    a. In addition to monitoring and facilitating implementation of the mitigation measures, the Project Compliance Manager should also ensure compliance with mitigation measures and the Plan. Specify that the Project Compliance Manager will refer any non-compliant fleets to the Bay Area Air Quality Management District for investigation or potential penalties.
    b. Clarify which contractors are subject to this provision. It is our expectation that all contractors should be subject to oversight by the Project Compliance Manager.
    c. Specify what the Daily Inspection Logs will include and how often they will be reviewed by the Project Compliance Manager.

5) In the Emission Control Mitigation Plan, define the phrases "extent that it is readily available" under protocol "a", "extent that the equipment is readily available and cost effective" under protocol "b", and "extent feasible" under protocol "c". As currently written, it is unclear what criteria will be used, making it difficult to ensure implementation and enforcement of the protocols.

6) Consider requiring each equipment operator or sub-contractor to show proof of compliance for each on-road vehicle subject to ARB's Periodic Smoke Inspection Program prior to operating at the site. Additionally, any off-road equipment that

exhibits conditions outside of the manufacturer's specifications, or emits excessive visible smoke, should be prohibited from operating on-site. Please detail how these requirements will be enforced, in the Plan.

We understand that the Plan relates directly to construction activities at the project site. However, we want to take this opportunity to also support the incorporation of zero and near-zero emission technologies, especially for yard and on-road trucks, that are commercially available throughout operation of the facility. ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm. Additionally, please consider implementing, and planning accordingly for, the necessary infrastructure to support the zero emission and near-zero emission technology vehicles and equipment that will be operating at the Northeast Gateway in the future. There are several ways ARB could support implementing these recommendations, including technical assistance and funding programs. More information on ARB funding programs can be found at http://www.arb.ca.gov/ba/fininfo.htm.

Closing

ARB staff appreciates the opportunity to comment on the Plan. We are pleased to provide assistance for successful implementation and enforcement of this effort that serves the region's distribution and air quality needs, while protecting public health. If you would like to understand more about ARB's freight related work, please see our Sustainable Freight: Pathways to Zero and Near-Zero Emissions Discussion Document at http://www.arb.ca.gov/gmp/sfti/sfti.htm.

Please include ARB on the City of Oakland's Stakeholder List to receive information on the Subject Plans, pursuant to Mitigation Measure PO-1. If you have questions, please contact Ms. Robbie Morris, Air Pollution Specialist, Freight Transport Branch, at (916) 327-0006 or via email at Robbie.Morris@arb.ca.gov.

Sincerely,

Heather Arias, Chief
Freight Transport Branch
Transportation and Toxics Division

cc: See next page.

cc: Mr. Connell Dunning
Transportation Team Supervisor
U.S. Environmental Protection Agency,
Region 9
75 Hawthorne Street, ENF-4-2
San Francisco, California 94105

Ms. Margaret Gordon
Co-Director
West Oakland Environmental
Indicators Project
349 Mandela Parkway
Oakland, California 94607

Ms. Alison Kirk
Senior Environmental Planner
Bay Area Air Quality Management
District
939 Ellis Street
San Francisco, California 94109

Mr. Chuck McKetney
Community Assessment, Planning,
& Evaluation Director
Alameda County Public Health Department
1000 Broadway, Suite 500
Oakland, CA 94607

Ms. Robbie Morris
Air Pollution Specialist
Freight Transport Branch
Transportation and Toxics Division

Attachment D

Revised Air Quality Plan for Construction Prepared by Prologis (titled "Northeast Gateway A-D. Construction Management Plan" including related documents; dated August 30, 2016)

PROLOGIS.

August 30, 2016

Darin Ranelletti, Deputy Director
City of Oakland – Bureau of Planning
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612

Via Email

RE: DRX151553 - Oakland Global Logistics Center #1 – Response to Air Quality Stakeholder Comments to SCA-MMRP Public Outreach Element (Mitigation Measure PO-1)

Dear Darin:

We are in receipt of the Stakeholder comments to the construction related Air Quality Standard Conditions of Approval (SCA AIR-1 and SCA AIR-2), which you forwarded via email on June 7, 2016. Subsequent to the conference call we had with various stakeholders on 8/3/16, and for your use in staff recommendation that the public outreach process has been satisfied, we are pleased to present the following responses:

Global Responses:
We received comments from several different stakeholder groups relating to the same topic, which we address by providing the following clarifications:

1. EIR Date/Update – Several comments pertained to the EIR for the project being 10+ years old. We are working from the entitlements provided under the 2012 Development Agreement and SCA-MMRP as amended by City Council 7/16/2013, and includes the 2012 OARB Initial Study/EIR Addendum.
2. Sustainable Design/Attributes – Several groups commented on the lack of Green Building and/or sustainable design elements. The air quality plans submitted for review pertained primarily to the air quality measures during construction. There is a separate Mitigation Measure (MM4.4-6) that relates to energy conserving fixtures and design. To that end, this project will meet and exceed the minimum requirements for MM4.4-6, as well as acheive a LEED Gold certification. Some specific examples of sustainable project design include but not are limited to: building finish floor above the 50-year projected sea level rise, high reflectance "cool" TPO roof, low VOC paints, high recycled content building materials, water efficient irrigation and plantings, energy efficient LED lighting, and low E glazing.
3. Operational Issues – There were several comments pertaining to operational issues that will be addressed at a separate time. The purpose of this phase of public outreach was to get feedback regarding **construction related** air quality items only. The future Air Quality Operations Plan will be subject to the same stakeholder review and any operational comments will be addressed at that time.
4. Future Tenant Improvements - The Project currently under consideration is a "Cold Shell", meaning that no tenant improvements ("TI") are being constructed. The Cold Shell does not involve any interior improvements such as warehouse lighting, office/restroom buildouts, equipment, or racking. The space is unoccupiable until a TI permit is approved, for which the Landlord (Prologis) will have approval rights over. As part of the LEED process, Prologis will have an TI Guidelines exhibit to the Tenant lease, which will

3353 Gateway Blvd., Fremont, California 94538 United States Main +1 510.661.4000 Fax +1 510.565.4320

require the Tenant to implement certain sustainable elements into their design, for example – low flow toilets, or 240v+ plugs for truck refrigerated units. It is important to note that the Cold Shell building design will not preclude mitigations to emmissions during Operations phase.

5. Covered Elsewhere in SCA-MMRP – Several comments address items covered elsewhere in the SCA-MMRP, not specifically a part of Air Quality conditions.

Specific Responses:

1. West Oakland Environmental Indicators Project (WOEIP) Comments:

Comment 1: Nothing about solar
Response: Solar (rooftop or carport) is not a project requirement. We do note that the rooftop is solar-ready - if an energy off-taker is determined in the future, the roof structure has been designed to take an ancillary load of 3 to 5 psf and could be added on.

Comment 2: Shuttle Services do not bring cars into West Oakland
Response: See global response #3 - future Air Quality Operations Plan.

Comment 3: No traffic study cars or trucks
Response: See global response #1 – EIR Update.

Comment 4: There's not an emission reduction plan
Response: See global response #3 - future Air Quality Operations Plan.

Comment 5: EIR is over ten years old
Response: See global response #1 – EIR Update.

Comment 6: No zero emission plan or new technology
Response: See global response #3 - future Air Quality Operations Plan.

Comment 7: No Green Infrastructure
Response: See global response #2 – sustainable design.

Comment 8: No use of electric truck for local freight transportation
Response: See global response #3 - future Air Quality Operations Plan.

Comment 9: No spraying of water from an enclosed fence during construction.
Response: Water must be used during construction to keep dust down. All water used will be contained onsite, behind the fence.

Comment 10: No hours of operations
Response: See global response #4. Standard hours of operations are per SCA NOI-1, Mon – Sat, 7am to 7pm, other hours with prior approval by the City. See CMP, Section 7a.

Comment 11: Nothing in the plan about greenhouse gases reduction.
Response: See global response #4. Not a part of Air Quality. See SCA GCC-1, Greenhouse Gas Reduction. Timing is at Certificate of Occupancy, not prior to permits.

Comment 12: The item on the warehouse is not subject to Planning Commission.
Response: Confirmed, staff approves conformance with Project Design Guidelines.

Comment 13: We don't if there will be indoor air filtration for workers.

Response: Project will comply with mandatory LEED Indoor Environmental Quality Prerequisite #1 – Minimum IAQ performance.

Comment 14: There nothing about recycling and no waste added to the project.
Response: Not a part of Air Quality. See SCA UTL-2, CMP Section 10.

2. Ditching Dirty Diesel Asterick #5 – Charging Stations and Sustainable Freight Policy:

* **This Prologis project includes 55 Trucks, 78 trailer parking stalls, 171 parking stalls and only 2 electric charging stations (for passenger vehicles only we believe).**

There is no mention of utility design , planning , and infrastructure for future Heavy Duty charging stations , forklifts, and cargo handling equipment. It would be very helpful to have ARB provide aggressive guidance here in accordance with its Sustainable Freight Policy. If this policy is to be "Transformative" as the governor has declared it must seriously weigh in on projects such as this in a comprehensive manner. If the current plans do not account for the future energy needs of zero emission HD trucks it will probably be prohibitively expensive to install these needed technologies later.

Response: EV chargers are for passenger vehicle charging only and are provided voluntarily by Prologis. Forklift charging stations are typically provided with tenant improvements as their location is critical to a user's operations. As we understand it, the Sustainable Freight Action Plan is in the implementation phase, with proposed pilot projects already in motion. By virtue of geography, the Project is located within close proximity to intermodal, first-mile, last-mile,and transportation infrastructure of the freight supply chain, which are all goals of the Sustainable Freight Action Plan.

3. ACPH Diesel Emissions Bullet Point #5 – Truck Plug-in Capability

- Another way to minimize idling, particularly for highly polluting refrigerated truck units (so this might be an operations measure), is utilizing truck plug-in capability. If it is feasible, it would be great to include this into the Plan as a pollution reduction measure.

Response: If Prologis leases to a tenant that has refrigerated storage space, it is standard practice to install charging outlets at dock doors designated for cold deliveries. Tenant is not known at this time so this item is still to be determined, but it is commonly part of Tenant Improvements. As we develop the Air Quality Operations Plan, we will work with the City to incorporate appropriate operations requirements regarding charging outlets at dock doors, which would be enforced via TI Guidelines within the Tenant's lease.

4. BAAQMD Attachment re: SCA-AIR-1 – Dust Monitoring

The Northeast Gateway Construction Management Plan submitted to comply with SCA-AIR-1 includes all the construction related mitigation measures listed in SCA-AIR-2, but does not provide the specificity needed to "explain how the project applicant will comply". There are a number of measures that provide an "option" for compliance; in these instances, Air District staff recommends that the applicant identify the criteria for choosing one option over another and identify the process for making that decision. For example, measure (a) requires the Project to increase dust control watering when wind speeds exceed 15 miles per hour; and measure (k) requires soil moisture to be maintained at a minimum of 12 percent; and measure (l) requires all excavation, grading, and demolition activities to be suspended when wind speeds exceed 20 miles per hour. The Plan should identify specifically how wind speeds and soil moisture will be monitored and who is required to maintain compliance logs.

Response: The contractor monitoring process will include: 1) Checking weather reports daily prior to starting construction activity to prepare for wind speeds as necessary. 2) Monitoring weather and dust as day progresses by setting up an anemometer wind speed sensor and checking periodically. 3) Increasing dust control watering as wind speeds increase to maintain minimum 12% moisture content, or to a point at which the earth becomes tacky. See CMP, Section 2, Dust Mitigation Control Plan.

5. BAAQMD Attachment re: measure (u) – CARB verification

Measure (u) requires all equipment used on the construction site and subject to Title 13, Section 2449 of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations") to meet emissions requirements one year in advance of any fleet deadlines. To comply, the proposed Plan indicates that "The project applicant shall provide written documentation that fleet requirements have been met." It is not clear who the written documentation will be submitted to and who will ensure that the appropriate equipment is used at the construction site. Air District staff recommends that this and all projects at the Oakland Army Base submit off-road registration documents approved by the Air Resources Board to determine a fleet's compliance with this requirement. In addition, Air District staff also recommends that only Tier 4 off-road engines be used at the OAB, and if Tier 4 off-road engines are not available for a particular use, then Tier 3 off-road engines be used.

Response: See CMP Section 2, Emission Control Mitigation Plan, part e:
All contractors will be bound by contract to comply with the requirements of CCR Title 13, Section 2449. All written documentation that fleet requirements have been met will be submitted to the City of Oakland for record.
See CMP Section 2, Emission Control Mitigation Plan, part h:
All contractors will be encouraged to use Tier 4 off-road engines for all equipment brought to the site if available. At a minimum, required to use Tier 3 off-road engines for all equipment brought on-site. Contractors shall provide documentation from CARBS DOORS website with fleet summary. Compliance officer to use this documentation to verify equipment meets either Tier 4 orTier 3 requirement.

6. BAAQMD Attachment re: measure (v) – Low VOC Coatings

Measure (v) requires the use of low VOC "coatings beyond local requirements (i.e., BAAQMD Regulation 8, Rule 3: Architectural Coatings)." Air District staff recommends that the Plan identify what the current regulations require and demonstrate how the Project will reduce VOC emissions beyond these requirements.

Response: All coatings will meet VOC Content requirements specified in the attached Project Specification – See Attachment A. This specification meets or exceeds the limits per BAAQMD Regulation 8, Rule 3.

7. ARB Construction Related Recommendations ("CRR's") #1 – CARB verification

1) **Define "late model" under Emission Control Mitigation Plan, protocol "a". We suggest requiring all medium-heavy and heavy-heavy duty trucks, including any alternative fuel vehicles, meet or exceed 2010 emission standards. In addition, consider clarifying the parameters of this measure by requiring all off-road vehicles and equipment meet Tier 4 engine standards. If Tier 4 is not available, the off-road equipment should meet Tier 3 engine standards. Also, consider requiring each contracted fleet to provide an ARB Certificate of Compliance to the onsite Project Compliance Manager prior to commencing operations.**

Response: See CMP Section 2, Emission Control Mitigation Plan, part a & h:
All Contractors will be required to use minimum Tier 3 off-road engines for all equipment brought on-site. Contractors shall provide documentation from CARBS DOORS(Diesel Off-road Online Reporting System) website with their fleet summary. Compliance officer to use this documentation to verify equipment meets Tier 4 or Tier 3 requirement.

8. ARB CRR's #2 – Low Emmission Fuel

Clarify the intention of "low-emission diesel fuel" in the Emission Control Mitigation Plan, protocol "a". This type of fuel is already standard in California; therefore, it is unclear what additional control this measure is offering. As written, this protocol also seems to limit equipment onsite to diesel power. Please consider editing to allow for the flexibility to use zero and near-zero emission equipment as well.

Response: See CMP Section 2, Emission Control Mitigation Plan, part a - d:
Fuel being used will be compliant with California standards and consistent with regulatory requirements for ULSD (Ultra Low Sulfur Diesel). Contractors shall use late model (defined as Tier 4 or Tier 3 heavy-duty diesel-powered equipment, as well as zero and near-zero emission equipment to the extent that it is readily available in the San Francisco Bay Area. Electric boom lifts, scissors lifts, and small tools will be utilized to the extent feasible.

9. ARB CRR's #3 – Alternative Fuel Equipment

Define "alternative fuel construction equipment" under Emission Control Mitigation Plan protocol "b". Without specifying equipment type, it is difficult to determine if this protocol provides appropriate mitigation. We recommend requiring the use of electric construction tools or amending the Plan to identify a target for the minimum amount of electric power tools that will be used onsite, explaining how this measure will be enforced, and clarifying for the public how the target was derived. In addition, we suggest requiring all off-road vehicles and

Response: See CMP Section 2, Emission Control Mitigation Plan, part e:
Temporary electric service from existing infrastructure will be provided on the job-site for contractors to use for small tools and equipment.

10. ARB CRR's #4 – measure (f) response

In addition to monitoring and facilitating implementation of the mitigation measures, the Project Compliance Manager should also ensure compliance with mitigation measures and the Plan. Specify that the Project Compliance Manager will refer any non-compliant fleets to the Bay Area Air Quality Management District for investigation or potential penalties.

Response: See CMP Section 2, Emission Control Mitigation Plan, part f:
The Project Compliance Manager (Randy Knaus) will monitor and facilitate the implementation of mitigation measures. Any off-road equipment that exhibits conditions outside of the manufacturer's specifications, or emits excessive visible smoke, shall be prohibited from operating on-site. All contractors will be subject to this provision and will maintain Inspection Logs daily throughout the project. In addition,the Compliance Manager will complete ARB courses for Visible Emissions Evaluation to enhance ability to ensure equipment is in compliance.

Please note that not every comment was individually addressed in the specific comments section as the responses may have been redundant to other specific responses or covered by one of the global responses.

If you have any questions or comments regarding the responses to the stakeholder review comments, please do not hesitate to contact me.

Sincerely,

Cory Chung
Development Manager

Cc: John Monetta, City of Oakland
Bill Quesada, City of Oakland
Jeff Major, Prologis
Janet Frentzel, Prologis
Jakub Swander, Whiting-Turner
Adam Smith, Whiting-Turner
Steve Rodriguez, Whiting-Turner

Encl: Attachment A – Painting Specification for Low VOC Content Applications
Attachment B – Construction Management Plan, Rev. 3 – August 30, 2016

PROLOGIS®

SECTION 099123

INTERIOR PAINTING

SUMMARY

A. **Section Includes**: Surface preparation and the application of paint systems on interior substrates as scheduled at the end of the section.

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

A. Drawings and general provisions of the Contract, including General Conditions, and other Division 01 Sections, apply to this Section.

1.2 LEED REQUIREMENTS

A. VOC Content: For field applications that are inside the weatherproofing system, paints and coatings shall comply with VOC content limits of authorities having jurisdiction and the following VOC content limits:

1. Flat Paints and Coatings: 50 g/L.
2. Nonflat Paints and Coatings: 150 g/L.
3. Dry-Fog Coatings: 400 g/L.
4. Primers, Sealers, and Undercoaters: 200 g/L.
5. Anticorrosive and Antirust Paints Applied to Ferrous Metals: 250 g/L.
6. Zinc-Rich Industrial Maintenance Primers: 340 g/L.
7. Pretreatment Wash Primers: 420 g/L.
8. Shellacs, Clear: 730 g/L.
9. Shellacs, Pigmented: 550 g/L.

1.3 LEED SUBMITTALS

A. Product Data: For paints and coatings, indicating VOC content.

1.1 ACTION SUBMITTALS

A. Product Data: **For each type of product**. Include preparation requirements and application instructions.

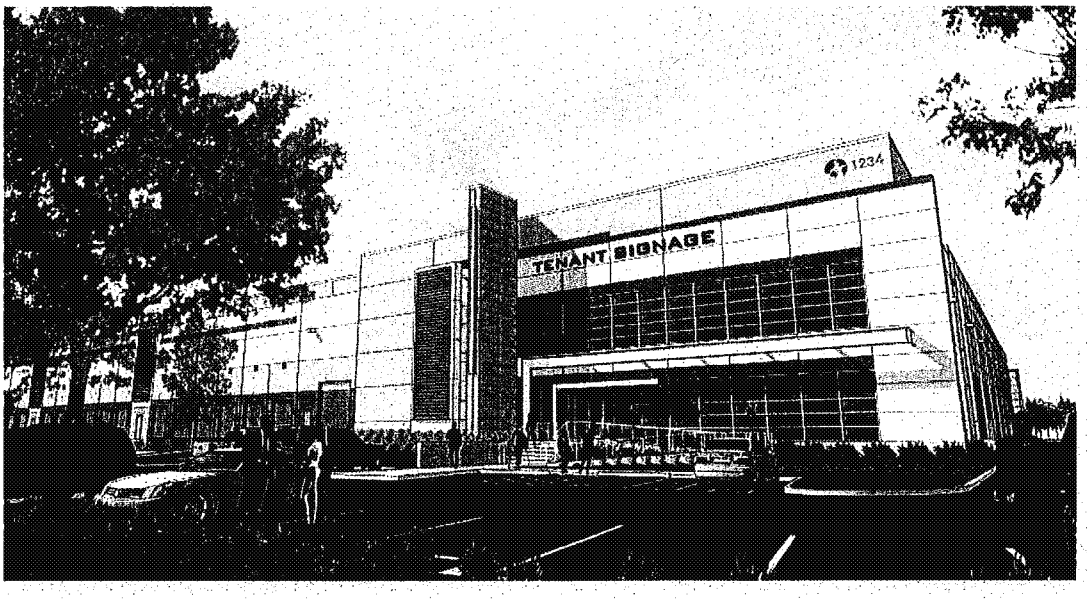
B. **Samples for Verification**: For each type of paint system and in each color and gloss of topcoat.

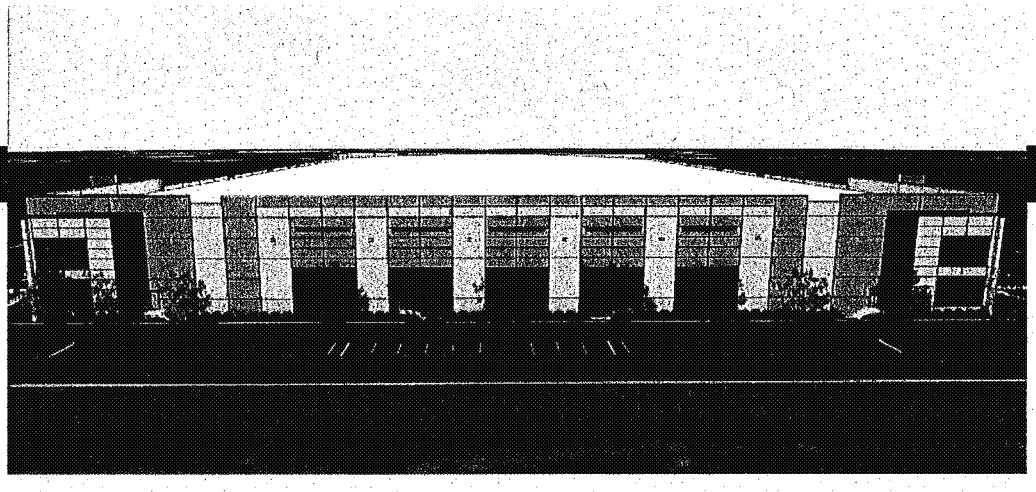
1. Submit Samples on rigid backing, 8 inches square.

C. **Product List**: Include color designations.

NORTHEAST GATEWAY
CONSTRUCTION MANAGEMENT PLAN

Original: April 15th, 2016
Rev #1: July 18th, 2016
Rev #2: July 27th, 2016
Rev #3: August 30th, 2016





THE WHITING-TURNER CONTRACTING COMPANY
4690 Chabot Drive, Suite 120
Pleasanton, California 94588

STEVE RODRIGUEZ
Assistant Project Manager
Office: 925-271-6020
Mobile: 925-351-4622

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WHITING-TURNER

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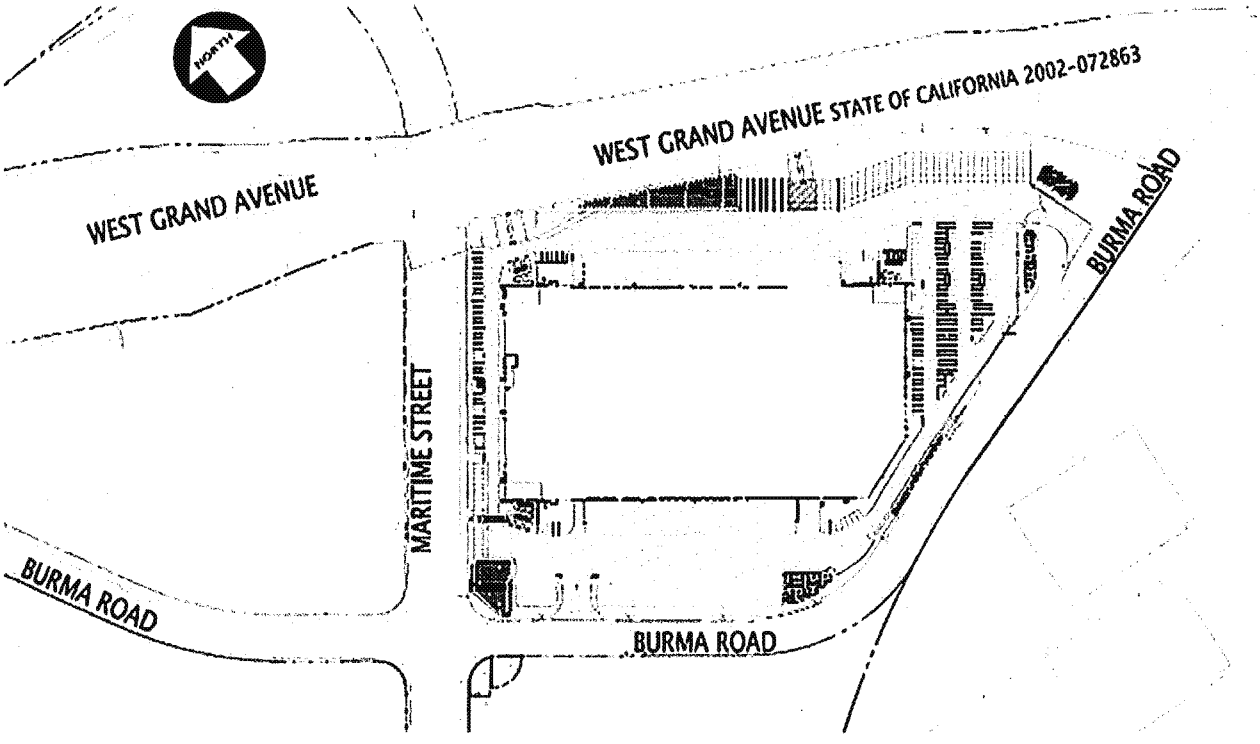


On the Northeast Gateway site Prologis will construct a new 256,000 sf warehouse on a site covering approximately 702,000sf bordered by Maritime Street, Burma Road and West Grand Ave. The project site improvements will include new underground utilities, landscaping, concrete and ac paving and bio-swales. The new warehouse building will include 55 truck docks, 78 trailer parking stalls, 171 auto parking stalls and two electric vehicle charging stations.

SCA-AIR-2 Construction Related Air Pollution Controls

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading and/or construction.

Requirements:

During Construction, the project applicant shall require the construction contractor to implement all of the following applicable measures recommended by the Bay Area Air Quality Management District (BAAQMD):

a. Water all exposed surfaces of active construction areas at least twice daily (using reclaimed water if possible). Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.

b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).

c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

d. Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.

e. Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).

f. Requirement: Limit vehicle speeds on unpaved roads to 15 miles per hour.

g. Idling times on all diesel-fueled commercial vehicles over 10,000 lbs. shall be minimized either by shutting equipment off when not is use or reducing the maximum idling time to five minutes (as required by Title 13, Section 2485, of the California Code of Regulations. Clear signage to this effect shall be provided for construction workers at all access points.

h. Idling times on all diesel-fueled off-road vehicles over 25 horsepower shall be shall be minimized either by shutting equipment off when not is use or reducing the maximum idling time to five minutes and fleet operators must develop a written idling policy (as required by Title 13, Section 2449 of the California Code of Regulations.)

i. All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.

j. Post a publicly visible sign that includes the contractor's name and telephone number to contact regarding dust complaints. When contacted, the contractor shall respond and take corrective action within 48 hours. The telephone numbers of contacts at the City and the BAAQMD shall also be visible. This information may be posted on other required on-site signage.

k. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.

l. All excavation, grading, and demolition activities shall be suspended when average wind speeds exceed 20 mph.

m. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

n. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for one month or more).

o. Designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress.

p. Install appropriate wind breaks (e.g., trees, fences) on the windward side(s) of actively disturbed areas of the construction site to minimize wind blown dust. Wind breaks must have a maximum 50 percent air porosity.

q. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.

r. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.

s. All trucks and equipment, including tires, shall be washed off prior to leaving the site. Tire washing station will be included at each construction entrance. Water will be contained on-site and reused where possible.

t. Site accesses to a distance of 50 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel over filter fabric.

u. All equipment to be used on the construction site and subject to the requirements of Title 13, Section 2449 of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations") must meet Emissions and Performance Requirements one year in advance of any fleet deadlines. The project applicant shall provide written documentation that the fleet requirements have been met.

v. Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., BAAQMD Regulation 8, Rule 3: Architectural Coatings).

Dust Control Mitigation Plan:

The Erosion Control Plan (Exhibit B) was submitted to the City as part of the 02/08/2016 Issue for Permit Drawings. In addition to the dust control measures included in The Erosion Control Plan the following items will be implemented to control dust -

a. Use water trucks to water exposed surfaces during construction activities at least twice daily or more frequently if winds exceed 15 mph. Suspend excavation, grading, and demolition activities when average wind speed exceeds 20 mph. Maintain minimum soil moisture of 12% as indicated by laboratory samples or a moisture meter. Use reclaimed water for dust mitigation whenever feasible. Monitoring process will include:

1) Checking weather reports daily prior to starting construction activity to prepare for wind speeds as necessary.
2) Monitoring weather and dust as day progresses by setting up an anemometer wind speed sensor and checking periodically.
3) Increasing dust control watering as wind speeds increase to maintain minimum 12% moisture content, or to a point at which the earth becomes tacky.

b. Cover truck loads with tarpaulins or keep loads 2 feet below the sideboard of the truck bed to eliminate wind contact with soil or other loaded materials.

c. Require all operators tracking dirt/mud onto public roadways to have a wet power vacuum sweeper present daily during these activities and remove tracked dirt/mud at the end of each day or more frequently if needed.

d. Install construction area entrances at all ingress and egress sites to ensure dirt is kept off of public roads. Construction area entrances will be built using fabric and 3x5 rock to facilitate tire soil removal prior to leaving the site (or as defined by the guidelines in the Best Management Practice Handbook). Ingress/egress sites will also provide dry brushing of loose soil from tires and fenders.

e. As soon as practical and prior to rainy season, cover all access roads and/or permanent roads and building pads with aggregate or asphalt concrete to mitigate tracking of dirt and/or mud offsite.

f. Cover all inactive soil material stockpiles with plastic sheeting or non-toxic soil binders. Water all active stockpiles to maintain 12% moisture.

g. Install fencing with attached windscreen fabric on the windward side of the actively disturbed area of the construction site.

h. Replant vegetation in disturbed areas as quickly as possible.

i. Limit simultaneous occurrence of excavation, grading, and ground disturbance activities on the same area at any one time when feasible.

j. Draft and implement a Project SWPPP. The onsite QSP (Randy Knaus) will monitor runoff before, during, and after rain events. Deficiencies will be logged and corrected immediately. Inactive construction areas will be properly addressed with BMPs to eliminate erosion. Required BMPs will be outlined in the SWPPP and enforced with reporting and inspection.

k. Post signage and enforce 15 mph speed limit requirement for unpaved roads (Exhibit G).

l. Post signage and enforce dust complaint reporting requirement (Exhibit H). Take corrective action to remedy complaints within no more than 48 hours after receiving the complaint.

m. The Project Dust Compliance Manager (Randy Knaus) will monitor and facilitate the implementation of mitigation measures. The Contractor will maintain Daily Inspection Logs throughout the Project.

n. Limit inactive construction areas (previously graded areas inactive for one month or more) by installing planting, finished hardscape, and paving as soon as possible.

o. Designate Randy Knaus (WT Superintendent) as the person to monitor the dust control program and to order increased watering, as necessary.

p. Install fencing with attached windscreen fabric on the windward side of the actively disturbed area of the construction site.

q. Replant vegetation in disturbed areas as quickly as possible.

r. Limit simultaneous occurrence of excavation, grading, and ground disturbance activities on the same area at any one time when feasible.

s. Tire washing station will be included at each construction entrance and all equipment, including tires will be washed off prior to leaving the site.

t. Install construction area entrances at all ingress and egress sites to ensure dirt is kept off of public roads. Construction area entrances will be built using fabric and 3x5 rock to facilitate tire soil removal prior to leaving the site (or as defined by the guidelines in the Best Management Practice Handbook). Ingress/ egress sites will also provide dry brushing of loose soil from tires and fenders

u. All contractors will be bound by contract to comply with the requirements of CCR Title 13, Section 2449. All written documentation that fleet requirements have been met will be submitted to the City of Oakland for record.

v. Install coatings meeting VOC content requirements specified in Project Specification.

Emission Control Mitigation Plan:

To reduce emissions generated by equipment operating onsite the following protocols will be implemented –

Equipment and Fuel Requirements

a. All contractors will be encouraged to use Tier 4 off-road engines for all equipment brought to the site, as available. At a minimum, contractors will be required to use Tier 3 off-road engines for all equipment brought on-site. All contractors will be encouraged to use post 2010 model water trucks, as available. Contractors shall provide Reporting and Labeling documentation required and enforced by CARB. In addition, each contractor shall submit specific list of equipment being proposed for this project site. Compliance officer to use this documentation to verify equipment meets requirement meets either Tier 4 or Tier 3 engine requirement.

b. Fuel being used will be compliant with California standards and consistent with regulatory requirements for Ultra Low Sulfur Diesel (USLD). Use late model (defined as Tier 4, manufactured post 2008, or Tier 3, manufactured post 2006) heavy-duty diesel-powered equipment, as well as zero and near-zero emission equipment at the Project Site to the extent that it is readily available in the San Francisco Bay Area.

c. Utilize alternative fuel construction equipment (i.e., compressed natural gas, liquid petroleum gas, and unleaded gasoline) to the extent that the equipment is readily available and cost effective in the San Francisco Bay Area.

d. Electric boom lifts, scissor lifts, and small tools will be utilized to the extent feasible. Use low-emission diesel fuel for all heavy-duty diesel-powered equipment.

e. Rely on the electricity infrastructure surrounding the construction sites rather than electrical generators powered by internal combustion engines to the extent feasible. Temporary electric service from existing infrastructure will be provided on the job-site for contractors to use for small tools and equipment.

f. Keep all construction equipment properly tuned by a certified mechanic in accordance with the manufacturer's specifications. Operators will provide the Contractor with written documentation of equipment maintenance for all equipment to be used onsite.

g. All contractors will be bound by contract to comply with the requirements of CCR Title 13, Section 2449 (CARB Off-Road Diesel Regulations). All written documentation that fleet requirements for equipment to be used onsite have been met will be submitted to the City of Oakland for record.

h. The CARB Off-Road Diesel Vehicle Regulations will be enforced on this project using the requirements currently in effect and enforced by CARB. All emission standards and related requirements set forth in the CARB Regulations apply on the schedules set forth in the Regulations.
https://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm

The requirements outlined below are currently in effect and being enforced by CARB:

Idling

Equipment operators must limit their unnecessary idling to 5 minutes. There are exceptions for vehicles that need to idle to perform work (such as a crane providing hydraulic power to the boom), vehicles being serviced, or in a queue waiting for work. See Exhibit J for signage describing the Project Idling Policy.

Disclosure, Reporting and Labeling

Sellers of any equipment to be used on the Project must provide disclosure of the Off-Road regulation (exact language provided in the regulation) on the bill of sale or invoice, and must keep records that the disclosure was provided for three years after the sale. The seller must also report the vehicle sale to CARB via DOORS within 30 days of the sale.

Reporting can be completed using DOORS (Diesel Off-road online Reporting System), which is CARB's free online reporting tool for the Off-Road regulation. Additionally, hard copy reporting forms may be submitted. All equipment providers must review and update their information by March 1 of each year that annual reporting is required. Large fleets (fleet size > 5,000 HP) must report annually from 2012 to 2023, medium fleets from 2016 to 2023, and small fleets (fleet size < 2,500 HP) from 2018 to 2028. For each annual reporting date, a fleet must report any changes to the fleet, hour meter readings (for low-use vehicles and vehicles used a majority of the time, but not solely, for agricultural operations), and also must submit the Responsible Official Affirmation of Reporting (ROAR) form. All of these items should be submitted using DOORS. In the event that a fleet cannot, or does not want to meet the fleet average emissions target in a given year, it may instead choose to comply with the BACT (Best Available Control Technology) requirements, which requires installation of VDECS (Verified Diesel Emission Control Strategies), ie. exhaust retrofits, on a certain percentage of their fleet.

All fleet equipment used onsite shall be properly labeled. After a fleet reports their vehicles to CARB, each vehicle is assigned a unique Equipment Identification Number (EIN). The fleet must label its vehicles within

30 days of receiving EINs. Labeling provisions of the Off-Road regulation were amended in December 2010 to require labels on both sides of each vehicle. Additionally, fleets reported as 'captive attainment area fleets' must have labels with a green background instead of red.

Restrictions on Adding Vehicles

The Off-Road regulation restricts fleets from adding vehicles with older tier engines. Contractors adding fleet equipment to be used on the Project shall comply with the following restrictions at a minimum of one year in advance of dates listed below.

Ban on adding Tier 0s – Effective January 1, 2014, a fleet may not add a vehicle with a Tier 0 engine to its fleet. (Note no Tier 0 engines will be permitted onsite).

Prohibition on adding Tier 1s – Also effective January 1, 2014, for large and medium fleets, and January 1 2016 for small fleets, a fleet may not add any vehicle with Tier 1 engine. The engine tier must be tier 2 or higher. (Note no Tier 1 engines will be permitted onsite).

Prohibition on adding Tier 2s – Beginning January 1, 2018, for large and medium fleets, and January 1, 2023, for small fleets, a fleet may not add a vehicle with a Tier 2 engine to its fleet. The engine tier must be Tier 3 or higher. (Note no Tier 2 engines will be permitted onsite).

Enforcement

i. Signage will be posted notifying Contractors that all equipment onsite is subject to the requirements of CCR Title 13, Section 2449 (CARB Off-Road Diesel Regulations) and must meet Emissions and Performance Requirements one year in advance of any fleet deadlines and enforced with inspection and reporting.

j. The Project Compliance Manager (Randy Knaus) will monitor and facilitate the implementation of mitigation measures. Any off-road equipment that exhibits conditions outside of the manufacturer's specifications, or emits excessive visible smoke, shall be prohibited from operating on-site. All contractors will be subject to this provision and will maintain Inspection Logs daily throughout the project. Compliance Manager will complete online ARB courses for Visible Emissions Evaluation to enhance ability to ensure fleets are in compliance with CARB Regulations.

k. Post signage limiting truck and equipment idling time to five minutes or less, in accordance with CCR Title 13, Section 2485 & 2449. (Exhibit J)

l. A program to enforce and monitor vehicle compliance will be developed to ensure that vehicles associated with the Project comply with applicable local, regional, state, and federal air quality requirements. The program will include a gate check component to control vehicle access to and from the Project site and may include a voluntary decal program (i.e., "sticker program") whereby vehicles determined to be in compliance with Project requirements will be issued an exterior decal to assist in identifying compliant vehicles.

SCA-CULT-1: Archaeological Resources

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading and/or construction.

Requirements:

Pursuant to CEQA Guidelines section 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted.

Archaeological Resource Discovery Plan:

a. Halt all activities within a 50-foot radius of discovery of prehistoric or historic subsurface cultural resources, contact a qualified archaeologist or paleontologist to review discovery, and immediately notify the City.

b. Determine avoidance measures and/or further actions in consultation with City and a qualified archaeologist or paleontologist.

SCA-CULT-3: Paleontological Resources

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading and/or construction.

Requirements:

Pursuant to Section 15064.5 of the CEQA Guidelines in the event of an unanticipated discovery of a paleontological resource during ground disturbing activities the following provisions shall be instituted:

Paleontological Resource Discovery Plan:

a. Halt all activities within a 50-foot radius of discovery of prehistoric or historic subsurface cultural resources, to review discovery, and immediately notify the City.

b. Determine avoidance measures and/or further actions in consultation with City and a qualified archaeologist or paleontologist. Basin Research Associates, Inc. Ph: 510-430-8441

SCA-CULT-2: Human Remains

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading and/or construction.

Requirements:

Pursuant to Section 15064.5 of the CEQA Guidelines in the event of an unanticipated discovery of human skeletal remains during ground disturbing activities the following provisions shall be instituted:

Human Remains Discovery Plan:

a. Halt all activities upon discovery of human skeletal remains, contact the Alameda County Coroner to review discovery, and immediately notify the City.

b. Cease all activities within a 50-foot radius of discovery if the Alameda County Coroner determines that the remains are Native American, until appropriate arrangements are made.

SCA-GEO-1: Erosion & Sedimentation Plan

Prior to issuance of a demolition, grading, or building permit; and ongoing throughout demolition, grading, and/or construction:

Requirements:

The project applicant shall obtain a grading permit if required by the Oakland Grading Regulations pursuant to Section 15.04.660 of the Oakland Municipal Code. The grading permit application shall include an erosion and sedimentation control plan for review and approval by the Building Services Division. The erosion and sedimentation control plan shall include all necessary measures to be taken to prevent excessive storm water runoff or carrying by storm water runoff of solid materials on to lands of adjacent property owners, public streets, or to creeks as a result of conditions created by grading operations. The plan shall include, but not be limited to, such measures as short-term erosion control planting, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, devices to trap, store and filter out sediment, and storm water retention basins. Off-site work by the project applicant may be necessary. The project applicant shall obtain permission or easements necessary for off-site work. There shall be a clear notation that the plan is subject to changes as changing conditions occur. Calculations of anticipated storm water runoff and sediment volumes shall be included, if required by the Director of Development or designee. The plan shall specify that, after construction is complete, the project applicant shall ensure that the storm drain system shall be inspected and that the project applicant shall clear the system of any debris or sediment.

Erosion and Sediment Control Action:

An Erosion Control Plan (Exhibit B) was submitted to the Oakland Building Services Department as required for a grading permit pursuant to Section 15.04.660 of the Oakland Municipal Code. As required by code the Erosion Control Plan provides for the following:

a. Prevents excessive storm water runoff

b. Utilizes appropriate short-term erosion control methods, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, storm water retention basins, and devices to trap, store, and filter sediment.

c. The storm drain system shall be inspected to verify that the onsite system is cleared of debris and/or sediment. A copy of the survey shall be submitted to the City for review and approval.

d. Grading will be prohibited between October 15 and April 15 unless written authorization is obtained from the City Building Services Division.

SCA-HAZ-1: Best Management Practices for Soil and Groundwater Hazards

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading, and/or construction activities.

Requirements:
The project applicant shall implement all of the following Best Management Practices (BMPs) regarding potential soil and groundwater hazards:

a. Soil generated by construction activities shall be stockpiled onsite in a secure and safe manner or if designated for off-site disposal at a permitted facility, the soil shall be loaded, transported and disposed of in a safe and secure manner. All contaminated soils determined to be hazardous or non-hazardous waste must be adequately profiled (sampled) prior to acceptable reuse or disposal at an appropriate off-site facility. Specific sampling and handling and transport procedures for reuse or disposal shall be in accordance with applicable local, state and federal agencies laws, in particular, the Regional Water Quality Control Board (RWQCB) and/ or the Alameda County Department of Environmental Health (ACDEH) and policies of the City of Oakland. The excavation, on-site management, and off-site disposal of soil from Project areas within the OARB shall follow the DTSC-approved RAP/RMP.

b. Groundwater pumped from the subsurface shall be contained onsite in a secure and safe manner, prior to treatment and disposal, to ensure environmental and health issues are resolved pursuant to applicable laws and policies of the City of Oakland, the RWQCB and/or the ACDEH. The on-site management and off-site disposal of groundwater extracted from Project areas within the OARB shall follow the DTSC-approved RAP/RMP for Project areas within the OARB. Engineering controls shall be utilized, which include impermeable barriers to prohibit groundwater and vapor intrusion into the building (pursuant to the Standard Condition of Approval regarding Radon or Vapor Intrusion from Soil and Groundwater Sources.

c. Prior to issuance of any demolition, grading, or building permit, the applicant shall submit for review and approval by the City of Oakland, written verification that the appropriate federal, state or county oversight authorities, including but not limited to the RWQCB and/or the ACDEH, have granted all required clearances and confirmed that the all applicable standards, regulations and conditions for all previous contamination at the site. The applicant also shall provide evidence from the City's Fire Department, Office of Emergency Services, indicating compliance with the Standard Condition of Approval requiring a Site Review by the Fire Services Division pursuant to City Ordinance No. 12323, and compliance with the Standard Condition of Approval requiring a Phase I and/or Phase II Reports.

Hazards and Hazardous Material Mitigation Plan:

See Exhibit O for closure reports related to RMP/RAP. See Exhibit N for Fire Safety Phasing Plan.

All subcontractors shall be required by to comply with the RAP/RMP and Soils Management Plan which includes provisions for the following:

a. All soil stockpiles shall be consolidated in a safe and secure manner.

b. Soil shall be profiled prior to off-haul and disposal.

c. All soils determined to be unsuitable for reuse onsite shall be loaded, transported and disposed of in a secure and safe manner and in accordance with applicable local, state, and federal laws, regulations, and/or policies.

d. Groundwater pumped onsite shall be contained in a safe and secure manner and will only be disposed of at permitted facilities.

SCA-HAZ-2: Hazards Best Management Practices

See Exhibit O for closure reports related to RMP/RAP
Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading, and/or construction activities.

Requirements:

The project applicant and construction contractor shall ensure Best Management Practices (BMPs) are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:

a. Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction.

b. Avoid overtopping construction equipment fuel gas tanks.

c. During routine maintenance of construction equipment, properly contain and remove grease and oils.

d. Properly dispose of discarded containers of fuels and other chemicals.

e. Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all USTs, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building.

f. If soil, groundwater or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notification of regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval (and DTSC-approved RAP/RMP for Project area within the OARB), as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.

Hazards Best Management Practices Mitigation Plan:

a. During construction comply with the RAP/RMP and Soils Management Plan.

b. Prepare a Project Storm Water Pollution Prevention Plan (SWPPP) that includes site hazardous materials and waste management BMPs, proper procedures for storing and handling construction materials onsite, and cleanup measures for accidental releases.

c. Collect environmental samples if suspected contamination, abandoned drums, USTs, elevator shafts, clarifiers, or subsurface hydraulic lifts are encountered during construction, and immediately notify Mark Arniola at (510) 238-7371.

d. Prepare task-specific Health and Safety Plan for construction activities in areas with known or suspected contamination.

e. Follow recommendations provided by a qualified environmental consultant for the profiling, handling, treating, transportation, and/or disposal of any other materials classified as potentially hazardous waste.) (Farallon Consulting, LLC Ph: 510-879-6800)

SCA-HYD-1: Storm Water Pollution Prevention Plan (SWPPP)

Mitigation Implementation/Monitoring: Prior to and ongoing throughout demolition, grading, and/or construction activities.

Requirements:

The project applicant must obtain coverage under the General Construction Activity Storm Water Permit (General Construction Permit) issued by the State Water Resources Control Board (SWRCB). The project applicant must file a notice of intent (NOI) with the SWRCB. The project applicant will be required to prepare a storm water pollution prevention plan (SWPPP) and submit the plan for review and approval by the Building Services Division. At a minimum, the SWPPP shall include a description of construction materials, practices, and equipment storage and maintenance; a list of pollutants likely to contact storm water; site-specific erosion and sedimentation control practices; a list of provisions to eliminate or reduce discharge of materials to storm water; Best Management Practices (BMPs), and an inspection and monitoring program. Prior to the issuance of any construction-related permits, the project applicant shall submit to the Building Services Division a copy of the SWPPP and evidence of submittal of the NOI to the SWRCB. Implementation of the SWPPP shall start with the commencement of construction and continue through the completion of the project. After construction is completed, the project applicant shall submit a notice of termination to the SWRCB.

Storm Water Pollution Prevention Action Items:

a. Prepare a construction SWPPP signed by a Qualified SWPPP Developer (QSD).

b. File a NOI with the SWRCB.

c. Submit SWPPP to the Water Board and City for review and approval.

d. File a NOT with the SWRCB at the completion of construction.

e. On behalf of the Developer and/or its Contractor, a QSP will perform periodic inspections to confirm compliance.

SCA-NOI-1: Days/Hours of Construction Operation

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading, and/or construction activities. The project applicant shall require construction contractors to limit standard construction activities as follows:

Requirements:

The project applicant shall require construction contractors to limit standard construction activities as follows:

a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Saturday, except that barging and unloading of soil shall be allowed 24 hours per day, 7 days per week for about 15 months.

b. Any construction activity proposed to occur outside of the standard hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division. The project applicant shall also submit an air quality report prepared by a qualified professional evaluating the air quality impacts of the special activities, if the duration of each activity exceeds 6 months.

c. No construction activity shall take place on Sundays or Federal holidays, except as noted above.

d. Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

e. Applicant shall use temporary power poles instead of generators where feasible.

f. All requests to Building Services to work outside normal work days & hours require a Neighborhood Survey (Exhibit P) to be circulated at least 10-days in advance of proposed work to nearby residents and businesses within 300 feet of the job site. A draft of the Neighborhood Survey needs to be approved by Building Services prior to circulating it for community input. Results of the survey are forwarded to Building Services 2 days in advance of scheduled work, to be considered prior to granting written authorization.

Construction Work Hours Plan:

Developer and/or its Contractor will specify in the Project Plans, install signage, and perform periodic inspections, including gate checks, to confirm the following actions:

a. Construction activities will be conducted Monday through Saturday from 7:00am to 7:00 pm. (Exhibit H)

b. Sunday and holiday hours will be from 7:00 am to 4:00 pm with prior City approval.

c. Utilize temporary power poles instead of generators when feasible.

SCA-NOI-2: Noise Control & SCA-NOI-5: Operational Noise – General

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading, and/or construction activities. Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the Planning and Zoning Division and Building Services. To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to the Planning and Zoning Division and the Building Services Division review and approval, which includes the following measures:

Requirements:

Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the Planning and Zoning Division and Building Services.

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to the Planning and Zoning Division and the Building Services Division review and approval, which includes the following measures:

a. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).

b. Except as provided herein, Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.

c. Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.

d. The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

Noise Control Mitigation Plans:

Developer and/or its Contractor will specify in the Project Plans, install signage (Exhibit H), and perform periodic inspections to confirm the following actions:

a. Use BACTs for noise control on construction equipment and trucks.

b. Use hydraulically or electrically powered impact tools.

c. Use exhaust mufflers when pneumatically powered tools are imperative.

d. Locate stationary noise sources as far from receptors as possible.

e. Limit the noisiest phases of construction to periods of no more than 10 consecutive days.

f. Comply with decibel levels and other aspects of the City of Oakland Noise Ordinance.

SCA-NOI-3: Noise Complaint Procedures

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading, and/or construction activities. Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the Building Services Division a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

Requirements:

Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the Building Services Division a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

a. A procedure and phone numbers for notifying the Building Services Division staff and Oakland Police Department; (during regular construction hours and off-hours);

b. A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);

c. The designation of an on-site construction complaint and enforcement manager for the project;

d. Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities about the estimated duration of the activity; and

e. A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

Noise Complaint Mitigation Plan:

Developer and/or its Contractor will perform periodic inspections to confirm the following actions:

a. The project team will hold a pre-construction meeting with the Building Services Division staff to discuss noise control measures and to provide an opportunity for inspection and verification of noise control measures.

b. The project team will post signage with construction hours of operation and contact information for the Building Services Department, Oakland Police Department and the Contractor's noise enforcement representatives. Randy Knaus and Steve Rodriguez are the Contractor's noise enforcement representatives for this project. Randy and Steve are responsible for documenting complaints in the Noise Complaint Log and remedying complaints within 48 hours after receiving the complaint.

c. The project team will notify neighbors and occupants within 300 feet of the project site at least 30 days in advance of extreme noise generating activities.

d. All noise complaints received will be documented in the Noise Complaint Log (Exhibit I). At a minimum the following information will be documented in the log: date of complaint, contact information for person providing a noise complaint, reason for the complaint, action taken and/or resolution. Additionally, an email will be notified within 48 hours with an explanation of the corrective measures taken, if applicable. Complaint Logs (Exhibit I) will be maintained up to date and shall be submitted to the Building Services Division monthly and upon request.

SCA-NOI-6: Pile Driving and Other Extreme Noise Generators

Mitigation Implementation/Monitoring: Ongoing throughout demolition, grading, and/or construction activities.

Requirements:

To further reduce potential pier drilling, pile driving and/or other extreme noise generating construction impacts greater than 90dBA, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the Planning and Zoning Division and the Building Services Division to ensure that maximum feasible noise attenuation will be achieved. This plan shall be based on the final design of the project. A third-party peer review, paid for by the project applicant, may be required to assist the City in evaluating the feasibility and effectiveness of the noise reduction plan submitted by the project applicant. The criterion for approving the plan shall be a determination that maximum feasible noise attenuation will be achieved. A special inspection deposit is required to ensure compliance with the noise reduction plan. The amount of the deposit shall be determined by the Building Official, and the deposit shall be submitted by the project applicant concurrent with submittal of the noise reduction plan. The noise reduction plan shall include, but not be limited to, an evaluation of implementing the following measures. These attenuation measures shall include as many of the following control strategies as applicable to the site and construction activity:

a. Erect temporary plywood noise barriers around the construction site, particularly along on sites adjacent to residential buildings.

b. Implement "quiet" pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions.

c. Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site.

d. Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example and implement such measure if such measures are feasible and would noticeably reduce noise impacts.

e. Monitor the effectiveness of noise attenuation measures by taking noise measurements.

Extreme Noise Generator Mitigation Plan:

Developer, its Contractor, and/or its consultant will:

a. In the event of a noise complaint, will contract with a qualified acoustical engineer to access construction noise levels at City approved monitoring locations, in order to verify compliance with Oakland Noise Regulations related to construction. The consultant will produce a site-specific noise reduction plan with recommended noise control measures for review and approval by Building Services, and the project sponsors will apply all prescribed noise reduction measures in this plan.

b. Developer and/or its Contractor will perform periodic inspections to confirm compliance.

c. Hire qualified noise consultant for initial noise assessment and provide written letter with findings. See Exhibit R – Noise Consultant Review Letter.

SCA-PSU-2: Fire Safety Phasing Plan – Mitigation 4.9-3

Mitigation Implementation/Monitoring: Prior to issuance of a demolition, grading, and/or construction and concurrent with any p-job submittal permit.

Requirments:

The Port and City shall require developers within their respective jurisdictions to notify OES of their plans in advance of construction or remediation activities. Each developer proposing construction in the redevelopment project area would be required to notify OES prior to initiation of construction, so that OES may plan emergency access and egress taking into consideration possible conflicts or interference during the construction phase. The developer would also be required to notify OES once construction is complete.

Fire Safety Phasing Plan:

The Developer or its Contractor will:

a. Notify California Emergency Management Agency (CalEMA, formerly OES) prior to and at the completion of construction.

b. Submit a separate fire safety phasing plan (Exhibit N) to the Planning and Zoning Division and Fire Services Division for their review and approval. The fire safety plan shall include all of the fire safety features incorporated into the project and the schedule for implementation of the features.

SCA-TRANS-2: Construction Traffic and Parking

Mitigation Implementation/Monitoring: Prior to the issuance of a demolition, grading or building permit; and on-going throughout demolition, grading, and/or construction.

Requirement:

The project sponsor and construction contractor shall meet with appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project (see also SCA TRANS-1, especially "h") and other nearby projects that could be simultaneously under construction. The project sponsor shall develop a construction management plan. The plan shall be submitted to EBMUD, the Port, and Caltrans for their review and comment ten (10) business days before submittal to the City. The project sponsor shall consider in good faith such comments and revise the plan as appropriate. The revised plan shall be submitted for review and approval by the City's Planning and Zoning Division, the Building Services Division, and the Transportation Services Division. The plan shall include at least the following items and requirements:

a. A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.

b. Notification procedures for adjacent project sponsors and public safety personnel regarding when major deliveries, detours, and lane closures will occur.

c. Location of construction staging areas for materials, equipment, and vehicles at an approved location.

d. A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services.

e. Provision for accommodation of pedestrian flow.

f. Provision for parking management and spaces for all construction workers to ensure that construction workers do not park in on-street spaces (see also SCA TRANS-1, especially "h").

g. Any damage to the street caused by heavy equipment, or as a result of this construction, shall be repaired, at the applicant's expense, within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to issuance of a final inspection of the building permit. All damage that is a threat to public health or safety shall be repaired immediately. The street shall be restored to its condition prior to the new construction as established by the City Building Inspector and/or photo documentation, at the applicant's expense, before the issuance of a Certificate of Occupancy.

h. Any heavy equipment brought to the construction site shall be transported by truck, where feasible.

i. No materials or equipment shall be stored on the traveled roadway at any time.

j. Prior to construction, a portable toilet facility and a debris box shall be installed on the site, and properly maintained through project completion.

k. All equipment shall be equipped with mufflers.

l. Prior to the end of each work day during construction, the contractor or contractors shall pick up and properly dispose of all litter resulting from or related to the project, whether located on the property, within the public rights-of-way, or properties of adjacent or nearby neighbors. Specifically, to further implement SCA TRANS-2,

m. A traffic construction management analysis was performed which recommended certain improvements to the Adeline/5th and Adeline/3rd Street and Adeline Street intersection, which is discussed under construction impacts of the Traffic and Transportation section of the 2012 OARB Initial Study/Addendum. The requirement for these improvements is not applicable to Prologis's vertical project.

Construction Traffic and Parking Mitigation Plan:

The Developer, its Contractor, or its consultant will prepare a Traffic Control Plan if encroachment into the public right-of-way is required. When required, a Traffic Control Plan will be submitted to EBMUD, the Port, and CalTrans for review and comment no less than 10 days prior to submittal to the City. Incorporate comments and revise plan as appropriate.

a. Submit the Traffic Control Plan to the City for review and approval prior to undertaking any project construction that affects pedestrian or vehicular circulation in the public right-of-way.

b. Schedule major truck trips and deliveries to avoid peak traffic hours.

c. Designate construction access routes, construction staging areas, remediation staging areas, construction and visitor parking areas, and pedestrian walkways. Delineate these areas on Project plans. (Exhibit D & F) All truck traffic involving vehicles over 2 tons are restricted to pre-approved truck route. This will be a contractual requirement. In addition, this requirement will be communicated at the each subcontractor preconstruction meeting and weekly subcontractor meetings

d. Notify adjacent property owners and occupants and public safety personnel and erect electronic message boards in advance of major deliveries, detours, and/or lane closures. (Exhibit K)

e. Survey and document existing conditions prior to construction. Repair damage to streets caused by construction equipment within one week of occurrence unless damage is anticipated to continue. Immediately repair damage that is a threat to public health or safety.

f. Transport heavy equipment to the site by truck/trailer.

g. Require all operators tracking dirt/mud onto public roadways to have a wet power vacuum sweeper present daily during these activities and remove tracked dirt/mud at the end of each day or more frequently if needed. (See Dust Control Mitigation Plan)

h. Install construction area entrances at all ingress and egress sites to ensure dirt is kept off of public roads. (See Exhibit B and Dust Control Mitigation Plan)

i. Draft and implement a Project SWPPP. Required BMPs will be outlined in the SWPPP and enforced with reporting and inspection.

j. Inspect construction area and vicinity daily, and collect and properly dispose of construction-related litter, whether located on the property, within the public rights-of-way, or adjacent properties.

k. Post signage and enforce traffic control measures with reporting and/or inspection.

l. Develop a process for receiving, responding to, and tracking complaints. (See Exhibit I)

m. The Project Compliance Manager Randy Knaus will monitor and facilitate the implementation of mitigation measures. The Compliance Manager will maintain Daily Inspection Logs throughout the Project. (See exhibit M)

n. All equipment will be equipped with mufflers to reduce pollutants and noise. Developer, its Contractor, and/ or its consultant will perform periodic inspections to confirm compliance.

o. An updated Project Truck Log (Exhibit L) will be submitted to Building Services monthly and upon request. The log will summarize all deliveries and off-hauls involving weights (truck + haul load) of 2 to 5 tons, and > 5 tons.

p. Project Truck Log (Exhibit L) and pre-and post-construction videos (Exhibit Q) will be taken to assess potential wear and tear solely due to traffic directly and specifically attributable to construction of the North East Gateway.

SCA-UTL-2: Waste Reduction and Recycling

Mitigation Implementation/Monitoring: Prior to the issuance of a demolition, grading or building permit.

Requirements:

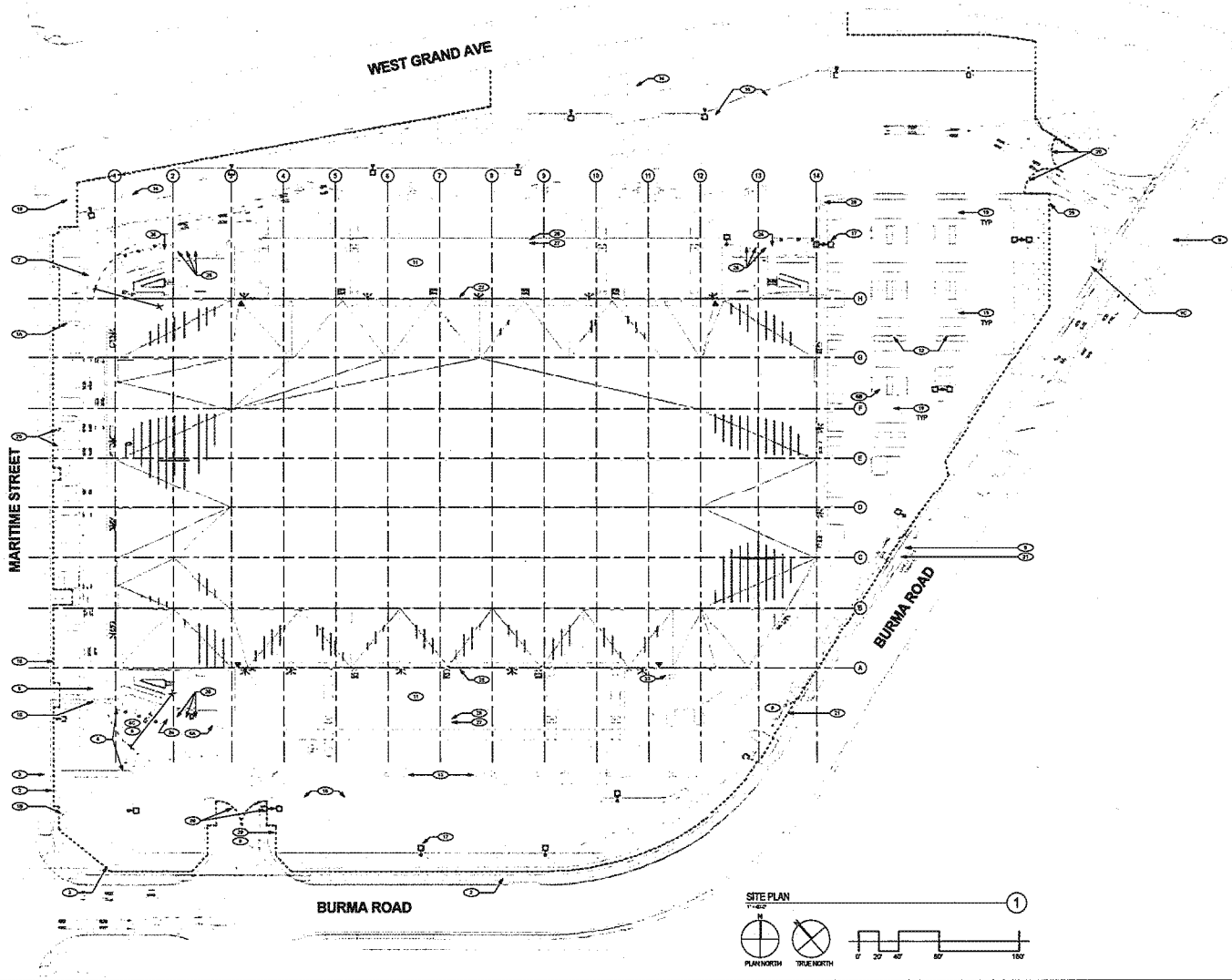
The project applicant will submit a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency. Chapter 15.34 of the Oakland Municipal Code outlines requirements for reducing waste and optimizing construction and demolition (C&D) recycling. Affected projects include all new construction, renovations/alterations/modifications with construction values of $50,000 or more (except R-3), and all demolition (including soft demo). The WRRP must specify the methods by which the development will divert C&D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at *http://www2.oaklandnet.com/Government/o/PWA/o/FE/s/GAR/OAK024368* or in the Green Building Resource Center. After approval of the plan, the project applicant shall implement the plan.

Waste Reduction and Recycling Action:

The Developer, its Contractor, or its consultant will:

a. Prepare a Waste Reduction and Recycling Plan. Submit the plan to the City for review and approval.

b. Identify and track all waste for applicability of reuse or diversion.



SITE STATISTICS

PARCEL NUMBER:	018 050701000
ZONING:	D-CE
HEIGHT - CENTRAL BUSINESS DISTRICT:	N/A
HEIGHT - COMMERCIAL CORRIDOR:	N/A
MAXIMUM BUILDING HEIGHT:	85'-0" (PER OAKLAND ZONING 17.101F.050)
MAXIMUM FLOOR AREA RATIO:	5 (PER OAKLAND ZONING 17.101F.050)
GENERAL PLAN:	BUSINESS MIX
CONDO CONVERSION IMPACT AREA:	NO
CITY COUNCIL DISTRICT:	CCD3
S26 SERVICE DISTRICT:	1
PORT OF OAKLAND JURISDICTION:	NO
LOCAL HISTORIC PROPERTY CATEGORY:	LOCAL REGISTER
LOCAL HISTORIC DISTRICT:	
OCHS RATING:	
CONSTRUCTION DATE:	
LOCAL LANDMARK:	NO
NATIONAL HISTORIC LANDMARK :	NO
HERITAGE PROPERTY:	NO
DESIGNATED HISTORIC DISTRICT:	NO
MILLS ACT	NO
WHIPSNAKE CRITICAL HABITAT:	NO
FLOOD ZONE:	NO
HAYWARD FAULT ZONE:	NO
LIQUEFACTION HAZARD ZONE:	YES, LIQUEFACTION SEVERITY 5
WILD FIRE ASSESSMENT DISTRICT:	NO
TOTAL SITE AREA =	702,071.2175 G.S.F. = 16.12 ACRES
TOTAL BLDG AREA =	256,136 G.S.F.
SITE COVERAGE =	36.49 %
TOTAL VEHICLE PARKING =	234 STALLS = .84 / 1000 S.F.
TOTAL TRAILER PARKING =	73 TRAILER STALLS (12' X 50')
PARKING STANDARDS (17.116.290)	
STANDARD PARKING STALLS	18' DEEP X 8.5' WIDE
COMPACT PARKING STALLS	15' DEEP X 7.5' WIDE (50% MAX)
PARALLEL PARKING STALLS	26.5' DEEP X 7.5' WIDE
DRIVE ISLE WIDTH (17.116.210) AT 90 DEGREE PARKING:	21 FEET MINIMUM
REQUIRED PARKING PER ZONING CODE:	
OFFICE (17.116.060 C, BUSINESS):	1 / 600 S.F.
INDUSTRIAL ACTIVITIES (17.116.090)	1 / 1500 S.F. OR 1 FOR EACH 3 EMPLOYEES (WHICHEVER IS GREATER)
REQUIRED PARKING BY USE:	
OFFICE = (8,348 S.F. @ 1/600 S.F.)	14 STALLS
WAREHOUSE = (247,787 S.F. @ 1/1500 S.F.)	165 STALLS
TOTAL PARKING REQUIRED =	179 STALLS = .70 / 1000 S.F.
TOTAL PARKING PROVIDED =	178 STALLS = .70 / 1000 S.F.

BIORETENTION AREAS

12' X 14' GRADE LEVEL SECTIONAL ROLL UP DOOR

8' X 10' DOCK LEVEL SECTIONAL ROLL UP DOOR

KEY NOTES

1A SITE SIGNAGE FOR REFERENCE ONLY - OVERALL DEVELOPMENT PYLON SIGN

1B SITE SIGNAGE FOR REFERENCE ONLY - BUILDING MONUMENT SIGN

1C SITE SIGNAGE FOR REFERENCE ONLY - CUSTOMER DIRECTORY SIGNS (2 TOTAL)

2 PROPERTY LINES TO REMAIN

3 50' WIDE (MIN 8.5M SIDEWALK) AT MARITIME AND BURMA RD

4 TYPICAL 8" TALL 12" WIDE CONCRETE CURBS

5 TYPICAL 4" WIDE TRAFFIC STRIPING

6A TYPICAL PARKING - STANDARD STALLS 18'-0" DEEP MIN 8'-6" SHOWN THROUGHOUT

6B TYPICAL PARKING - COMPACT STALLS 15'-0" DEEP MIN 7'-6" SHOWN THROUGHOUT, (50%)

6C TYPICAL PARKING - ACCESSIBLE PARKING STALLS 9'-0" WIDE MIN / PARKING OVERHANG WITH 8' DEEP WIDE SAFETY ZONE AS SHOWN

7 TYPICAL DRIVE ISLE, 25'-0" MIN / ACTUAL SIZES INDICATED

8 PARKING AND DRIVE ISLES TO BE ASPHALTIC CONCRETE

9 PROPOSED LOCATION OF NEW SITE ACCESS DRIVE CURB CUT AT BURMA RD

10 NEW CONCRETE PEDESTRIAN WALKS 10'-0" WIDE MIN, ADA REQUIRED SIDEWALKS TO BE ACCESSIBLE PATHS OF TRAVEL, SLOPE NOT EXCEED 1:20 (5%), INTERSECTION OF TRAVEL GRADE SLOPE NOT TO EXCEED 1:50 (2%) WHERE PARKING OVERHANG OCCURS, INCREASE WIDTH OF SIDEWALK TO 8'-0" MIN

11 TRUCK DOCK

12 TYP LANDSCAPE PLANTER AREA

13 18M TRACTOR TRAILER TEMPLATE SHOWN FOR REFERENCE ONLY

14 DI SITE BILLBOARD LOCATION (2 TOTAL)

15 8' TALL PAINTED WROUGHT IRON FENCE, SEE SPECS

16 TYP 12' X 50' TRAILER PARKING STALL

17 SITE LED RING POLE MOUNTED LIGHT FIXTURE

18 SEE CIVIL DRAWINGS FOR EASEMENT LOCATIONS AND INFORMATION

19 PLANNED FLEXIBLE STORAGE ZONES

20 SWINGING SECURITY GATES

21 SLIDING SECURITY GATE

22 PROPOSED BUILDING EXTERIOR WALLS TO BE SITE CAST TILT UP CONCRETE WALLS WITH REVEALS & TEXTURED/SLIP/SATIN/MATTE COATING AND A MULTI COLOR CONTRAST PAINT PALETTE. EXTERIOR WALLS ARE ACCENTED WITH GLAZING, STEEL, COMPOSITE ALUMINUM PANELS AND ARCHITECTURAL METAL PANELS. SEE EXTERIOR ELEVATIONS

23 LOCATION OF BICYCLE PARKING TO ACCOMMODATE A TOTAL OF 18 BICYCLES, PER CALGREEN REQUIREMENTS

24 AREA OF ASSISTED RESCUE

25 ELECTRIC VEHICLE CHARGING STATIONS (2 TOTAL, SERVICING 4 PARKING SPOTS). PROVIDE CHARGE & STATION SIGNAGE

26 2 HIGH EFFICIENCY VEHICLE STALLS (NEW) - 1% TOTAL 8 (PROJECT GREATER THAN THE REQUIREMENT 10% OF TOTAL)

27 PROVIDE BOLLARDS AT FOUR CORNERS OF FH, CONTRACTOR TO COORD BOLLARDS TO NOT CONFLICT WITH FH

28 PARKING GARAGE, TYP, SEE CIVIL DWGS

29 PERIMETER HIGH SECURITY INTEGRATED INFO FENCE

RMW architecture & interiors
160 Pine Street
San Francisco, CA 94111
Tel 415.781.9800
Fax 415.788.5216
www.rmwa.com

Stamp:

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#	Description	Date
	ISSUE FOR PERMIT	10.29.20

ISSUE : ISSUE FOR PERMIT FEB 09 2018

OAKLAND GLOBAL LOGISTICS CENTER

PHASE 1, NORTH EAST GATEWAY
OAKLAND, CALIFORNIA

PROLOGIS

3353 GATEWAY BLVD
FREMONT, CALIFORNIA
94539

TELEPHONE: 510.494.1000

Date: DATE:
Project No.: 18024.00

Sheet Title: SITE PLAN

Sheet No.: A1.0.1

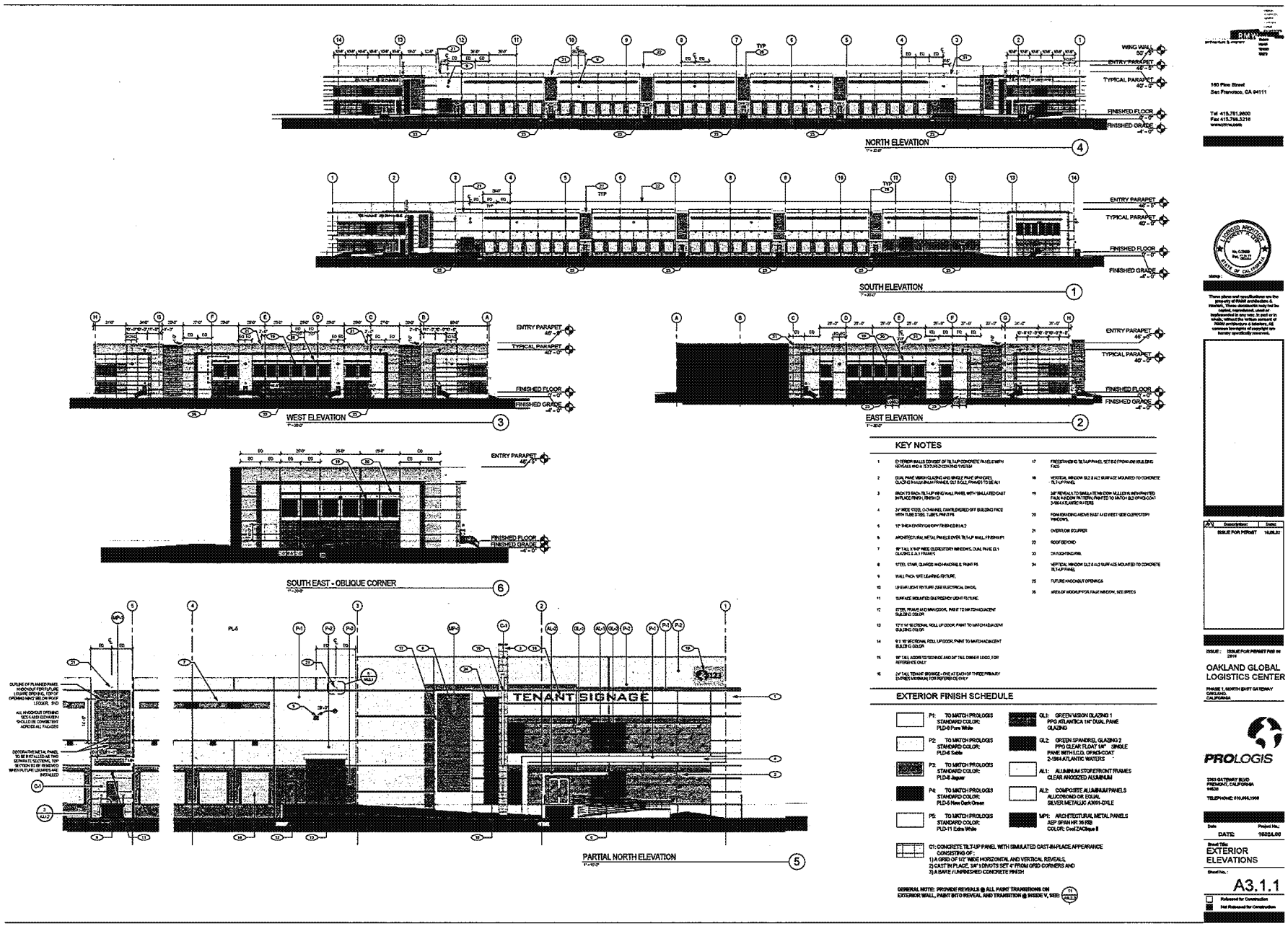
☐ Released for Construction
☑ Not Released for Construction

002680 2020-10-29

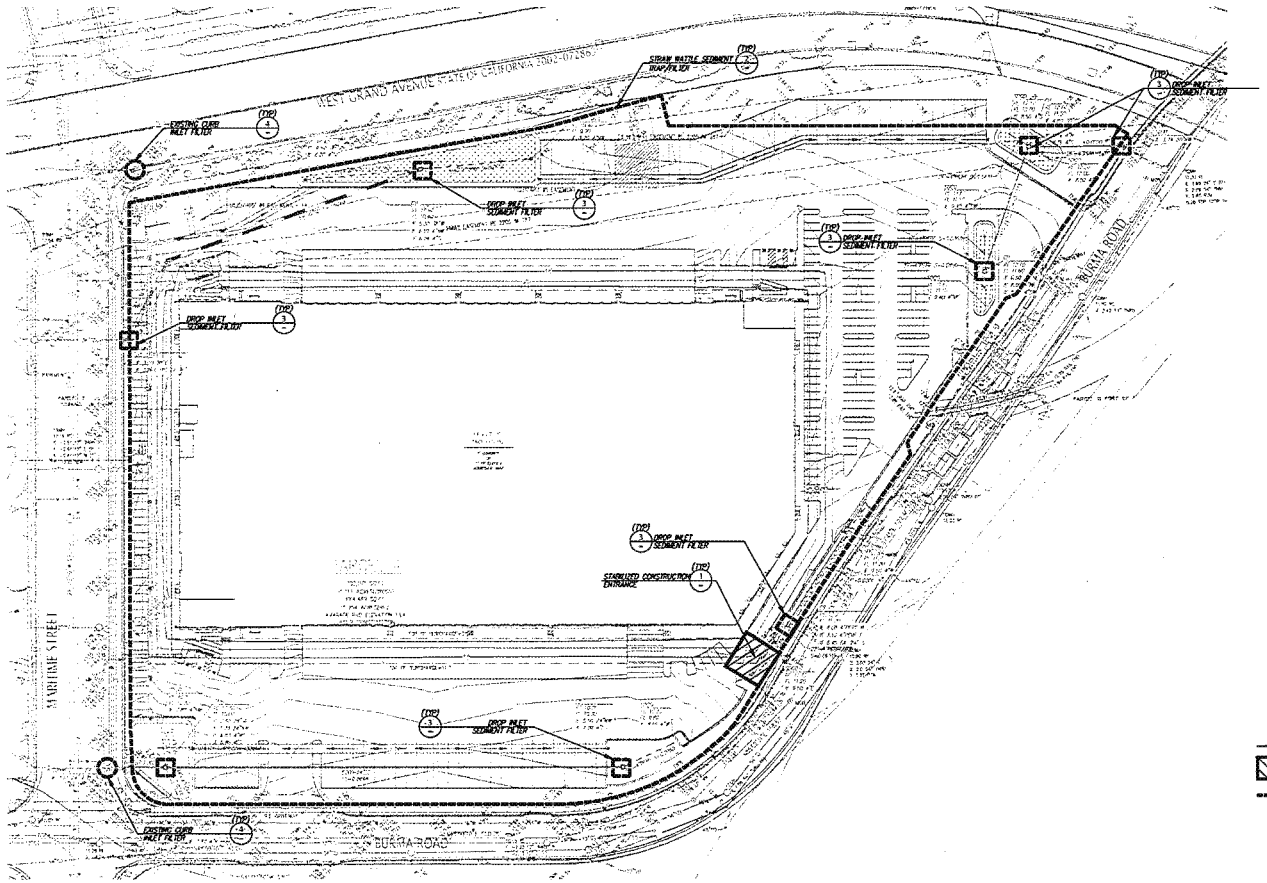
PROLOGIS

WT Working Turner

Exhibit A- Site Plan and Elevation

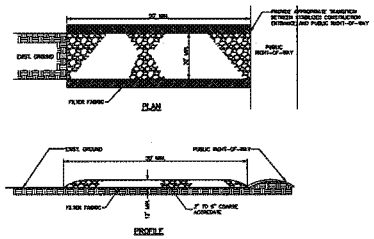


0020810 2020-10-23

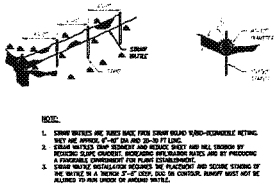


LEGEND

- STABILIZED CONSTRUCTION ENTRANCE
- STRAW WATTLE SEDIMENT TRAP/FILTER
- DROP INLET SEDIMENT FILTER
- EXISTING CURB INLET FILTER

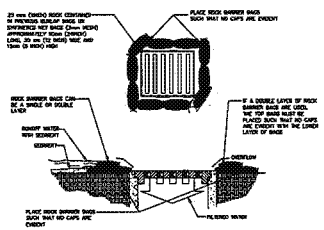


STABILIZED CONSTRUCTION ENTRANCE (1)
NOT TO SCALE

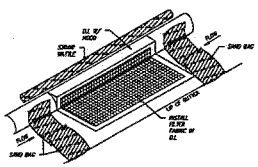


NOTE:
1. STRAW WATTLES ARE MADE FROM STRAW BOUND WIRE-NONBIODEGRADABLE NETTING. THEY ARE APPROX. 8"-10" DIA AND 20-30 FT LONG.
2. STRAW WATTLES TRAP SEDIMENT AND REDUCE RUNOFF AND RILL EROSION BY REDUCING SLOPE GRADIENT, INCREASING INFILTRATION RATES AND BY PRODUCING MICRO-CLIMATES FOR SEED GROWTH ON DISTURBED SOILS.
3. STRAW WATTLE INSTALLATION INCLUDES THE PLACEMENT AND SECURE STAKING OF THE WATTLE IN A TRENCH 3"-4" DEEP, DUG ON CONTOUR. RUNOFF MUST NOT BE ALLOWED TO RUN UNDER OR AROUND WATTLE.

STRAW WATTLE SEDIMENT TRAP/FILTER (2)
NOT TO SCALE



DROP INLET SEDIMENT FILTER UTILIZING ROCK BARRIER BAGS (3)
NOT TO SCALE



EXISTING CURB INLET FILTER DETAIL (4)
NOT TO SCALE

Z:\STANDARDS\DETAILS\ EROSION CONTROL\ECC07.DWG

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
2850 Collier Canyon Road
Livermore, California 94551
Phone (925) 245-6788
Fax (925) 245-8796

Scale 1" = 50 ft

Description	Date
PERMIT SUBMITTAL	3-3-16

ISSUE: ISSUE FOR PERMIT FEB 26 2016

OAKLAND GLOBAL LOGISTICS CENTER
PHASE 1, NORTHEAST GATEWAY
OAKLAND, CALIFORNIA

PROLOGIS
3353 GATEWAY BLVD
FREMONT, CALIFORNIA 94538
TELEPHONE: 510.864.1000

Date: JAN. 2016
Project No.: A13533-1

Sheet Title: EROSION CONTROL PLAN

Sheet No.: C6

☐ Released for Construction
■ Not Released for Construction

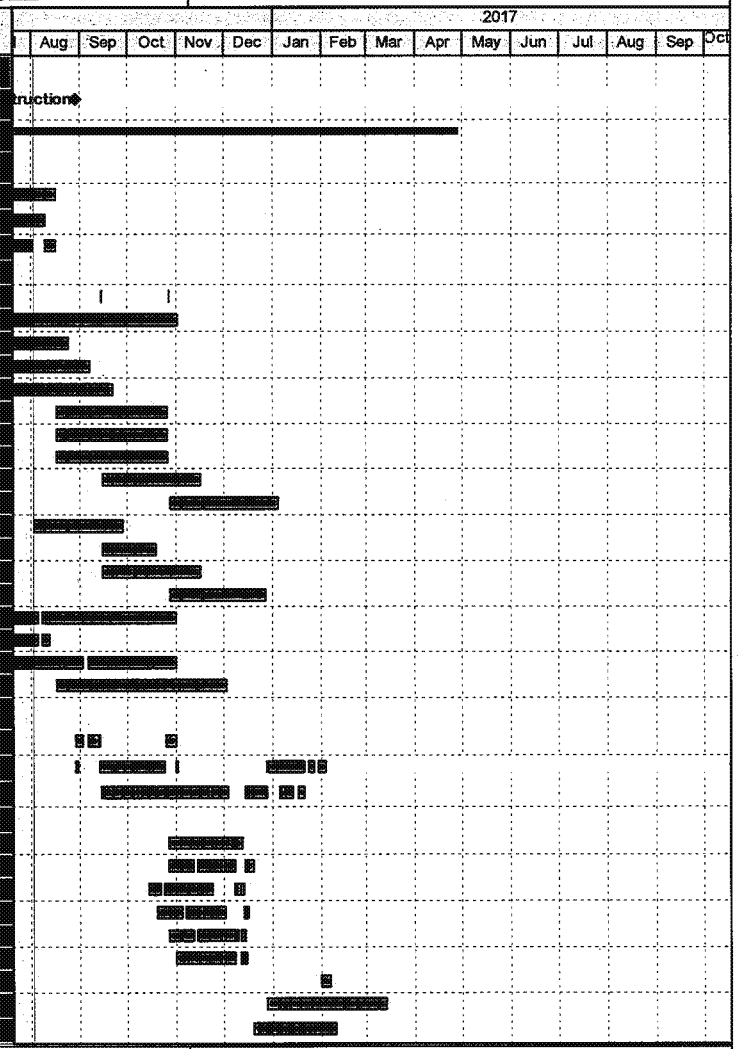
PROLOGIS
WT Wattles Turner

WHITING-TURNER CONTRACTING COMPANY
Page: 1 of 2

PROLOGIS - OAB NORTHEAST GATEWAY
PROJECT SCHEDULE

Prologis

Activity ID	Activity Name	OD	Start	Finish
	PROLOGIS PHASE 1 - Aug 4, 2016 Working	230	24-Feb-16 A	19-May-17
	PROJECT MILESTONES	199	25-Feb-16 A	28-Apr-17
	PROJECT SUMMARY	199	24-Feb-16 A	28-Apr-17
	PRECONSTRUCTION / CONTRACT / DESIGN	174	24-Feb-16 A	04-Jan-17
	BUDGET & GMP	65	24-Feb-16 A	16-Aug-16
	DESIGN DOCUMENTS & PERMITTING	35	24-Feb-16 A	10-Aug-16
	SUBCONTRACTOR BID / AWARD	31	09-May-16 A	16-Aug-16
	PROCUREMENT	174	22-Jun-16 A	04-Jan-17
	INCREMENTAL SUBMITTALS	61	18-Jul-16 A	27-Oct-16
	UNDERGROUND UTILITIES - EBMUD	80	12-Jul-16 A	01-Nov-16
	UNDERGROUND UTILITIES - WATER/SEWER/STORM	32	12-Jul-16 A	24-Aug-16
	UNDERGROUND UTILITIES- FIRE WATER	36	05-Jul-16 A	07-Sep-16
	CONCRETE	53	08-Jul-16 A	21-Sep-16
	BRBF'S	50	17-Aug-16	26-Oct-16
	COLUMNS & LEDGERS	50	17-Aug-16	26-Oct-16
	METAL STAIRS	50	17-Aug-16	26-Oct-16
	STOREFRONT	45	15-Sep-16	16-Nov-16
	METAL WALL PANELS	45	28-Oct-16	04-Jan-17
	HOLLOW METAL DOORS	40	03-Aug-16	28-Sep-16
	GLAZING SYSTEM	25	15-Sep-16	19-Oct-16
	OVERHEAD DOORS	45	15-Sep-16	16-Nov-16
	SITE PERIMETER FENCE	40	28-Oct-16	27-Dec-16
	FIRE PUMP	63	05-Jul-16 A	31-Oct-16
	FIRE SPRINKLER SYSTEM	39	22-Jun-16 A	12-Aug-16
	PANELIZED ROOF SYSTEM	63	18-Jul-16 A	31-Oct-16
	ELECTRICAL	75	17-Aug-16	02-Dec-16
	CONSTRUCTION	183	29-Aug-16	19-May-17
	MOBILIZATION/DEMO/SITE PREP	45	29-Aug-16	31-Oct-16
	SITE UTILITIES	168	29-Aug-16	28-Apr-17
	FOUNDATIONS & SOG	88	14-Sep-16	20-Jan-17
	SITECAST PANELS	77	14-Oct-16	06-Feb-17
	SITECAST FABRICATION - QUAD 1	31	27-Oct-16	12-Dec-16
	SITECAST FABRICATION - QUAD 2	36	27-Oct-16	19-Dec-16
	SITECAST FABRICATION - QUAD 3	41	14-Oct-16	13-Dec-16
	SITECAST FABRICATION - QUAD 4	40	20-Oct-16	16-Dec-16
	SITECAST FABRICATION - QUAD 5	33	27-Oct-16	14-Dec-16
	SITECAST FABRICATION - QUAD 6	31	01-Nov-16	15-Dec-16
	SITECAST ERECTION	4	01-Feb-17	06-Feb-17
	ROOF CONSTRUCTION & MEP EQUIPMENT	51	28-Dec-16	13-Mar-17
	EXTERIOR FINISHES	35	20-Dec-16	09-Feb-17



Date Date:03-Aug-16
Print Date: 18-Aug-16

Exhibit E - 8.4.16

TASK filter: All Activities
© Oracle Corporation

PROLOGIS WT Whiting-Turner

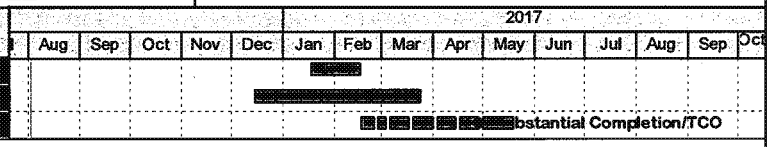
002683 2020-10-29

WHITING-TURNER CONTRACTING COMPANY
Page: 2 of 2

PROLOGIS - OAB NORTHEAST GATEWAY
PROJECT SCHEDULE

Prologis

Activity ID	Activity Name	OD	Start	Finish
	INTERIOR ROUGH-IN	22	18-Jan-17	16-Feb-17
	SITEWORK	68	15-Dec-16	24-Mar-17
	FINAL INSPECTIONS / PROJECT COMPLETION	65	17-Feb-17	19-May-17

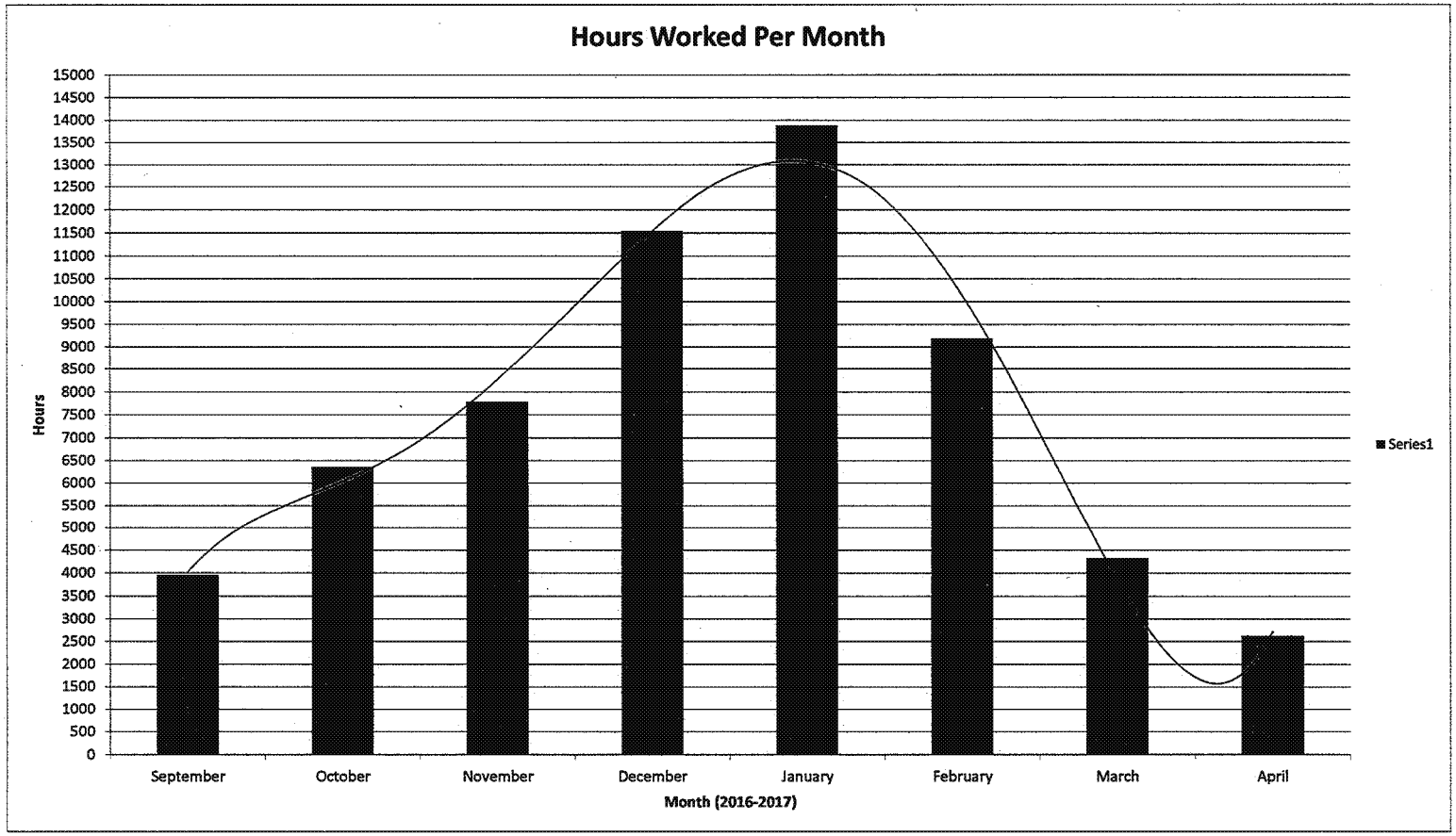


Date Date:03-Aug-16
Print Date: 18-Aug-16

Exhibit E - 8.4.16

TASK filter: All Activities
© Oracle Corporation

002004 2020-10-29



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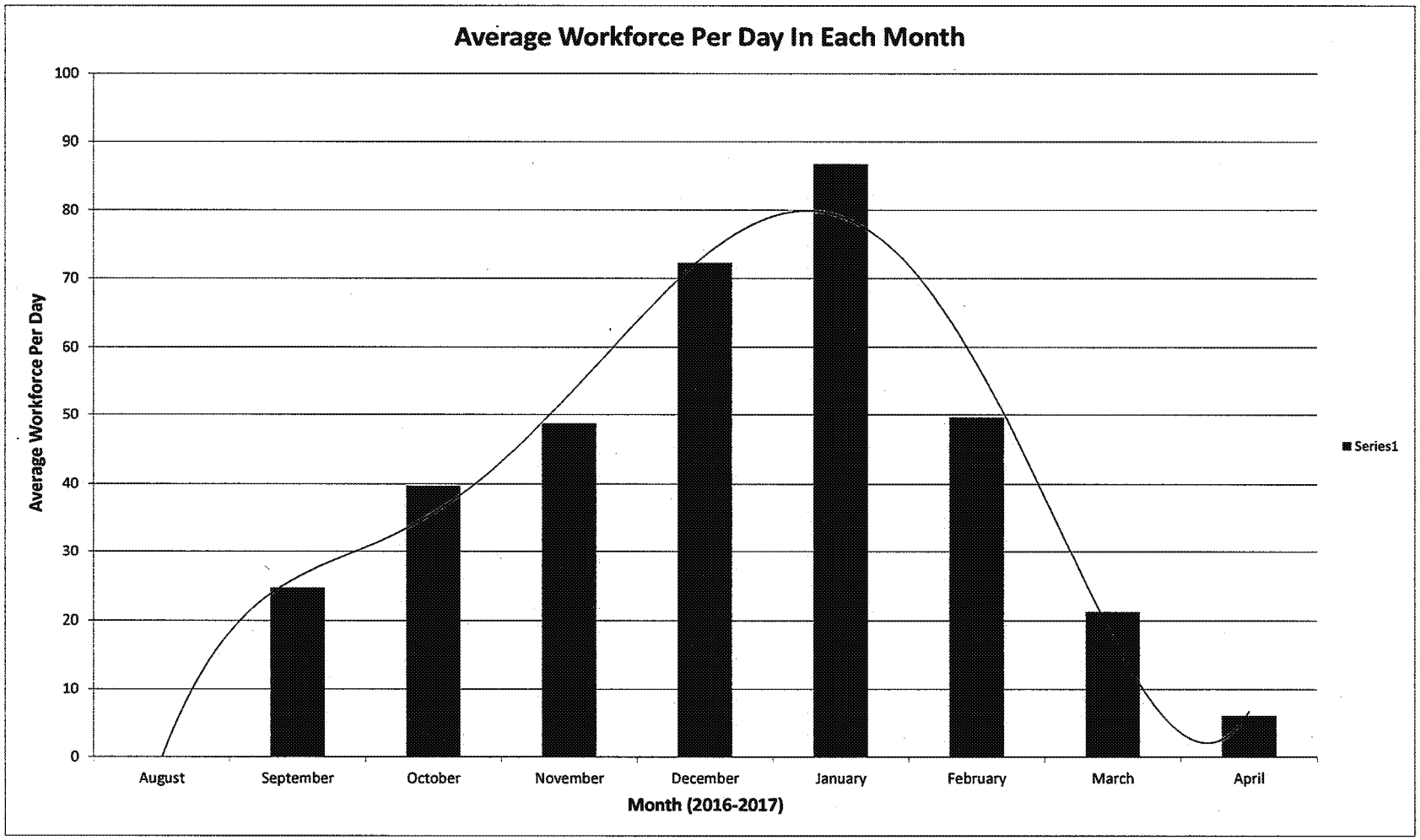
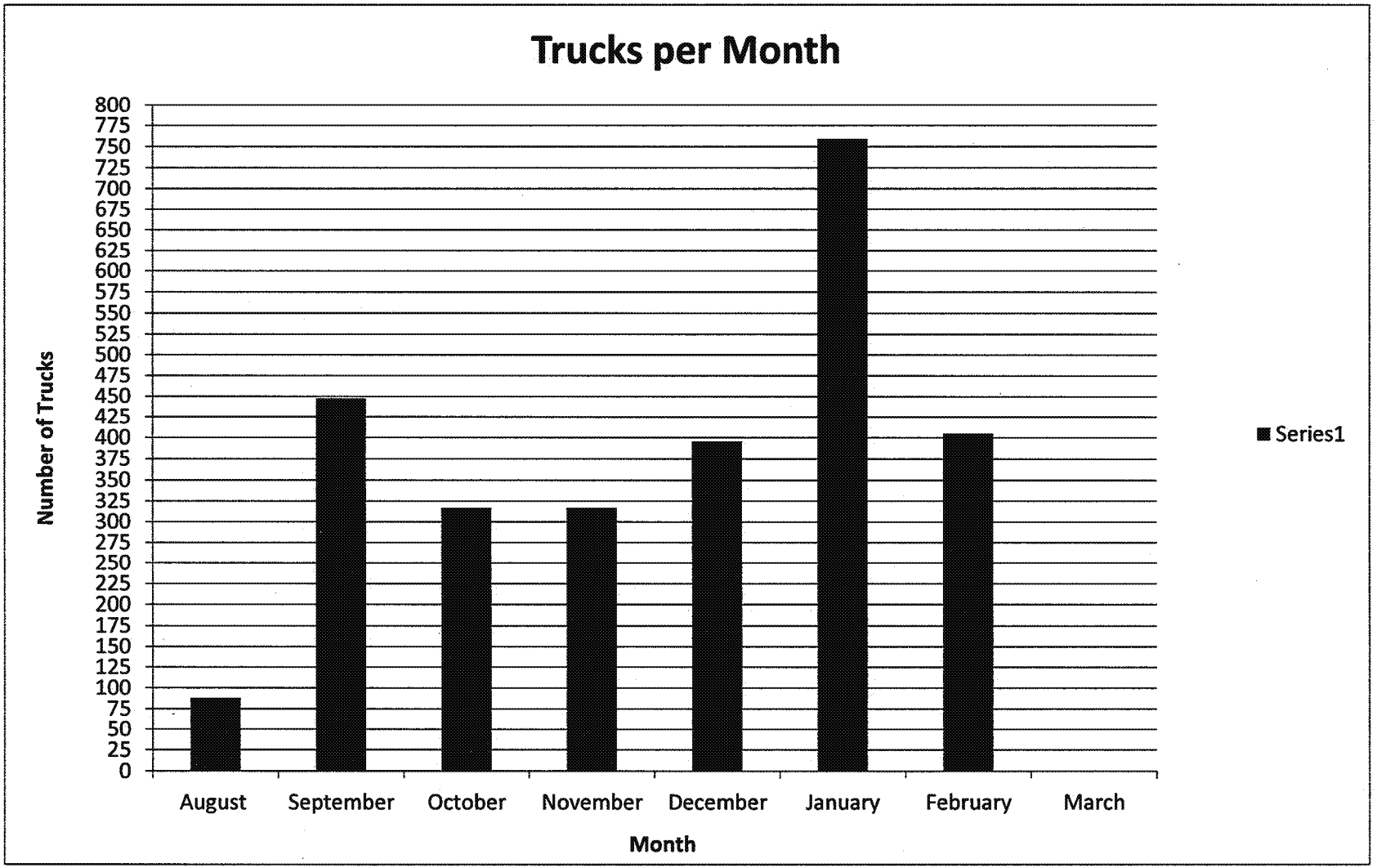
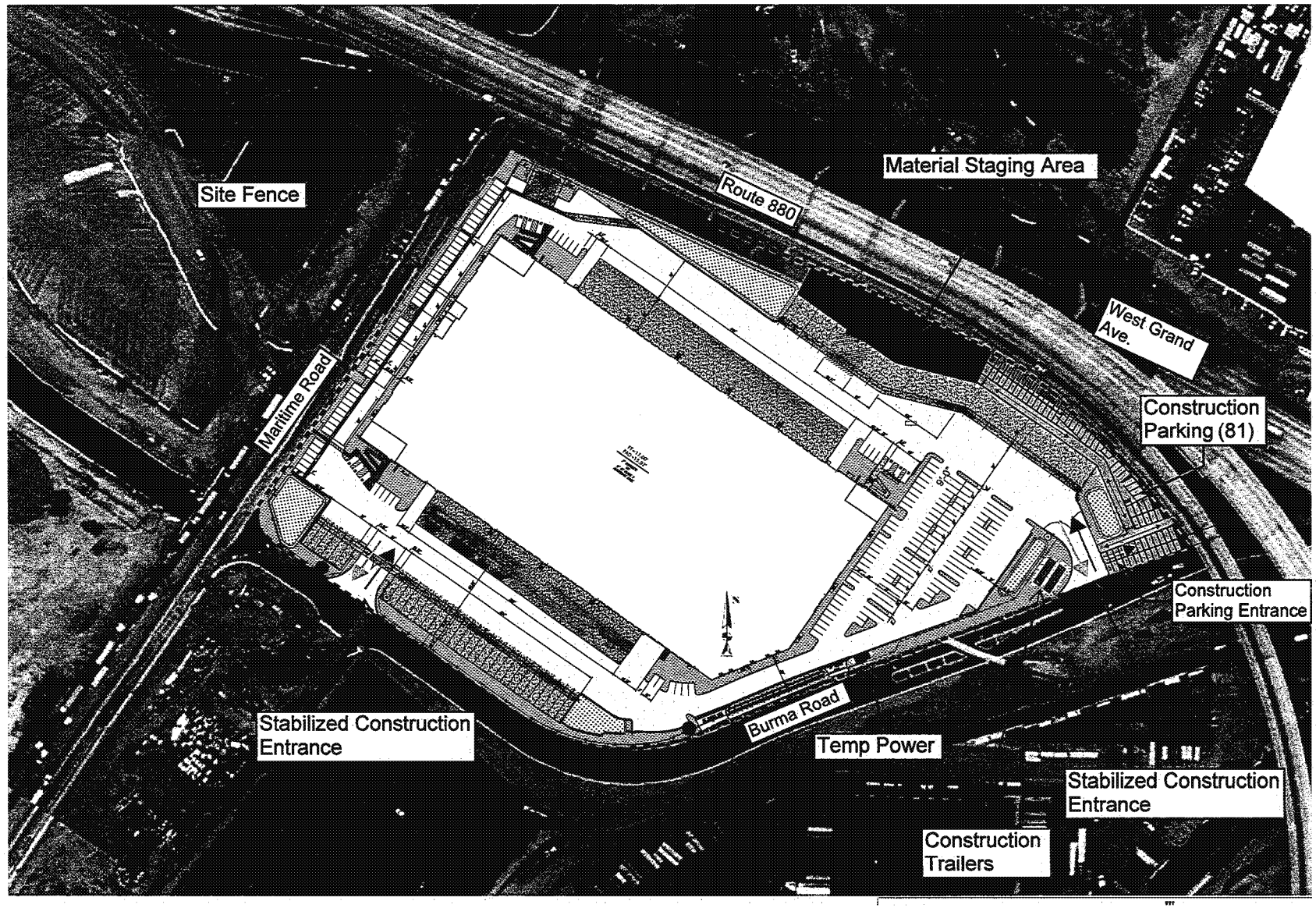


PROLOGIS
002686 2020-10-29



002087 2020-10-29

Exhibit D- Project Logistics Plan



● Fire Hydrant
⊙ Construction Signage
- - - Construction Fence

*All truck queuing will be accommodated on-site. No queuing on public streets will be necessary.

The Developer, its Contractor, or its consultant will prepare a Traffic Control Plan if encroachment into the public right-of-way is required. When required, a Traffic Control Plan will be submitted to EBMUD, the Port, and CalTrans for review and comment no less than 10 days prior to submittal to the City. Incorporate comments and revise plan as appropriate.

Exhibit F- Approved Truck Haul Route

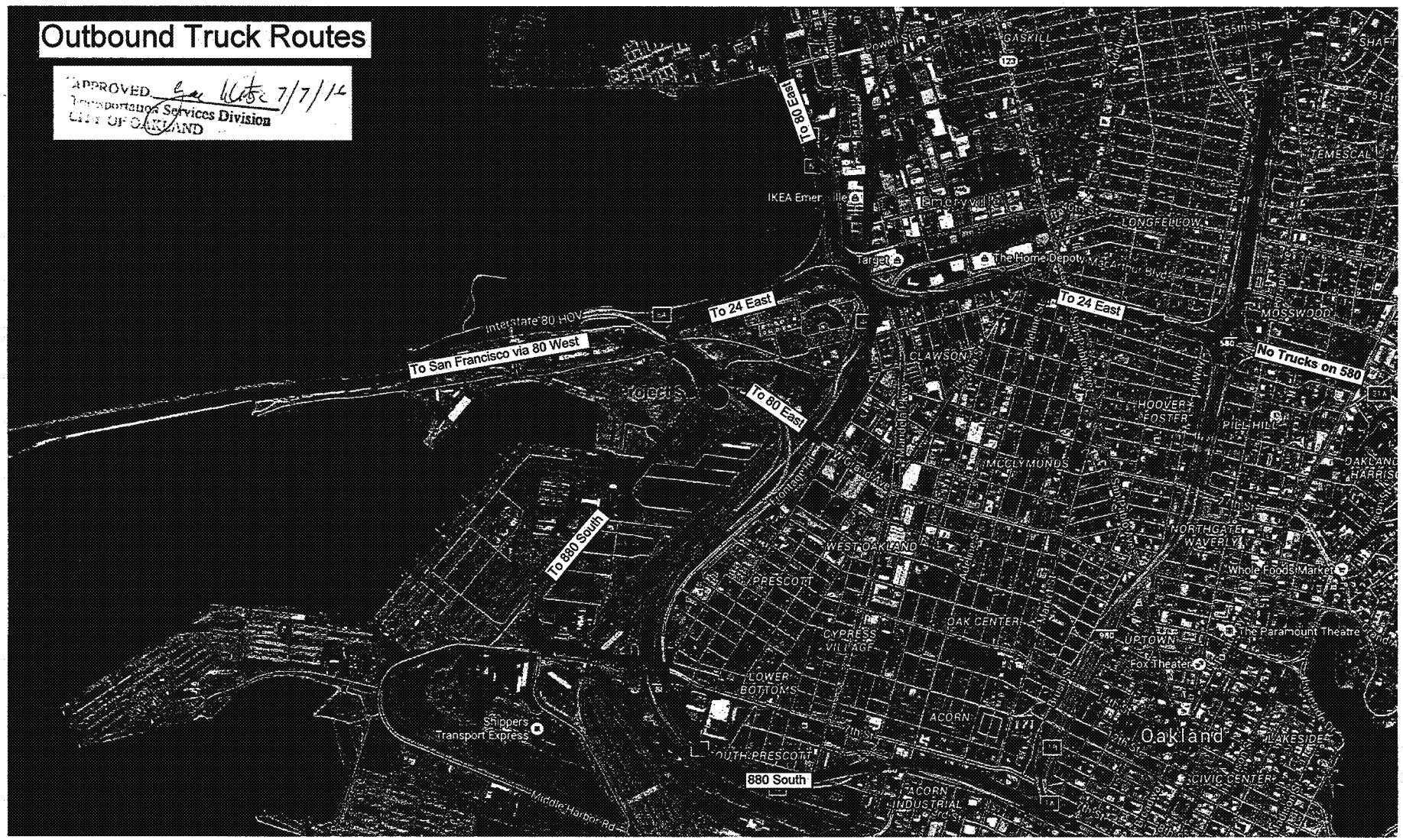


Exhibit F- Approved Truck Haul Route

SPEED
LIMIT
15 MPH
ON UNPAVED ROADS

ATTENTION

PERMITTED CONSTRUCTION HOURS:
Monday-Friday 7AM-7PM

There will be no work on site outside of permitted hours without written permission from City of Oakland.

FOR CONCERNS REGARDING DUST, CONSTRUCTION NOISE, EROSION OR ANY CONSTRUCTION ACTIVITY ON THIS PROJECT PLEASE CONTACT:

During Construction Hours – Randy Knaus (925)-271-6023
After Construction Hours – Steve Rodriguez (925-)-271-6590

CITY OF OAKLAND CODE COMPLIANCE:
(510) 238-3381

OAKLAND POLICE DEPARTMENT 24 HR LINE:
(510) 777-3333

BAY AREA AIR QUALITY MANAGEMENT DISTRICT:
(800) 334-6367

Project Name: Prologis Northeast Gateway

Complaint Log

Name and Address of Notifier	Telephone Number and/or Email	Date and Time of Call/Email	Nature of Complaint (Traffic/Noise/Dust/Etc.)
	Received By	Directed To	
	Received By	Directed To	
	Received By	Directed T	

0020-10-28

IDLING POLICY

IDLING TIMES ON ALL DIESEL-FUELED COMMERCIAL VEHICLES OVER 10,000 LBS AND DIESEL-FUELED OFF-ROAD VEHICLES OVER 25 HORSEPOWER SHALL BE MINIMIZED EITHER BY SHUTTING EQUIPMENT OFF WHEN NOT IN USE OR REDUCING THE MAXIMUM IDLING TIME TO FIVE MINUTES.
(CCR TITLE 13, SECTION 2485 & 2449)

VIOLATIONS SUBJECT TO MINIMUM FINE OF $300.

G.W.C. WHITING
(1883-1974)

WILLARD HACKERMAN
PRESIDENT AND CEO

FOUNDED 1909

THE WHITING-TURNER CONTRACTING COMPANY

(INCORPORATED)

ENGINEERS AND CONTRACTORS

4690 CHABOT DRIVE, SUITE 120
PLEASANTON, CALIFORNIA 94588
925-485-0800
FAX 925-485-0854
www.whiting-turner.com

CONSTRUCTION MANAGEMENT
GENERAL CONTRACTING
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SPECIALTY CONTRACTING
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RETAIL/SHOPPING CENTERS
HEALTHCARE
BIOTECH/PHARMACEUTICAL
HIGH TECH/CLEANROOM

INSTITUTIONAL
DATA CENTERS
SPORTS AND ENTERTAINMENT
INDUSTRIAL
WAREHOUSE/DISTRIBUTION
MULTI-FAMILY RESIDENTIAL
ENVIRONMENTAL
BRIDGES, CONCRETE

WRITER'S DIRECT NUMBER IS
925-271-6606

Dear Neighbors,

I am writing to inform you of the upcoming work at the Prologis Northeast Gateway project located in the City of Oakland. The project site is located on the cross streets of Maritime and Burma Road.

Commencement of construction work is scheduled to begin on or around 7/15/2016. Your property address is within a 300' radius of the project site and this letter is providing notice that construction activities involved with construction may exceed the 90dBA level for a period of 10 working days between 7/28/2016 and 8/11/16.

Any construction work over 90dBA is considered an extreme noise generating activity. The City of Oakland requires all property owners within 300' of the project to be notified 30 days prior to any extreme noise activities taking place. Any work over 90dBA will be performed between the hours of 8:00 a.m. and 4:00 p.m. Monday thru Friday. Construction work that may exceed 90dBA will include:

1. The installation and erection of concrete panels.
2. Removal of construction debris into trucks via excavators and front loader equipment.
3. Construction equipment including, but not limited to, excavators, loaders, mobile crane, and dump trucks.

Whiting-Turner looks forward to working closely with our new neighbors and would like to create a solid relationship with them. If a complaint shall arise, please contact the undersigned below, and all complaints received will be noted in a Complaint Log. The log will include at a minimum the following information: The date of complaint, contact information for all complainant(s), reason for complaint, action taken, and resolution notes. Corrective measures will be immediately taken to address any and all complaints, should they occur. Copies of the Complaint Log will be submitted to Inspections Services monthly and, if so desired, upon request. These noise complaint procedures will be posted along the perimeter of the construction site prior to the commencement of construction. Should you have any noise complaints during construction please follow these procedures.

Most of the extreme noise generating activities will take place during the excavation work during the early stages of the project. We will send additional notices as required for additional upcoming work. If you would like to receive email notifications in lieu of or in addition to a hard copy please provide your email address to Steve.Rodriguez@whiting-turner.com.

Additional project information may be requested should you have any questions by contacting the undersigned.

Sincerely,

Steve Rodriguez
Whiting-Turner Contracting Company
925-271-6590
Steve.Rodriguez@whiting-turner.com

PROLOGIS WT

G.W.C. WHITING
(1883-1974)

WILLARD HACKERMAN
PRESIDENT AND CEO

FOUNDED 1909

THE WHITING-TURNER CONTRACTING COMPANY

(INCORPORATED)

ENGINEERS AND CONTRACTORS

4690 CHABOT DRIVE, SUITE 120
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INDUSTRIAL
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MULTI-FAMILY RESIDENTIAL
ENVIRONMENTAL
BRIDGES, CONCRETE

WRITER'S DIRECT NUMBER IS
925-271-6606

Dear Neighbors,

Due to safety reasons, pedestrian traffic will be periodically shut down on Maritime Street between Tuesday 9/15/2016 and Friday 10/16/2016 while demolition and excavation activities are in progress. Pedestrian barricades will be set in place to re-route all pedestrian traffic to the detour per the approved Traffic Control Plan. Please reference the included closure plan exhibit from our Traffic Control Plan that shows the areas that will be closed. The shutdown dates will be posted on our website within 2 days prior to shut down.

If you should have any problems or questions we encourage you to call or stop by our construction trailer located on site.

Additional project information may be requested should you have any questions using the contact below.

Sincerely,
Steve Rodriguez
Whiting -Turner Contracting Company
925-271-6590
Steve.Rodriguez@whiting-turner.com

PROLOGIS WT WHITING TURNER

Project: Prologis Northeast Gateway
Date:

Truck Information Form

Time In	Time Out	Vehicle Type	License Plate Number	Trucker's Name	Driver's Name	Material	Documentation [1]	Destination	Quantity

Documentation carried by the driver will include:

- Bills of lading or non-hazardous or hazardous waste manifests;
- Proof of insurance, valid registration, and current driver's license;
- Material profile information (reflecting chemical analysis results);
- Material weight records; and
- Complete copy of the Traffic Control Plan.

0020-2020-10-29

Project Name: Prologis Northeast Gateway

Construction Site Condition Log

Location:	Decription of Damage:	Date:	Inspected

date: June, 2016

PROLOGIS WT

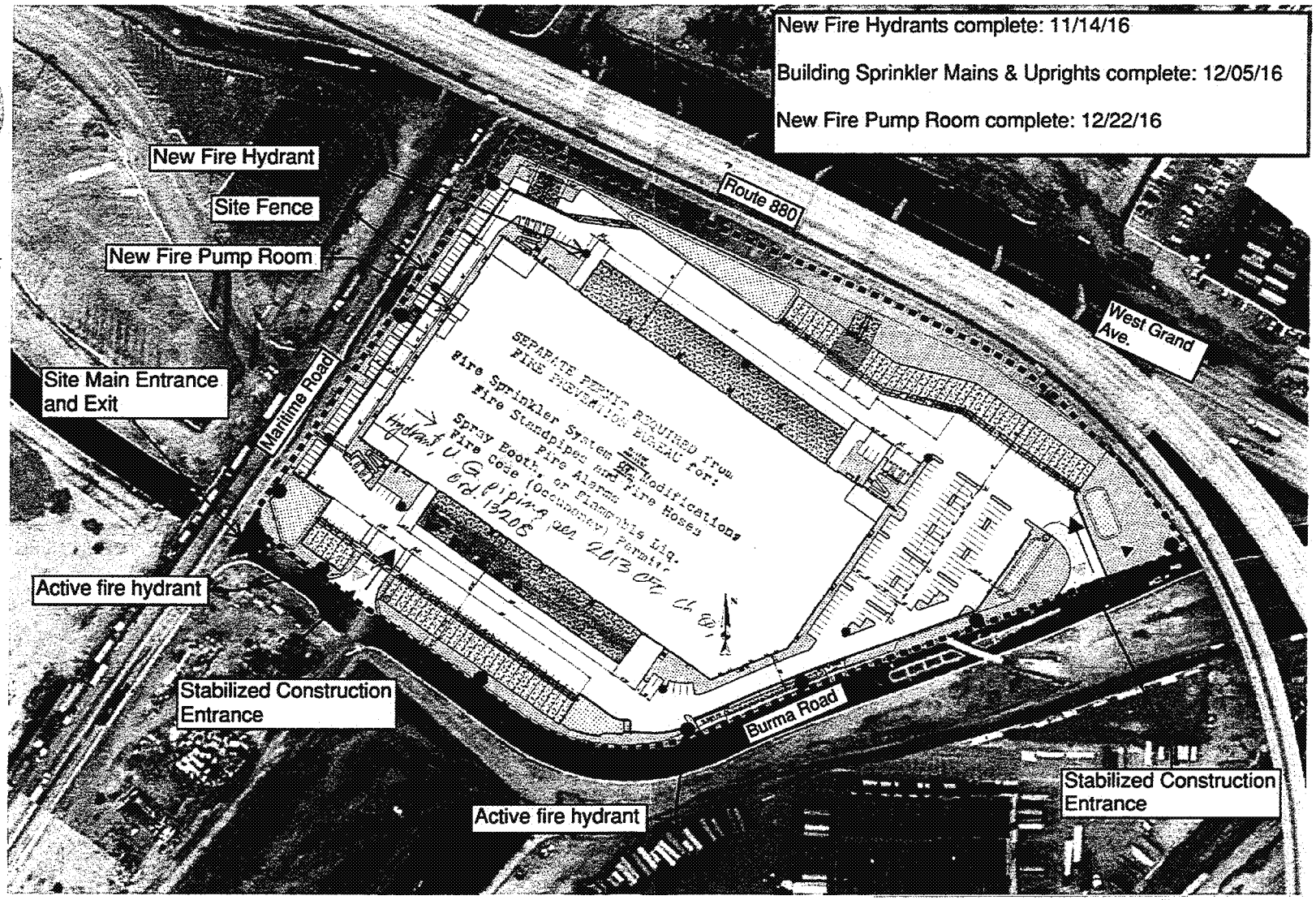
002699 2020-10-29

Exhibit N- Fire Safety Phasing Plan

Conceptual Review
As noted.

FIRE MARSHAL
APPROVED
BY
DATE 6-08-16
CITY OF OAKLAND

Subject to approval of shop drawings & hydraulic calcs.



● Existing Active Fire Hydrant
○ Construction Signage
● New Fire Hydrant
--- Construction Fence

PROLOGIS WT

002700 2020-10-29

Table 1
Risk Management Plan and Remedial Action Plan Information
Northeast Gateway Property
Oakland, California

RAP/RMP Designation	Northing	Easting	Location/Description	Constituents of Concern	Summary of Actions	Final Report Reference	DTSC Remedial Action Certification Date
RMP 22	2126388.536	6041985.046	Bldg. T-816 was a hazardous waste accumulation shed. TPH was detected in a soil sample collected near the former shed. No VOCs or TPH were detected in groundwater.	TPH, PAHs, VOCs	No action required. TPH remains in soil less than remediation goals.	Mastic, 2011	3/15/2011
RMP 23	2126546.617	6041720.998	Facility 815 was a washrack with waste oil sump, associated sand trap, and two associated 550-gallon waste oil USTs (Tanks 7 and 8).	TPH, PAHs, VOCs, Metals	Tanks were removed in 1990. Other structures were removed and the area was overexcavated in 1999. TPH, VOCs, PAHs, and metals remain in soil less than remediation goals. TPH, VOCs, and PAHs remain in groundwater below remediation goals.	EKI, 2010	7/19/2010
RMP 24	2126541.346	6041784.181	An oil-water separator (OWS-2) was located near Facility 815, and was removed and overexcavated in 1999.	TPH, PAHs, VOCs, Metals	Overexcavated in 1999. TPH, VOCs, PAHs, and metals remain in soil below remediation goals. TPH, VOCs, and PAHs remain in groundwater less than remediation goals.	EKI, 2010	7/19/2010
RMP 25	2126479.042	6041875.34	Former Bldg. T-815 was a paint and solvent storage shed.	TPH, PAHs, VOCs, Metals	Shed was removed after 1999. TPH, VOCs, PAHs, and metals remain in soil less than remediation goals. TPH, and VOCs remain in groundwater less than remediation goals.	EKI, 2010	7/19/2010
RMP 87	2126504.825	6041606.784	Building 812 was a former vehicle and equipment maintenance shop.	TPH, PAHs, VOCs, Metals, PCBs	No action required. TPH, VOCs, PAHs, and metals remain in soil less than remediation goals. TPH, VOCs, and metal remain in groundwater less than remediation goals.	EKI, 2010	7/19/2010
RMP 88	2126383.153	6042258.566	Building 823 was a wood shop and heavy equipment maintenance shop with a paint room	TPH, PAHs, VOCs, Metals, PCBs	No action required. TPH, VOCs, and metals remain in soil less than remediation goals. TPH, VOCs, and metal remain in groundwater less than remediation goals.	EKI, 2010	7/19/2010
RMP 113	2126434.841	6042138.387	One former 1000-gallon fuel oil UST (Tank A, a.k.a. TK15).	TPH, PAHs, VOCs, Metals, PCBs	Tank A removed in 1990. TPH and VOCs remain in soil and groundwater less than remediation goals.	EKI, 2010	7/19/2010
RMP 114	2126527.224	6041477.077	One former 550-gallon waste oil UST (Tank 8A).	TPH, PAHs, VOCs, Metals, PCBs	Removed in 1996. TPH and metals remain in soil less than remediation goals. TPH, VOCs, PAHs, and metals remain in groundwater less than remediation goals.	EKI, 2010	7/19/2010
RMP 123	2126562.164	6041727.832	Two former 550-gallon waste oil USTs (Tanks 7 and 8).	TPH, PAHs, VOCs, Metals	UST 7 removed in 1990 and UST 8 removed in 1981. TPH, VOCs, PAHs, and metals remain in soil less than remediation goals. TPH, VOCs, and PAHs remain in groundwater less than remediation goals.	EKI, 2010	7/19/2010
RMP 159	2126588.287	6041712.97	Confirmation soil samples near a utility line with PAHs in soil at concentrations exceeding Remediation Goals	TPH, PAHs, VOCs	Soil excavation in 2013. TPH, VOCs, and PAHs remain in soil less than remediation goals.	AMEC, 2013	6/27/2013
RAP Site 5	NA	NA	VOCs in groundwater proximate to Buildings 808 and 823. Vinyl chloride detected in reconnaissance groundwater samples at concentrations exceeding remediation goals, but less than remediation goals in monitoring well samples.	VOCs	No action. VOCs remain in groundwater less than remediation goals.	EKI, 2009	6/8/2009 and 6/18/09

AMEC, 2013 - AMEC Environment & Infrastructure, Inc. letter regarding Request for Completion and Summary of Remediation Activities, RMP Locations 98 and 159, Former Oakland Army Base, Economic Development Conveyance Area, Oakland, California. June 18.
EKI, 2009 - Erler & Kalinowski, Inc., Completion Report for VOCs in Groundwater at Buildings 808 and 823, Former Oakland Army Base - EDC Area, Oakland, California. April 24.
EKI, 2010 - Erler & Kalinowski, Inc. letter regarding Request for Completion - RMP Locations 23, 24, 25, 87, 88, 113, 114, and 123 in the East Gateway Area, Former Oakland Army Base - EDC Area, Oakland, California. June 29.
Mastic, 2011 - Mastic Engineering and Consulting, Inc. letter regarding Revised Request for Completion - RMP Locations 7, 22, and 29, Former Oakland Army Base - Economic Development Conveyance Area, Oakland, California. February 25.
DTSC = California Department of Toxic Substances Control
PAHs = polycyclic aromatic hydrocarbons
PCBs = polychlorinated biphenyls
RAP = Remedial Action Plan
RMP = Risk Management Plan
TPH = total petroleum hydrocarbons
VOCs = volatile organic compounds

Department of Toxic Substances Control

Linda S. Adams
Acting Secretary for
Environmental Protection

Leonard E. Robinson
Acting Director
700 Heinz Avenue
Berkeley, California 94710-2721

Edmund G. Brown Jr.
Governor

REMEDIAL ACTION CERTIFICATION

Risk Management Plan Locations 7, 22, and 29
Oakland Gateway Development Area
700 Murmansk Street, Suite 3
Oakland, California 94607

---

1. Certification of Remedial Action:

I hereby certify that the foregoing information is true and correct to the best of my knowledge.

Henry Wong
Remedial Project Manager
Brownfields and Environmental Restoration Program

3/15/2011
Date

Karen M. Toth, P.E.
Unit Chief
Brownfields and Environmental Restoration Program

3/17/2011
Date

Gerard Aarons, PG 7430, CHG 771
Engineering Geologist,
Geological Services Unit
Office of Geology
Brownfields and Environmental Restoration Program

3/15/2011
Date

2. **Certification Statement:** Based upon the information which is currently and actually known to the Department of Toxic Substances Control (DTSC),

__ DTSC has determined that all appropriate response actions have been completed, that all acceptable engineering practices were implemented and that no further removal/remedial action is necessary.

__ DTSC has determined, based upon a remedial investigation or site characterization that the site poses no significant threat to public health, welfare or the environment and therefore implementation of removal/remedial measures is not necessary.

X DTSC has determined that all appropriate removal/remedial actions have been completed and that all acceptable engineering practices were implemented; however, the site requires ongoing operation and maintenance (O&M) and monitoring efforts. The site will be deleted from the "active" site list following (1) a trial operation and maintenance period and (2) execution of a formal written settlement between the Department and the responsible parties, if appropriate. However, the site will be placed on the Department's list of sites undergoing O&M to ensure proper monitoring of long-term clean-up efforts.

3. **Site Name and Location:**

Risk Management Plan (RMP) Locations 7, 22, and 29
Oakland Gateway Development Area
700 Murmansk Street, Suite 3
Oakland, California 94607

A. List of any other names that have been used to identify the site:

RMP Locations
- RMP Location 7 – Former incinerator (Building 147) and an adjoining concrete garbage pit, 1 acre
- RMP Location 22 – Former hazardous waste accumulation shed (Building T-816), 0.1 acre
- RMP Location 29 – Hazardous material storage bay at the west end of Building 806, 0.8 acre

Alternative Names for the Project Site
- Gateway Development Area
- Former Oakland Army Base – Economic Development Conveyance Area
- Oakland Army Base (OARB)
- Base Realignment and Closure (BRAC) Parcels 3, 11, and 12
- Operable Units 1 and 4

B. Address of site if different from above:

RMP Location 7 is near Buildings 141 and 145 located the intersection of Burma Road and Bataan Avenue; RMP Location 22, is located near the intersection of Tobruk Street and Burma Road, RMP Location is located at the west end of Building 806 at West 19th Street, in the City of Oakland, California.

C. Assessor's Parcel Number: O000-0507-001-11
(This number starts with the letter "O" and follows by three zeros.)

D. DTSC Identification Numbers:

Site Code: 201537
EnviroStor ID: 01970016

4. Responsible Parties:

Landowner
City of Oakland

Contact Person:
Mr. Mark Arniola, P.G.
Environmental Program Specialist
Public Works Agency
Environmental Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, California 94612-2034
(510) 238-7371
marniola@oaklandnet.com

5. Brief History:

Prior to 1916, much of the area encompassing OARB was natural tidal marsh or shallow open water. Subsequent land reclamation activities in the general areas created the land where OARB is situated. The Army began operation at OARB in the early 1940s, closed the base in September 1999, and transferred 363.5 acres of property to the City of Oakland in July 2003. In August 2006, the City of Oakland deeded approximately half of the transferred area to the Port of Oakland. DTSC has renamed the transferred 363.5-acre property as the "Oakland Gateway Development Area."

On September 27, 2002, DTSC approved the Remedial Action Plan (RAP) and selected remedies for seven RAP Sites and approximately 150 RMP Locations.

RMP Locations and features include washracks, sumps, oil/water separators, miscellaneous operations, underground storage tanks, aboveground storage tanks, former industrial and chemical handling locations, historical spills and stains, lead in soil around buildings, former polychlorinated biphenyl (PCB)-transformers and equipment locations, storm drains and sanitary sewers, railroad tracks, and marine sediments. The RAP selects a presumptive remedy outlined in the Risk Management Plan (Appendix E of the RAP) for supplementing environmental data and implementing necessary cleanup actions during infrastructure installation or redevelopment.

On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* for the Oakland Gateway Development Area, which includes RMP Locations 7, 22, and 29. Since the former base property is not being remediated to residential or drinking water standards, the Covenant requires land and groundwater use restrictions and compliance with the RMP for proper soil and groundwater management.

6. RMP Locations 7, 22, and 29:

On February 25, 2011, the City of Oakland finalized the *Request for Completion - RMP Location 7, 22, and 29* documenting the achievement of the remedial action objectives.

RMP Location 7

RMP Location 7 is a one-acre area where a former incinerator (Building 147) and an adjoining concrete garbage pit were located. The Army constructed the 10-ton incinerator and adjoining 16' x 6' x 3.5' adjoining concrete garbage pit in 1948; the Army demolished the incinerator and pit in 1964. The Army's record does not indicate the types of waste that were burned in the incinerator or stored in the pit. Since 1964, the area has been a mostly paved and gravel surface open area used for trailer and cargo container storage. The area is currently undeveloped.

The Army and City of Oakland collected six soil samples and two groundwater samples and analyzed for volatile organic compounds (VOC), semi-volatile SVOCs, polycyclic aromatic hydrocarbons (PAH), total petroleum hydrocarbons as diesel (TPH-d), TPH as motor oil (TPH-mo), metals, PCBs, dioxins, and furans. Soil and groundwater analytical results do not show chemical of concern (COC) concentrations above remediation goals.

RMP Location 22

RMP Location 22 measure approximately 0.1 acre and is an area where a former is a location a former hazardous waste accumulation shed (Building T-816) was located. The building is no longer on site and is assumed to have been

demolished. The area is currently undeveloped. No additional operational record regarding Building T-816 was available for review.

The Army and City of Oakland collected five soil samples and one groundwater sample and analyzed for VOCs, SVOCs, PAHs, TPH-d, TPH-mo, metals, and PCBs. Soil and groundwater analytical results do not show COC concentrations above remediation goals.

RMP Location 29

RMP Location 29 is a hazardous material storage bay of approximately 0.8 acre at the west end of Building 806. Hazardous material stored in this area included chlorinated hydrocarbons, pesticide, insecticides, mercuric solutions, and flammable materials. According to the Army's August 2001 report, the western-most bay of Building 806 was also the designated storage area for radioactive items. The Army report indicates that no spills of radiological items have occurred and that the results of surveys conducted in 1999 were free from any evidence of radiological contamination.

The Army and City of Oakland collected nine soil samples and two groundwater samples and analyzed for VOCs, SVOCs, PAHs, TPH-d, TPH-mo, metals, pesticides, and PCBs. Soil and groundwater analytical results do not show COC concentrations above remediation goals.

Approval of Request for Completion

On March 15, 2011, DTSC approved the Request for Completion and concluded that the City of Oakland (a) had adequately investigated RMP Locations 7, 22, and 29, (b) had demonstrated achievement of the remedial action objectives, and (c) had implemented the required institutional control remedy for the subject RMP Locations.

All RAP Sites and RMP Locations within the Oakland Gateway Development Area, upon remedy implementation, continue to be parts of the RMP Implementation Area. The August 8, 2003 *Covenant to Restrict Use of Property, Environmental Restriction* requires landowner(s) to follow the risk management protocols set forth in the RMP regarding planning and implementation of earthwork construction, redevelopment, and/or post-development activities.

7. Type of Site:

Included in EnviroStor? Yes

RCRA Permitted Facility	_____	Bond Funded	_____
RCRA Facility Closure	_____	RP Funded	_____
NPL	_____	Federal Facility	_____

Other (i.e., walk-in): Please see Section 14.E of this Certification for project funding.

8. Size of Site:

RMP Locations 7, 22, and 29 encompass approximately two acres.

Small __X__ Medium _____ Large _____ Extra Large _____

9. Dates of Remedial Action

The Army and the City of Oakland investigated RMP Locations 7, 22, and 29 from 2000 through 2010. On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* for the Oakland Gateway Development Area, which includes RMP Locations 7, 22, and 29.

10. Response Action Taken on Site: (check appropriate action)

____ Initial removal or remedial action (site inspection/sampling)

__X__ Final remedial action

____ RCRA enforcement/closure action

____ No action, further investigation verified that no cleanup action at site was needed

A. Type of Remedial Action:

The RAP selects the following remedies for the RMP Locations:

- For locations where no contamination has been found to date, the area will be inspected and sampled in accordance with the RMP during redevelopment to confirm no contamination exists above remediation goals at these locations;
- For locations requiring additional soil and groundwater characterization, the areas will be inspected and sampled/monitored during redevelopment as outlined in the RMP;
- For locations requiring removal of an existing structure or sites where impacted soil is anticipated, the RMP assumes that an average of about 50 cubic yards of debris and contaminated soil

will be removed at each site and disposed as hazardous substances at an off-site permitted facility; and

- Implementation of institutional controls to:
  - Prohibit sensitive land uses;
  - Restrict construction of groundwater wells and extraction of groundwater without DTSC's approval;
  - Prevent disturbance of surface soil, subsurface soil, and groundwater monitoring wells, except as conducted pursuant to the RMP; and
  - Comply with the RMP for soil and groundwater management, maintenance of ground covers, mitigation during earthwork, management of below grade structures, and construction dewatering.

B. Estimated quantity of waste associated with the site (i.e., tons/gallons/ cubic yards) was:

1. _____ Waste Treated Amount: _____
2. _____ Untreated (capped sites) Amount: _____
3. _____ Soil Removed Amount: _____
4. _____ Wastewater Removed Amount: _____
5. __X__ Institutional Controls
   The institutional controls remedy applies to all Oakland Gateway Development Area property including RMP Locations 7, 22, and 29.

11. Cleanup Levels/Standards

A. What were the cleanup standards established by DTSC pursuant to the final remedial action plan or workplan (if cleanup occurred as the result of a removal action workplan or interim remedial measures prior to development of a RAP)?

The RAP specifies risk-based remediation goals for meeting the remedial action objectives based on commercial and industrial reuses. Remediation goals for most chemicals are risk-based and represent the lowest calculated values of the non-carcinogenic or carcinogenic risk goal for each chemical of concern (COC) that are protective of all potentially exposed populations. However, some remediation goals are based on other chemical-specific parameters (such as potential leachability of a

chemical from soil to groundwater) when these values are more stringent that the calculated human health goals.

The RAP, Table 7-11 lists numerical cleanup targets as the soil and groundwater remediation goals that correspond to a 1×10^{-6} incremental lifetime cancer risk for each COC. When more than ten carcinogenic COCs are present at concentrations exceeding remediation goals, the overarching remedial action objective is the cumulative target risk level of 1×10^{-5} for carcinogenic COCs applicable at each RAP Site and RMP Location.

Remediation goals represent the maximum allowable concentrations for the respective COCs and cannot be increased to allocate amongst the residual COCs to meet the overarching cumulative risk of 1×10^{-5}. However, remediation goals can be adjusted downward, as need, if the cumulative cancer risk level exceeds 1×10^{-5} or the total hazard index (HI) exceeds 1. Remedial action objectives are achieved when residual COCs in soil and groundwater are no greater than a cumulative HI of 1 or a cumulative carcinogenic risk of 1×10^{-5} for each potentially exposed population.

The Army investigated RMP Locations 7, 22, and 29 from 2000 through 2010. COC concentrations in soil and groundwater samples are below remediation goals. The number of samples and types of analyses at the subject RMP Locations are adequate to demonstrate that the remedial action objectives established in the DTSC-approved RAP/RMP have been met. RMP Locations 7, 22, and 29 are not significant sources of soil and groundwater contamination and no significant data gaps are evident.

B. Were the specified cleanup standards met? Yes __X__ No _____

C. If "no", why not:

12. DTSC Involvement in the Remedial Action:

A. Did DTSC order the Removal Action?

Yes _____ No __X__ Date of Order _____

B. Did DTSC review and approve (check appropriate action and indicate date of review/approval if done):

_____ Sampling Analysis Procedures Date: _____

_____ Health & Safety Protections Date: _____

_____ Removal/Disposal Procedures Date: _____

__X__ Remedial Action Plan Date: September 27, 2002

_____ Removal Action Workplan Date: _____

C. If site was abated by a responsible party, did DTSC receive a signed statement from a licensed professional on all Remedial Action?

Yes __X__ No ____ Name: Bethany P. Flynn, P.G., 5710

D. Did a registered engineer or geologist verify that acceptable engineering practices were implemented?

Yes __X__ No ____ Name: Gerard Aarons, P.G., 7430

E. Did DTSC confirm completion of all remedial action?

Yes __X__ No ____ Date of verification: March 15, 2011

F. Did DTSC (directly or through a contractor) actually perform the Remedial Action?
Yes ____ No __X__

G. Was there a community relations plan in place?
Yes __X__ No ____

H. Was a remedial action plan or removal action workplan developed for this site?
Yes __X__ No ____

I. Did DTSC hold a public meeting regarding the draft RAW or RAP?
Yes __X__ No ____

J. Were public comments addressed?
Yes __X__ No ____
Date of DTSC analysis and response: September 27, 2002

K. Are all of the facts cited above adequately documented in the DTSC files?
Yes __X__ No ____

If no, identify areas where documentation is lacking.

_____

13. EPA Involvement in the Remedial Action:

A. Was the EPA involved in the site cleanup?
Yes _X_ No ____

B. If yes, did EPA concur with all remedial actions?
Yes _X_ No ____

C. EPA comments: EPA staff provided consultative services on this project.

EPA staff involved in cleanup:

Xuan-Mai Tran
Remedial Project Manager
U.S. Environmental Protection Agency
Region IX
Federal Facilities Cleanup Branch
75 Hawthorne Street, (SFD-8-2)
San Francisco, California 94105
(415) 972-3002
Tran.Xuan-Mai@epamail.epa.gov

14. Other Regulatory Agency Involvement in the Cleanup Action:

Agency:	Activity:
_X_ RWQCB	The Regional Water Quality Control Board staff provided consultative services on this project.
____ ARB	_____
____ CHP	_____
____ Caltrans	_____
____ Other	_____

Name of contact persons and agency:

George Leyva, P.G.
Project Manager
California Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612
(510) 622-2379
gleyva@waterboards.ca.gov

15. Post-Closure / Post-Remedy Activities:

A. Will there be post-closure / post-remedy activities at this site? (e.g., Operation and Maintenance)
Yes _X_ No ____

If yes, describe:

On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* (Series No. 2003466371) for the Oakland Gateway Development Area, which includes RMP Locations 7, 22, and 29. The City of Oakland implemented the institutional control remedy by recording the Covenant with the Alameda County Assessor's Office. Since the former base property is not being remediated to residential and drinking water standards, the Covenant requires land and groundwater use restrictions and compliance with the RMP for proper soil and groundwater management. The RMP is Appendix E to the September 27, 2002 DTSC-approved RAP.

The remedial action objectives were based on commercial and industrial land uses. Since residual chemicals in soil and groundwater at the site render the property not suitable for unrestricted use, five-year statutory reviews are required for RMP Locations 7, 22, and 29. The trigger date for a statutory five-year review was the mobilization date of first remedy implementation for the Oakland Gateway Development Area project (i.e., Building 1 RAP Site on November 28, 2005). The City of Oakland has submitted the draft Five-Year Review Report in June 2010.

B. Have post-closure plans been prepared and approved by DTSC?
Yes ____ No _X_
Post-closure plan is not required or necessary for this site.

C. What is the estimated duration of post-closure (including operations and maintenance activities) activities?

Unless ended in accordance with the *Covenant to Restriction Use of Property, Environmental Restriction*, by law, or by DTSC in the exercise of its discretion, the Covenant and five-year review requirements shall continue in effect in perpetuity.

D. Are deed restrictions proposed or in place? Yes _X_ No ____

If yes, have deed restrictions been recorded with the County recorder?

Yes _X_ No _____ Date: August 8, 2003

If no, who is responsible for assuring that the deed restrictions are recorded?

_____

Who is the DTSC contact person?

Henry Wong
Hazardous Substances Engineer
Brownfields and Environmental Restoration Program
(510) 540-3770
hwong@dtsc.ca.gov

E. Has cost recovery been initiated? Yes _X_ No _____

Has DTSC received all payments? Yes _____ No _X_

If yes, amount received $ _____; _____% of DTSC costs billed.

On November 13, 2008, DTSC determined that the Army has failed to meet certain obligations of the Memorandum of Agreement (MOA) entered into between the Army, DTSC, RWQCB in April 2003. Specifically, the Army has failed to provide funds for DTSC and RWQCB oversight under Section 27.1 of the MOA. Section 27.1 requires that oversight funds will be "... provided through the Defense/State Memorandum of Agreement (DSMOA), executed August 21, 1992 ... or some other appropriate mechanism as agreed upon by the parties ..."

To date the Army has not provided alternative mechanism for payment of oversight costs to DTSC and RWQCB. Accordingly, DTSC and RWQCB have not been paid for oversight costs since July 2008. The Army's and DTSC's management teams are working toward a resolution on this issue.

F. Were local planning agencies notified of the cleanup action?

Yes _X_ No _____ If yes, the name and address of agency:

Mark Arniola, P.G.
Environmental Program Specialist
Public Works Agency
Environmental Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, California 94612-2034
(510) 238-7371

marniola@oaklandnet.com

16. **Expenditure of Funds and Source:**

(Information to be supplied by Accounting Unit)

Funding Source and Amount Expended:

_____ HWCA $ _____ _____ HSA $ _____
_____ HSCF $ _____ _____ RCRA$ _____
_____ RP $ _____ _____ Other $ _____
_____ Federal Cooperative Agreement $ _____

17. **Problems Encountered Which Caused Major Delays:** None

18. **Accomplishment Unique to the Project:** None

19. **Final Use of Site:** The City of Oakland plans to develop RMP Locations 7, 22, and 29 and vicinity areas for commercial and industrial land uses.

Department of Toxic Substances Control

Linda S. Adams
Secretary for
Environmental Protection

Maziar Movassaghi
Acting Director
700 Heinz Avenue
Berkeley, California 94710-2721

Arnold Schwarzenegger
Governor

July 19, 2010

Mr. Mark Arniola, P.G.
Environmental Program Specialist
Public Works Agency
Environmental Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, California 94612-2034
marniola@oaklandnet.com

DTSC APPROVAL, COMPLETION REQUEST, RMP LOCATIONS 23, 24, 25, 87, 88, 113, 114, and 123, FORMER OAKLAND ARMY BASE – ECONOMIC DEVELOPMENT CONVEYANCE AREA, OAKLAND, CALIFORNIA

Dear Mr. Arniola:

The Department of Toxic Substances Control (DTSC) has received the June 29, 2010 *Request for Completion – RMP Locations 23, 24, 25, 87, 88, 113, 114, and 123 in the East Gateway Area* (Completion Request). The Completion Request reports the remedial action implemented at eight Risk Management Plan (RMP) Locations totaling approximately 1.55-acre within the East Gateway Area of the Former Oakland Army Base – Economic Development Conveyance Area (also known as the Oakland Gateway Development Area) in Oakland, California. The City of Oakland is requesting completion of the following eight RMP Locations:

- RMP Location 23 – Former Facility 815 consisted of a washrack, a sand trap, and five collection sumps,
- RMP Location 24 – Former oil water separator (OWS-2) near former Facility 815,
- RMP Location 25 – Former Building T-815 used as a paint and solvent storage shed,
- RMP Location 87 – Building 812,
- RMP Location 88 – Building 823,
- RMP Location 113 – Former 1,000-gallon fuel oil Underground Storage Tank-A (UST-A),
- RMP Location 114 – Former 550-gallon waste oil UST-8A, and

Mr. Mark Arniola
July 19, 2010
Page 2

- RMP Location 123 – Two former 550-gallon waste oil USTs (Tanks 7 and 8).

In 1999, the Army excavated the RMP Location 23 area and removed stained soils associated with the sand trap and washrack; however, the Army encountered an active fire main, fire hydrant, and power poles on the north side of excavation. Residual chemical of concern (COC) concentrations in soil at the north sidewall have slightly exceeded remediation goals. The City of Oakland has created a new RMP Location identified as "*RMP Location 159 – Residual soil at North Side of Building 815 Excavation.*" RMP Location 159 will be addressed during future site redevelopment.

The September 27, 2002 DTSC-approved Remedial Action Plan (RAP) for the former Oakland Army Base requires remediation of RAP Sites and RMP Locations. The Completion Request reports soil and groundwater data at the RMP Locations 23, 24, 25, 87, 88, 113, 114, and 123, summarizes previous impacted-soil removal activities at RMP Locations 23, 113, and 123, and demonstrates that the residual COC concentrations at these RMP Locations meet the remedial action objectives specified in the RAP. The City of Oakland plans to develop the East Gateway Area for commercial and industrial land uses.

On June 25, 2010, DTSC provided comments on the draft Completion Request. The City of Oakland has responded to DTSC's comments and revised the Completion Request satisfactorily. Based on the information presented in the Completion Request, DTSC concludes that the City of Oakland (a) has investigated RMP Locations 23, 24, 25, 87, 88, 113, 114, and 123 adequately, (b) has removed impacted-soil from RMP Locations 23, 113, and 123, (c) has demonstrated achievement of the remedial action objectives, and (d) has implemented the required institutional control remedy for the subject RMP Locations. DTSC hereby approves the Completion Request and concurs with identification of RMP Location 159.

Please note that all RMP Locations and RAP Sites, upon remedy implementation, continue to be parts of the RMP Implementation Area. Such areas will still be subject to the risk management protocols set forth in the RMP regarding planning and implementation of earthwork construction, redevelopment, and/or post-development activities. In the event that the City of Oakland, future landowners, and/or developers discover unknown contamination and the RMP cannot address such new contamination, DTSC reserves the right to require additional environmental work, as appropriate.

Mr. Mark Arniola
July 19, 2010
Page 3

If you have any questions, please contact me at (510) 540-3770.

Sincerely,

Henry Wong
Remedial Project Manager
Brownfields and Environmental Restoration Program

Email Distribution:

Mr. Michael T. Steiger, P.E.
Project Manager
Erler & Kalinowski, Incorporated
1870 Ogden Drive
Burlingame, California 94010
msteiger@ekiconsult.com

Mr. Jeffrey L. Rubin
Port Associate Environmental Scientist
Port of Oakland
Environmental and Safety
530 Water Street, 2nd Floor
Oakland, California 94607
jrubin@portoakland.com

Ms. Lydia Huang, P.E.
Senior Engineer
Baseline Environmental Consulting
5900 Hollis Street, Suite D
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lydia@baseline-env.com

Ms. Xuan-Mai Tran
Remedial Project Manager
U.S. Environmental Protection Agency
Region 9
Federal Facilities Cleanup Branch
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San Francisco, California 94105
tran.xuan-mai@epamail.epa.gov

Mr. George Leyva, P.G.
Project Manager
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612
gleyva@waterboards.ca.gov

Mr. Bill Brawner
Army's Program Manager for
Oakland Gateway Development Area
Operational Army and Medical Branch
Department of the Army
2530 Crystal Drive
Room 5066E
Arlington, Virginia 22202
bill.brawner@conus.army.mil

Mr. Scott Armstrong
Army's BRAC Environmental Coordinator for
Oakland Gateway Development Area
CALIBRE
5200 Oleander Drive
Carmichael, California 95608
scott.armstrong@calibresys.com

Department of Toxic Substances Control

Matthew Rodriquez
Secretary for
Environmental Protection

Deborah O. Raphael, Director
700 Heinz Avenue
Berkeley, California 94710-2721

Edmund G. Brown Jr.
Governor

REMEDIAL ACTION CERTIFICATION

RMP Locations 98 and 159
Oakland Gateway Development Area
700 Murmansk Street, Suite 3
Oakland, California 94607

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1. Certification of Remedial Action:

I hereby certify that the foregoing information is true and correct to the best of my knowledge.

Henry Wong, P.E.
Remedial Project Manager
Brownfields and Environmental Restoration Program

6/27/2013
Date

Karen M. Toth, P.E.
Unit Chief
Brownfields and Environmental Restoration Program

6/26/2013
Date

Gerard Aarons, PG 7430, CHG 771
Engineering Geologist
Geological Services Unit
Office of Geology
Brownfields and Environmental Restoration Program

6/27/2013
Date

2. **Certification Statement:** Based upon the information which is currently and actually known to the Department of Toxic Substances Control (DTSC),

__ DTSC has determined that all appropriate response actions have been completed, that all acceptable engineering practices were implemented and that no further removal/remedial action is necessary.

__ DTSC has determined, based upon a remedial investigation or site characterization that the site poses no significant threat to public health, welfare or the environment and therefore implementation of removal/remedial measures is not necessary.

X DTSC has determined that all appropriate removal/remedial actions have been completed and that all acceptable engineering practices were implemented; however, the site requires ongoing operation and maintenance (O&M) and monitoring efforts. The site will be deleted from the "active" site list following (1) a trial operation and maintenance period and (2) execution of a formal written settlement between the Department and the responsible parties, if appropriate. However, the site will be placed on the Department's list of sites undergoing O&M to ensure proper monitoring of long-term clean-up efforts.

3. **Site Name and Location:**

RMP Locations 98 and 159
Oakland Gateway Development Area
700 Murmansk Street, Suite 3
Oakland, California 94607

A. List of any other names that have been used to identify the site:

RMP Locations

- RMP Location 98: A former 550-gallon gasoline above ground storage tank (AST) located west of Building 14
- RMP Location 159: The location of a former sand trap and vehicle wash rack

Alternative Names for the Project Site

- Base Realignment and Closure Parcels 4 and 11
- Operable Unit 1
- Gateway Development Area
- Former Oakland Army Base – Economic Development Conveyance Area
- Oakland Army Base

B. Address of site if different from above:

RMP Location 98 is located on the south side of Burma Road, west of its intersection with Maritime Street, in the City of Oakland, California. RMP Location 159 is located on the south side of Urkraine Street, east of its intersection with Maritime Street, in the City of Oakland, California.

C. Assessor's Parcel Number: O000-0507-001-11
(This number starts with the letter "O" and is followed by three zeros.)

D. DTSC Identification Numbers:

Site Code: 201537
EnviroStor ID: 01970016

4. Responsible Parties:

Landowner
City of Oakland

Contact Person:
Mr. Mark Arniola, P.G.
Environmental Program Specialist
Public Works Agency
Environmental Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, California 94612-2034
(510) 238-7371
marniola@oaklandnet.com

5. Project History:

Prior to 1916, much of the area encompassing the former Oakland Army Base was natural tidal marsh or shallow open water. Subsequent land reclamation activities in the general areas created the land where the Army property is situated. The Army began operation at the former Oakland Army Base in the early 1940s, closed the base in September 1999, and transferred 363.5 acres of property to the City of Oakland in July 2003. In August 2006 the City of Oakland deeded approximately half of the transferred area to the Port of Oakland. DTSC has renamed the transferred 363.5-acre property as the "Oakland Gateway Development Area."

On September 27, 2002, DTSC approved the Remedial Action Plan (RAP) and selected remedies for seven RAP Sites and approximately 150 Risk

Management Plan (RMP) Locations. RAP Sites are large areas with contaminated soil and/or groundwater that must be remediated before infrastructure installation or redevelopment. In contrast, RMP Locations and features include washracks, sumps, oil/water separators, miscellaneous operations, underground storage tanks, aboveground storage tanks, former industrial and chemical handling locations, historical spills and stains, lead in soil around buildings, former polychlorinated biphenyl (PCB)-transformers and equipment locations, storm drains and sanitary sewers, railroad tracks, and marine sediments. The RAP has selected a presumptive remedy outlined in the Risk Management Plan (Appendix E of the RAP) for supplementing environmental data and implementing necessary cleanup actions during infrastructure installation or redevelopment.

On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* (Covenant) for the Oakland Gateway Development Area, which includes RMP Locations 98 and 159. Since the former base property is not being remediated to residential or drinking water standards, the Covenant requires land and groundwater use restrictions and compliance with the RMP for proper soil and groundwater management.

6. **RMP Locations 98 and 159:**

On June 18, 2013, the City of Oakland finalized the *Request for Completion and Summary of Remediation Activities RMP Locations 98 and 159* (Completion Request) (a) presenting soil and groundwater data collected by the Army and supplemented by the City of Oakland, (b) summarizing the soil remediation activities, (c) evaluating whether the data satisfy RMP sampling requirements, and (d) documenting achievement of the remedial action objectives at the RMP Locations.

RMP Location 98

RMP Location 98 is the former 550-gallon gasoline AST located near the southwest corner of Building 14. The AST was removed in 1998; its installation date is unknown. The AST was reportedly used to store unleaded gasoline drained from vehicles before they were loaded onto ships and to fuel vehicles off-loaded from ships. The RAP identifies lead impacted soil at RMP Location 98.

- *1997 through 2000 Investigation*:

  In July 1997, August 1998, and February 2000, the Army collected a total of 17 soil samples at depths from the ground surface to 7 feet below ground surface (bgs). The soil samples were analyzed for volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons (PAHs), total petroleum hydrocarbons in gasoline range (TPH-g), TPH in diesel range

(TPH-d), TPH in motor oil range (TPH-mo), and metals. For these 17 soil samples, lead concentrations in two samples at 2 feet bgs and 1.5 feet bgs were detected at 2,910 mg/kg and 883 mg/kg, respectively, above the lead remediation goal of 750 mg/kg. All other chemicals of concern (COCs) were detected with soil concentrations below the remediation goals.

In July 1997 and August 1998, the Army collected five grab groundwater samples from four borings for VOC, TPH-g, TPH-d, TPH-mo, and metal analyses. All COCs were detected with groundwater concentrations below remediation goals.

- *2011 Remediation*:

In June 2011 the City of Oakland excavated the lead-impacted soil to a depth of three feet within a 10-foot by 30-foot area. Five soil samples (RMP98CS001 through RMP98CS005) were collected from the four sidewalls and the bottom for lead analysis. The analytical result of bottom sample (RMP98CS005) indicated the lead was present at a concentration of 950 mg/kg. The sidewall samples were all below the remediation goal. In July 2011 the City of Oakland continued excavation down to the water table (approximately 5 feet bgs). Following the over-excavation extension, a soil sample (RMP98CS007) was collected from the excavation bottom for lead analysis; the lead concentration was detected at a concentration of 19 mg/kg in this bottom confirmation sample.

During the initial excavation activities conducted in June 2011, an area of stained soil with a petroleum-like odor was encountered in the northeast corner of the excavation. A sample of this material (RMP98CS006) was collected and submitted for VOC, PAH, PCB, TPH-d, TPH-g, and TPH-mo analyses. Analytical results indicated the presence of VOCs, PAHs, and TPH-d at concentrations above the respective remediation goals. In July 2011 the excavation was extended five feet beyond the initial boundary to "chase" the petroleum impacted material. Following this over-excavation, three additional sidewall samples (RMP 98CS008 through RMP 98CS010) and one bottom sample (RMP98CS011) were collected for VOC, PAH, and TPH-d analyses. All COC concentrations from the four additional confirmation samples were below remediation goal.

- *2012 Data Gap Investigation*:

In April 2012 the City of Oakland conducted a data gap investigation to further evaluate the extent of lead in soil near sampling location ICFAS04S01, because the July 2011 excavation was obstructed by the presence of a tenant trailer and a buried electrical power line. Nine soil samples were collected from four borings (RMP98SL001 through RMP98SL004) advanced to 3.5 feet bgs. Analytical results from the nine soil samples indicated that the 2 to 2.5-

feet bgs sample in three of the four borings had lead concentrations that exceeded the remediation goal. Concentrations at the 2 to 2.5-feet bgs samples ranged from 340 mg/kg (RMP98SL003-2-2.5) to 12,000 mg/kg (RMP98SL002-2.5). None of the samples collected from 3 to 3.5-feet bgs depths exceeded the lead remediation goal. No evidence of petroleum hydrocarbons (visual or olfactory) was identified within the soil samples suggesting that the lead contamination may not have been associated with the 550-gallon gasoline AST.

- *2013 Remediation*:

  In February 2013 the City of Oakland excavated the lead-impacted area identified in April 2012 to a depth of 3 feet. Following the excavation, five soil samples (RMP98CS012 through RMP98CS016) were collected from the four sidewalls and bottom for lead analysis.

  In addition, soil was excavated in an area down to 1.5 feet bgs that was not excavated during the 2011 excavation due to the presence of a buried electrical power line. Care was taken to avoid damaging the electrical line that was encountered within a concrete covered utility conduit at a depth of 1.5 feet bgs. Once the concrete overlying the electric line was uncovered, a bucket width (3 feet) was excavated west of the electrical line to collect one soil sample (RMP98CS017) for VOC, semi-volatile organic compounds (SVOCs), TPH-d, and lead analyses.

  Analytical results from soil samples (RMP98CS012 through RMP98CS017) were detected with COCs below remediation goals.

  Four-point composite samples collected from the excavated soil placed into the two stockpiles were also analyzed for VOCs, SVOCs, PCBs, TPH-g, TPH-d, TPH-mo, and metals. Based on the analytical results, approximately 28 cubic yards of soil was disposed of as a RCRA hazardous waste at a landfill in Buttonwillow, California. Another 28 cubic yards of soil was disposed of as nonhazardous solid waste at at Keller Canyon Landfill in Bay Point, California.

RMP Location 159

RMP Location 159 is located at the northwestern corner of Facility 815. Former Facility 815 (RMP Location 23) consisted of a vehicle washrack, a sand trap, an oil water separator (RMP Location 24), and two waste oil underground storage tanks (USTs) (RMP Location 123). The two RMP Location 123 USTs were removed in 1990 and Facility 815 and the associated RMP Locations 23 and 24 features were dismantled and removed in 1999. Excavation, over-excavation, confirmation sampling and soil and groundwater investigations performed at Facility 815 resulted in completion of RMP Locations 24 and 123 and all but the

northwestern portion of RMP Location 23. The northwestern portion of RMP 23 was subsequently split apart from RMP Location 23 and identified as new RMP Location 159. DTSC approved the completion request for RMP Locations 23, 24, and 123 in July 2010.

- *1999 Army Excavation of Former Facility 815*:

  During excavation at the Former Facility 815 (i.e., RMP Location 23) in November 1999, the Army collected nine confirmation soil samples (11S26, 11S28 through 11S31, 11S35, 11S36, and 11S41) at the northeastern sidewall, which are in the southwestern margin of RMP Location 159. Stained soil was present on the northeastern excavation sidewall, indicative of COC impacted soil; however, excavation was halted due to the presence of a fire main, two power poles, and a fire hydrant located near the northeastern limit of the excavation. Analytical results of excavation soil samples 11S31, 11S35, and 11S41 indicated that COCs were present above their respective remediation goals at northeastern sidewall of the Former Facility 815.

  In December 1999, the Army subsequently collected 11 soil samples from five borings (11S42 through 11S45 and 11S47) drilled during a data gap investigation along a transect parallel to the excavation just north of the power poles to determine if COCs were present within soil just north fire main, power poles, and the fire hydrant that halted excavation in November 1999. In January 2000, two additional soil samples were collected from one boring (11S46) located west the Former Facility 815. Analytical results of excavation soil samples 11S31, 11S35, and 11S41 indicated that COCs were present above their respective remediation goals at northeastern sidewall of the Former Facility 815. Soil samples collected in December 1999 and January 2000 were below laboratory reporting levels or detected at concentrations below remediation goals.

  Groundwater samples were previously collected from five wells and seven grab groundwater soil borings in the vicinity of the Former Facility 815 for VOC, PAH, PCB, pesticide, petroleum hydrocarbons, and metal analyses. All analytes in the groundwater samples were detected at concentrations below their respective remediation goals.

- *2010 Creation of RMP 159*:

  During the review of a completion request for RMP Location 23 in early 2010, DTSC designated the northeastern sidewall, where samples 11S31, 11S35, and 11S41 were located, as RMP Location 159. Analytical results of excavation confirmation samples 11S31, 11S35, and 11S41 indicated that COCs were present above their respective remediation goals at RMP Location 159 as follows:

- TPH-d was detected at a concentration of 11,000 mg/kg at 6-feet bgs in soil sample 11S31 (TPH-d remediation goal is 8,000 mg/kg),
- TPH-g was detected at a concentration of 2,500 mg/kg at 5.5-feet bgs in soil sample 11S41 (TPH-g remediation goal is 2,400 mg/kg),
- Total xylenes were detected at a concentration of 2.5 mg/kg at 5.5-feet in soil sample 11S41 and at a concentration of 1.66 mg/kg at 3.5 feet bgs in soil sample 11S35 (total xylenes remediation goal is 1 mg/kg),
- Naphthalene was detected at a concentration of 6 mg/kg at 5.5-feet in soil sample 11S41 (naphthalene remediation goal is 4.9 mg/kg),
- Chrysene was detected at a concentration of 7.7 mg/kg at a depth of 3.5-feet in soil sample 11S35 (chrysene remediation goal is 4.7 mg/kg).

- *2013 Soil Excavation*:

In February 2013 the City of Oakland excavated a 2-foot by 20-foot trench to approximately 6 feet bgs at RMP Location 159. Following the excavation, five soil samples (RMP 159CS001 through RMP 159CS005) were collected from the four sidewalls and bottom for VOC, SVOCs, TPH-g, TPH-d, and TPH-mo analyses. Soil analytical results do not show COC concentrations above remediation goals.

One four-point composite sample collected from the excavated soil was also analyzed for VOCs, SVOCs, PCBs, TPHs, and metals. Based on the analytical results, approximately 9 cubic yards of soil was disposed of as non-hazardous solid waste at a permitted landfill in Bay Point, California.

The excavation was backfilled in March 2013 with clean fill to a depth of approximately 2.5 feet bgs. From 2.5 feet bgs to the surface, the excavation was backfilled with 2-sack sand cement slurry to insure that areas near the sewer line would be supported.

A 2-foot by 20-foot trench was the only area excavated out of the proposed 7-foot by 43-foot excavation to encompass sample location 11S31 due to the presence of buried utility lines, the fire main, two power poles, and a fire hydrant. In addition to a water line that was previously known to run the down the middle of the proposed excavation, an AT&T distribution line was identified by Underground Service Alert and an unknown utility was identified during the geophysical utility clearance. The unknown utility was determined to be a 6-inch sewer line located approximately 2 feet bgs.

The excavations conducted at RMP Location 159 in 1999 and 2013 removed the maximum amount of soil that could be accessed without risking worker safety or causing damage to underground utilities. The residual TPH-d concentration at soil sample location 11S31 at 6 feet bgs contains TPH-d at 11,000 mg/kg (remediation goal is 8,000 mg/kg). Since TPH-d concentrations at 11S26 (9.4 mg/kg), 11S28 (1.4 mg/kg), 11S35 (530 mg/kg excavated), 11S42 at 2 feet bgs (5 mg/kg), 11S42 at 5 feet bgs (5 mg/kg), and 11S42 at 5.5 feet bgs (4 mg/kg) were all collected within approximately 12 feet of location 11S31, it seems the elevated TPH-d concentration at 11S31 is well bounded.

RMP Location 159 is still part of the RMP Implementation Area and hence subject to the risk management protocols set forth in the RMP regarding planning and implementation of earthwork construction or other redevelopment or post-development subsurface construction activities.

Approval of Completion Request

On June 27, 2013, DTSC approved the June 18, 2013 Completion Request and concluded that the City of Oakland (a) had adequately assessed, investigated, and remediated RMP Locations 98 and 159, (b) had demonstrated achievement of the remedial action objectives, and (c) had implemented the required institutional control remedy for the subject areas.

All RAP Sites and RMP Locations within the Oakland Gateway Development Area, upon remedy implementation, continue to be parts of the RMP Implementation Area. The August 8, 2003 *Covenant to Restrict Use of Property, Environmental Restriction* requires landowner(s) to follow the risk management protocols set forth in the RMP regarding planning and implementation of earthwork construction, redevelopment, and/or post-development activities.

7. Type of Site:

Included in EnviroStor? Yes

RCRA Permitted Facility	_____	Bond Funded	_____
RCRA Facility Closure	_____	RP Funded	_____
NPL	_____	Federal Facility	_____
Other (i.e., walk-in):	X		

8. Size of Site:

Approximately 810 square feet

Small X Medium _____ Large _____ Extra Large _____

9. Dates of Remedial Action

The Army, City of Oakland, and Port of Oakland assessed, investigated and remediated RMP Locations 98 and 159 from April 2002 through June 2013. On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* for the Oakland Gateway Development Area, which includes RMP Locations 98 and 159.

10. Response Action Taken on Site: (check appropriate action)

____ Initial removal or remedial action (site inspection/sampling)

_X_ Final remedial action

____ RCRA enforcement/closure action

____ No action, further investigation verified that no cleanup action at site was needed

A. Type of Remedial Action:

The RAP selects the following remedies:

- In-situ chemical oxidation/reduction; and
- Implementation of institutional controls to:
  - Prohibit sensitive land uses;
  - Restrict construction of groundwater wells and extraction of groundwater without DTSC's approval;
  - Prevent disturbance of surface soil, subsurface soil, and groundwater monitoring wells, except as conducted pursuant to the RMP; and
  - Comply with the RMP for soil and groundwater management, maintenance of ground covers, mitigation during earthwork, management of below grade structures, and construction dewatering.

B. Estimated quantity of remediation waste/hazardous waste associated with the site (i.e., tons/gallons/ cubic yards) was:

1. _____ Waste Treated Off-Site Amount: _____

2. _____ Untreated (capped sites) Amount: _____

3. _X_ Soil Removed Amount: 65 cubic yards

4. _____ Groundwater Disposed Off-Site Amount: _____

5. __X__ Institutional Controls
The institutional controls remedy applies to all Oakland Gateway Development Area property including RMP Locations 98 and 159.

11. Cleanup Levels/Standards

A. What were the cleanup standards established by DTSC pursuant to the final remedial action plan or workplan (if cleanup occurred as the result of a removal action workplan or interim remedial measures prior to development of a RAP)?

The RAP, Table 7-11 lists numerical cleanup targets as the soil and groundwater remediation goals that correspond to a 1×10^{-6} incremental lifetime cancer risk for each COC. When more than ten carcinogenic COCs are present at concentrations exceeding remediation goals, the overarching remedial action objective is the cumulative target risk level of 1×10^{-5} for carcinogenic COCs applicable at each RAP Site and RMP Location.

Remediation goals represent the maximum allowable concentrations for the respective COCs and cannot be increased to allocate amongst the residual COCs to meet the overarching cumulative risk of 1×10^{-5}. However, remediation goals can be adjusted downward, as need, if the cumulative cancer risk level exceeds 1×10^{-5} or the total hazard index (HI) exceeds 1. Remedial action objectives are achieved when residual COCs in soil and groundwater are no greater than a cumulative HI of 1 or a cumulative carcinogenic risk of 1×10^{-5} for each potentially exposed population.

B. Were the specified cleanup standards met? Yes __X__ No _____

C. If "no", why not:

12. DTSC Involvement in the Remedial Action:

A. Did DTSC order the Removal Action?

Yes _____ No __X__ Date of Order _____

B. Did DTSC review and approve (check appropriate action and indicate date of review/approval if done):

_____ Sampling Analysis Procedures Date: _____

_____ Health & Safety Protections Date: _____

_____ Removal/Disposal Procedures Date: _____

__X__ Remedial Action Plan Date: September 27, 2002

_____ Removal Action Workplan Date: _____

C. If site was abated by a responsible party, did DTSC receive a signed statement from a licensed professional on all Remedial Action?

Yes __X__ No ____ Name: Bethany P. Flynn, PG 5710

D. Did a registered engineer or geologist verify that acceptable engineering practices were implemented?

Yes __X__ No ____ Name: Gerard Aarons, PG 7430
Henry Wong, P.E., C81458

E. Did DTSC confirm completion of all remedial action?

Yes __X__ No ____ Date of verification: June 27, 2013

F. Did DTSC (directly or through a contractor) actually perform the Remedial Action?
Yes ____ No __X__

G. Was there a community relations plan in place?
Yes __X__ No ____

H. Was a remedial action plan or removal action workplan developed for this site?
Yes __X__ No ____

I. Did DTSC hold a public meeting regarding the draft RAW or RAP?
Yes __X__ No ____

J. Were public comments addressed?
Yes __X__ No ____
Date of DTSC analysis and response: September 27, 2002

K. Are all of the facts cited above adequately documented in the DTSC files?
Yes __X__ No ____

If no, identify areas where documentation is lacking.

_____

13. EPA Involvement in the Remedial Action:

A. Was the EPA involved in the site cleanup?
Yes _X_ No ____

B. If yes, did EPA concur with all remedial actions?
Yes _X_ No ____

C. EPA comments: EPA staff provided consultative services on this project.

EPA staff involved in cleanup:

Xuan-Mai Tran
Remedial Project Manager
U.S. Environmental Protection Agency
Region IX
Federal Facilities Cleanup Branch
75 Hawthorne Street, (SFD-8-2)
San Francisco, California 94105
(415) 972-3002
tran.xuan-mai@epamail.epa.gov

14. Other Regulatory Agency Involvement in the Cleanup Action:

Agency:	Activity:
_X_ RWQCB	The Regional Water Quality Control Board staff provided consultative services on this project.
____ ARB	_____
____ CHP	_____
____ Caltrans	_____
____ Other	_____

Name of contact persons and agency:

George Leyva, PG
Project Manager
California Regional Water Quality Control Board

1515 Clay Street, Suite 1400
Oakland, California 94612
(510) 622-2352
george.leyva@waterboards.ca.gov

15. Post-Closure / Post-Remedy Activities:

A. Will there be post-closure / post-remedy activities at this site? (e.g., Operation and Maintenance)
Yes _X_ No ____

If yes, describe:

On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* (Alameda County Series Number 2003466371) for the Oakland Gateway Development Area, which includes Building 991 RAP Site. The City of Oakland implemented the institutional control remedy by recording the Covenant with the Alameda County Assessor's Office. Since the former base property is not being remediated to residential and drinking water standards, the Covenant requires land and groundwater use restrictions and compliance with the RMP for proper soil and groundwater management. The RMP is Appendix E to the September 27, 2002 DTSC-approved RAP.

The remedial action objectives were based on commercial and industrial land uses. Since residual chemicals in soil and groundwater at the site render the property not suitable for unrestricted use, five-year statutory reviews are required for RMP Locations 98 and 159. The trigger date for a statutory five-year review was the mobilization date of first remedy implementation for the Port-owned portion of the Oakland Gateway Development Area project (i.e., UST 11/12/13 RAP Site on August 1, 2007). On August 30, 2012, the Port of Oakland submitted the draft Five-Year Review to DTSC for review. DTSC plans to complete its review of the Five-Year Review by July 2013.

B. Have post-closure plans been prepared and approved by DTSC?
Yes ____ No _X_
A post-closure plan is not required or necessary for this site.

C. What is the estimated duration of post-closure (including operations and maintenance activities) activities?

Unless ended in accordance with the *Covenant to Restriction Use of Property, Environmental Restriction*, by law, or by DTSC in the exercise of

its discretion, the Covenant and five-year review requirements shall continue in effect in perpetuity.

D. Are deed restrictions proposed or in place? Yes _X_ No ____

If yes, have deed restrictions been recorded with the County recorder?

Yes _X_ No _____ Date: August 8, 2003

If no, who is responsible for assuring that the deed restrictions are recorded?

_____

Who is the DTSC contact person?

Henry Wong, P.E.
Hazardous Substances Engineer
Brownfields and Environmental Restoration Program
(510) 540-3770
henry.wong@dtsc.ca.gov

E. Has cost recovery been initiated? Yes _X_ No _____

Has DTSC received all payments? Yes _____ No _X_

If yes, amount received $ _____; _____% of DTSC costs billed.

On November 13, 2008, DTSC determined that the Army has failed to meet certain obligations of the Memorandum of Agreement (MOA) entered into between the Army, DTSC, and RWQCB in April 2003. Specifically, the Army has failed to provide funds for DTSC and RWQCB oversight under Section 27.1 of the MOA. Section 27.1 requires that oversight funds will be "... provided through the Defense/State Memorandum of Agreement (DSMOA), executed on August 21, 1992 ... or some other appropriate mechanism as agreed upon by the parties..." Accordingly, DTSC and RWQCB have not been paid for oversight costs since July 2008.

The City's, Port's, Army's and DTSC's management teams are working toward a resolution on this issue.

F. Were local planning agencies notified of the cleanup action?

Yes _X_ No _____ If yes, the name and address of agency:

Mark Arniola, PG

Environmental Program Specialist
Public Works Agency
Environmental Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, California 94612-2034
(510) 238-7371
marniola@oaklandnet.com

16. **Expenditure of Funds and Source:**

(Information to be supplied by Accounting Unit)

Funding Source and Amount Expended:

_____ HWCA $ _____ _____ HSA $ _____
_____ HSCF $ _____ _____ RCRA$ _____
_____ RP $ _____ _____ Other $ _____
_____ Federal Cooperative Agreement $ _____

17. **Problems Encountered Which Caused Major Delays:** None

18. **Accomplishment Unique to the Project:** None

19. **Final Use of Site:** The City of Oakland plans to develop RMP Locations 98 and 159 and vicinity for commercial and industrial land uses.

Department of Toxic Substances Control

Linda S. Adams
Secretary for
Environmental Protection

Maziar Movassaghi
Acting Director
700 Heinz Avenue
Berkeley, California 94710-2721

Arnold Schwarzenegger
Governor

REMEDIAL ACTION CERTIFICATION

Buildings 808 and 823 Remedial Action Plan Site
Oakland Gateway Development Area
700 Murmansk Street, Suite 3
Oakland, California 94607

---

1. **Certification of Remedial Action:**

I hereby certify that the foregoing information is true and correct to the best of my knowledge.

Henry Wong
Remedial Project Manager

6/18/2009
Date

Dot Lofstrom, P.G.
Leader
East Bay Urban Infill Team

6-18-09
Date

REGISTERED PROFESSIONAL ENGINEER
DANIEL EDWARD MURPHY
No. 049465
Exp. 9/30/2010
CIVIL
STATE OF CALIFORNIA

Daniel Murphy, P.E.
DTSC Civil Engineer in Responsible Charge

6/18/09
Date

2. **Certification Statement:** Based upon the information which is currently and actually known to the Department of Toxic Substances Control (DTSC),

   __ DTSC has determined that all appropriate response actions have been completed, that all acceptable engineering practices were implemented and that no further removal/remedial action is necessary.

   __ DTSC has determined, based upon a remedial investigation or site characterization that the site poses no significant threat to public health, welfare or the environment and therefore implementation of removal/remedial measures is not necessary.

   X DTSC has determined that all appropriate removal/remedial actions have been completed and that all acceptable engineering practices were implemented; however, the site requires ongoing operation and maintenance (O&M) and monitoring efforts. The site will be deleted from the "active" site list following (1) a trial operation and maintenance period and (2) execution of a formal written settlement between the Department and the responsible parties, if appropriate. However, the site will be placed on the Department's list of sites undergoing O&M to ensure proper monitoring of long-term clean-up efforts.

3. **Site Name and Location:**

   Buildings 808 and 823 Remedial Action Plan (RAP) Site
   (aka: VOCs in Groundwater at Buildings 808 and 823)
   Oakland Gateway Development Area
   700 Murmansk Street, Suite 3
   Oakland, California 94607

   A. List of any other names that have been used to identify the site:

      VOCs in Groundwater at Buildings 808 and 823
      Former Oakland Army Base – Economic Development Conveyance Area
      Oakland Army Base
      A portion of Base Realignment and Closure (BRAC) Parcel 11
      A portion of Operable Unit 1

   B. Address of site if different from above:

      Areas east of 2413 Ukraine Street, Oakland, California

   C. Assessor's Parcel Number: O000-0507-001-11

D. DTSC Identification Numbers:

Operable Unit:	Buildings 808 and 823
Site Code:	201537
EnviroStor ID:	01970016

4. Responsible Parties:

Landowner
City of Oakland

Contact Person
Mr. Mark Arniola
Environmental Program Specialist
Public Works Agency
Environmental Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, California 94612-2034
(510) 238-7371
marniola@oaklandnet.com

Relationship to Site: *Contact person for responsible party*

5. Brief Description and History of the Site:

The Buildings 808 and 823 RAP Site, also known as "VOCs in Groundwater at Buildings 808 and 823," is an approximately 1.3-acre site within the former Oakland Army Base (OARB), Oakland, California. Prior to 1916, much of the area encompassing the OARB was natural tidal marsh or shallow open water. Subsequent to 1916, land was created and industrial buildings constructed that predate OARB activities.

The Army constructed Building 808 in 1942 and used it as a general purpose warehouse. Building 808 is currently occupied by a commercial tenant, Lighting by Steinheimer, and is used as a warehouse and production office for lighting and set design. Inactive railroad tracks are adjacent to Building 808.

The Army also constructed Building 823 in 1942. Army historical documents show that Building 823 contained a paint room, paint booth finishing room, and carpenter shop. Currently, Building 823 is occupied by a commercial tenant, Arthur Freyer Lighting, and is used as a warehouse and production office for lighting design. Records indicate that Army personnel stripped paint at Building

823 with chemicals such as chlorinated solvents. Other reports indicate that Building 823 was also used as a heavy equipment maintenance facility. Specific locations and types of equipment and chemicals that were involved with these historical operations by the Army are unknown.

Vinyl chloride and lesser concentrations of other volatile organic compounds (VOCs) were present in shallow groundwater in an area north of Building 808 and south of Building 823. No significant soil contamination has been identified and the source of the VOCs in shallow groundwater is not known. Possible sources include Building 823, and storm drains and sanitary sewers that run through the area.

Maximum VOC concentrations detected in shallow groundwater from grab groundwater locations near Buildings 808 and 823 are vinyl chloride at 267 micrograms per liter (µg/L), cis-1,2 dichloroethene at 13 µg/L, trans 1,2 dichloroethene at 3.6 µg/L, trichloroethene at 4.1 µg/L, and 1,1 dichloroethene at 2 µg/L. VOCs in shallow groundwater near Buildings 808 and 823 appear to be in steady state and are not migrating.

The lateral extent of VOC-impacted shallow groundwater was further delineated as part of the City of Oakland's Phase II Investigation in May 2002. Vinyl chloride at concentrations of less than 5 µg/L were detected in groundwater samples collected along the southern edge of this area. VOC-impacted groundwater near Buildings 808 and 823 was defined as a RAP Site because vinyl chloride in two grab groundwater samples (Locations 11S49 and 11S50 with 267 and 111 µg/L of vinyl chloride, respectively) collected in January 2000 exceeded the remediation goal of 32 µg/L.

On September 27, 2002, DTSC approved the RAP for the former Oakland Army Base. The RAP selected in-situ bioremediation of vinyl chloride in groundwater, groundwater monitoring, and institutional controls as the remedy for the Buildings 808 and 823 RAP Site.

On May 19, 2003, the City of Oakland and DTSC entered into a Consent Agreement to bind the City to enter into environmental restrictions for the Oakland Gateway Development Area as necessary to protect human health and the environment, and to require the remediation of the former base by the City in accordance with the RAP and associated Risk Management Plan (RMP). The RMP is Appendix E to the September 27, 2002 DTSC-approved RAP.

On August 6, 2003, Governor Davis approved the early transfer of approximately 363.5 acres of the former Oakland Army Base to the City of Oakland. The Buildings 808 and 823 RAP Site is a portion of the transferred property.

On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* (Covenant) for the Oakland Gateway Development Area, which includes the Buildings 808 and 823 RAP Site. The City of Oakland implemented the institutional control remedy by recording the Covenant with the Alameda County Assessor's Office. Since the former base property is not being remediated to residential or drinking water standards to allow for unrestricted reuse, the Covenant requires land and groundwater use restrictions and compliance with the RMP for proper soil and groundwater management.

On October 24, 2005, DTSC approved the *Pre-Design Investigation Memorandum* (PDIM) for additional four quarters of groundwater monitoring to better define the plume boundary and to aid preparation of the remedial design document. Vinyl chloride is the only COC for the Buildings 808 and 823 RAP Site. The maximum detected concentration of vinyl chloride in groundwater from four recent quarterly monitoring events was 26 µg/L, which is below the remediation goal of 32 µg/L. All other VOCs were below the respective remediation goals.

On March 20, 2009, DTSC issued the "Risk Management Plan Modification" letter specifying new language for RMP, Section 6.2 regarding vapor intrusion mitigation measures. This RMP Modification requires additional evaluation and consultation with DTSC if new buildings were to be constructed at the Buildings 808 and 823 RAP Site and vicinity areas.

6. Type of Site:

Included in EnviroStor? Yes

RCRA Permitted Facility	_____	Bond Funded	_____
RCRA Facility Closure	_____	RP Funded	_____
NPL	_____	Federal Facility	_____

Other (i.e., walk-in): Please see Section 14.E of this Certification.

7. Size of Site:

Approximately 1.3 Acres

Small _____ Medium __X__ Large _____ Extra Large _____

8. Dates of Remedial Action

The City of Oakland conducted four quarterly groundwater monitoring events pursuant to the DTSC-approved PDIM from December 2005 to September 2006. On April 24, 2009, the City of Oakland submitted the final Completion Report summarizing the monitoring activities, presenting analytical data, and requesting closure of the subject RAP Site.

9. Response Action Taken on Site: (check appropriate action)

____ *Initial removal or remedial action (site inspection/sampling)*

_X_ Final remedial action

____ RCRA enforcement/closure action

____ No action, further investigation verified that no cleanup action at site was needed

A. Type of Remedial Action:

The RAP selected the following remedy for the Buildings 808 and 823 RAP Site:

- In-situ bioremediation of vinyl chloride in groundwater and groundwater monitoring;
- Remediation to allow for planned land uses (i.e., commercial and industrial) consistent with the Amended Reuse Plan; and
- Implementation of institutional controls to:
  - Prohibit sensitive land uses;
  - Restrict construction of groundwater wells and extraction of groundwater without DTSC's approval;
  - Prevent disturbance of surface soil, subsurface soil, and groundwater monitoring wells, except as conducted pursuant to the RMP; and
  - Comply with the RMP for soil and groundwater management, maintenance of ground covers, mitigation during earthwork, management of below grade structures, and construction dewatering.

B. Estimated quantity of waste associated with the site (i.e., tons/gallons/ cubic yards) was:

1. _____ Waste Treated Amount: _____

2. _____ Untreated (capped sites) Amount: _____

3. _____ Soil Removed Amount: _____

4. _____ Wastewater Removed Amount: _____

5. _____ Institutional Controls Amount: 1.3 Acres

10. Cleanup Levels/Standards

A. What were the cleanup standards established by DTSC pursuant to the final remedial action plan (RAP) or workplan (if cleanup occurred as the result of a removal action workplan (RAW) or interim remedial measures (IRM) prior to development of a RAP)?

Risk-based remediation goals developed for OARB are utilized to meet the remedial action objectives. These goals were developed and presented in the RAP, including the rationale, calculation, and input parameters used in establishing the remediation goals. Remediation goals for most chemical are risk-based and represent the lowest calculated values of the non-carcinogenic or carcinogenic risk goal for each chemical of concern that are protective of all potentially exposed populations. However, some remediation goals are based on other chemical-specific parameters (such as potential leachability of a chemical from soil to groundwater) when these values are more stringent that the calculated human health goals.

<u>Achievement of the Remedial Action Objectives</u>

Are COC concentrations below the respective remediation goals?

Vinyl chloride is the only COC for the Buildings 808 and 823 RAP Site. The maximum detected concentration of vinyl chloride in groundwater from four recent quarterly monitoring events was 26 µg/L, which is below the remediation goal of 32 µg/L. All other VOCs were below the respective remediation goals.

Are cumulative excess cancer risk less than 1.0E-05 and non-cancer hazard index less than 1 for potential human receptors?

Using the maximum detected vinyl chloride of 26 µg/L and other VOC concentrations from the 2005 and 2006 groundwater data sets and all soil

data, the cumulative risks and hazardous index (HI) for the indoor commercial worker (i.e., potential human receptors) are as follows:

Groundwater Risk:	8.1E-07		
Soil Risk:	2.0E-07		
Total Risk:	1.1E-06	→	*Less than 1.0E-05*

Groundwater HI:	3.6E-04		
Soil HI:	1.9E-04		
Total HI:	5.5E-04	→	*Less than 1*

The total risk and hazard index are less than the remedial action objectives.

B. Were the specified cleanup standards met? Yes __X__ No _____

C. If "no", why not:

11. DTSC Involvement in the Remedial Action:

A. Did DTSC order the Removal Action?

Yes _____ No __X__ Date of Order _____

B. Did DTSC review and approve (check appropriate action and indicate date of review/approval if done):

_____ Sampling Analysis Procedures Date: _____

_____ Health & Safety Protections Date: _____

_____ Removal/Disposal Procedures Date: _____

__X__ Remedial Action Plan Date: September 27, 2002

_____ Removal Action Workplan Date: _____

C. If site was abated by a responsible party, did DTSC receive a signed statement from a licensed professional on all Remedial Action?

Yes __X__ No ____ Name: Michael Steiger, P.E., C63348

D. Did a registered engineer or geologist verify that acceptable engineering practices were implemented?

Yes _X_ No ____ Name: Daniel Murphy, P.E., C49465

E. Did DTSC confirm completion of all Remedial Action?

Yes _X_ No ____ Date of verification: June 8, 2009

F. Did DTSC (directly or through a contractor) actually perform the Remedial Action?
Yes ____ No _X_

G. Was there a community relations plan in place?
Yes _X_ No ____

H. Was a remedial action plan or removal action workplan developed for this site?
Yes _X_ No ____

I. Did DTSC hold a public meeting regarding the draft RAW or RAP?
Yes _X_ No ____

J. Were public comments addressed?
Yes _X_ No ____
Date of DTSC analysis and response: September 27, 2002

K. Are all of the facts cited above adequately documented in the DTSC files?
Yes _X_ No ____

If no, identify areas where documentation is lacking.

_____

12. EPA Involvement in the Remedial Action:

A. Was the EPA involved in the site cleanup?
Yes _X_ No ____

B. If yes, did EPA concur with all remedial actions?
Yes _X_ No ____

C. EPA comments: EPA staff provided consultative services on this project.

EPA staff involved in cleanup:

Xuan-Mai Tran

Remedial Project Manager
U.S. Environmental Protection Agency
Region IX
Federal Facilities Cleanup Branch
75 Hawthorne Street, (SFD-8-2)
San Francisco, California 94105
(415) 972-3002

13. Other Regulatory Agency Involvement in the Cleanup Action:

Agency:	Activity:
____ RWQCB	The Regional Water Quality Control Board (RWQCB) staff provided consultative services on this project.
____ ARB	_____
____ CHP	_____
____ Caltrans	_____
____ Other	_____

Name of contact persons and agency:

Devender Narala
Project Manager
California Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612
(510) 622-2309

14. Post-Closure / Post-Remedy Activities:

A. Will there be post-closure / post-remedy activities at this site? (e.g., Operation and Maintenance)
Yes _X_ No ____

If yes, describe:

On August 8, 2003, the City of Oakland and DTSC executed and recorded the *Covenant to Restrict Use of Property, Environmental Restriction* (Covenant) for the Oakland Gateway Development Area, which includes

the Buildings 808 and 823 RAP Site. The City of Oakland implemented the institutional control remedy by recording the Covenant with the Alameda County Assessor's Office. Since the former base property is not being remediated to residential and drinking water standards to allow for unrestricted reuse, the Covenant requires land and groundwater use restrictions and compliance with the RMP for proper soil and groundwater management. The RMP is Appendix E to the September 27, 2002 DTSC-approved RAP.

The City of Oakland and DTSC executed the *Covenant to Restrict Use of Property, Environmental Restriction* on August 8, 2003, which:

- Prohibit sensitive land uses;
- Restrict construction of groundwater wells and extraction of groundwater without DTSC's approval;
- Prevent disturbance of surface soil, subsurface soil, and groundwater monitoring wells, except as conducted pursuant to the RMP; and
- Comply with the RMP for soil and groundwater management, maintenance of ground covers, mitigation during earthwork, management of below grade structures, and construction dewatering.

The remedial action objectives were based on commercial and industrial land uses. Since residual chemicals in soil and groundwater at the site render the property not suitable for unrestricted use, five-year statutory reviews are required for the Buildings 808 and 823 RAP Site. The trigger date for a statutory five-year review was the mobilization date of first remedy implementation for the Oakland Gateway Development Area project (i.e., Building 1 RAP Site on November 28, 2005). Therefore, DTSC should review and approve the first statutory five-year review report on or before November 28, 2010. As a result, DTSC shall receive the first Draft Five-Year Review Report in May 2010.

B. Have post-closure plans been prepared and approved by DTSC?
Yes ____ No _X__
Post-closure plan is not required or necessary for this site.

C. What is the estimated duration of post-closure (including operations and maintenance activities) activities?

Unless ended in accordance with the *Covenant to Restriction Use of Property, Environmental Restriction*, by law, or by DTSC in the exercise of its discretion, the covenant and five-year review requirements shall continue in effect in perpetuity.

D. Are deed restrictions proposed or in place? Yes _X__No ____

If yes, have deed restrictions been recorded with the County recorder?

Yes _X_ No _____ Date: August 8, 2003

If no, who is responsible for assuring that the deed restrictions are recorded?

_____

Who is the DTSC contact person?

Henry Wong, (510) 540-3770
Name/Phone Number

E. Has cost recovery been initiated? Yes _X_ No _____

Has DTSC received all payments? Yes _____ No _X_

If yes, amount received $ _____; _____% of DTSC costs billed.

On November 13, 2008, DTSC determined that the Army has failed to meet certain obligations of the Memorandum of Agreement (MOA) enter into between the Army, DTSC, RWQCB in April 2003. Specifically, the Army has failed to provide funds for DTSC and RWQCB oversight under Section 27.1 of the MOA. Section 27.1 requires that oversight funds will be "... provided through the Defense/State Memorandum of Agreement (DSMOA), executed August 21, 1992 ... or some other appropriate mechanism as agreed upon by the parties..."

To date the Army has provided no alternative mechanism for payment of oversight costs to DTSC and RWQCB. Accordingly, DTSC and RWQCB have not been paid for oversight costs since July 2008.

F. Were local planning agencies notified of the cleanup action?

Yes _X_ No _____ If yes, the name and address of agency:

Mark Arniola, P.G.
Environmental Program Specialist
Public Works Agency
Environmental Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, California 94612-2034
(510) 238-7371

marniola@oaklandnet.com

15. Expenditure of Funds and Source:

(Information to be supplied by Accounting Unit)

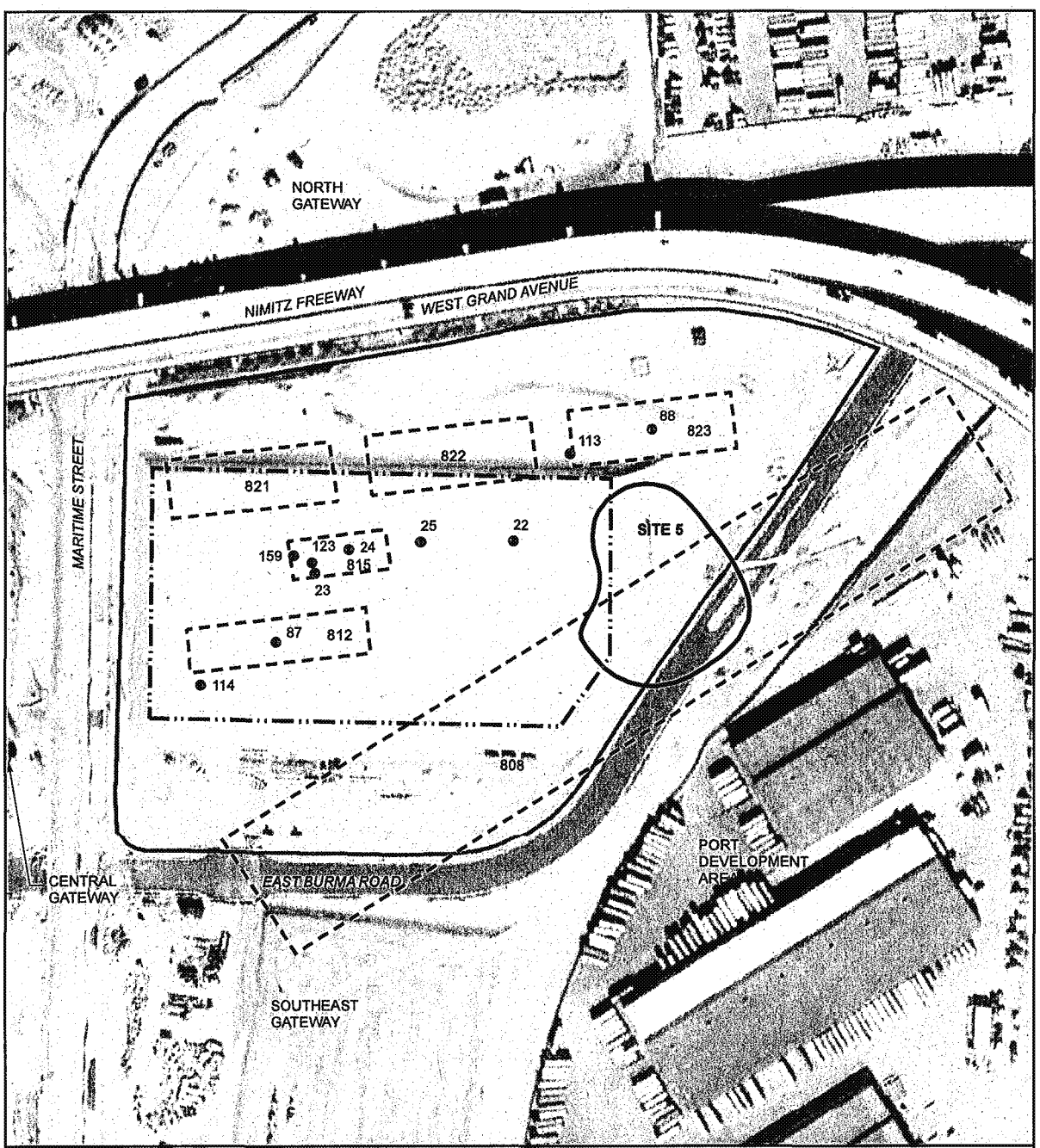
Funding Source and Amount Expended:

_____ HWCA $ _____ _____ HSA $ _____
_____ HSCF $ _____ _____ RCRA$ _____
_____ RP $ _____ _____ Other $ _____
_____ Federal Cooperative Agreement $ _____

16. Problems Encountered Which Caused Major Delays: None.

17. Accomplishment Unique to the Project: None.

18. Final Use of Site: The City of Oakland plans to develop the site for commercial and/or industrial land uses.



LEGEND

- RMP LOCATION
- REMEDIAL ACTION PLAN
- SITE BOUNDARY
- APPROXIMATE PROPOSED FUTURE BUILDING LOCATION
- APPROXIMATE FORMER BUILDING LOCATION

N

0 200
SCALE IN FEET

NOTES:
812 = FORMER BUILDING DESIGNATION
113 = RMP NUMBER
RMP = REMEDIAL ACTION PLAN

FARALLON CONSULTING
Washington: Issaquah | Bellingham | Seattle
Oregon: Portland | Bend | Baker City
California: Oakland | Sacramento | Irvine
Quality Service for Environmental Solutions | farallonconsulting.com

FIGURE 1
SITE PLAN
NORTHEAST GATEWAY PROPERTY
OAKLAND, CALIFORNIA

FARALLON PN: 1071-009

Drawn By: tperrin | Checked By: SA | Date: 5/10/2016 | Disc Reference:
Document Path: G:\Projects\1071 Prologis\1071009 2015 Due Diligence\009 Oakland Army Base\GIS\Figure NE_RMP-RAP-Future-Former-Bldg.mxd

PROLOGIS WT Wilhelm Terrace

NEIGHBORHOOD SURVEY/ NOTICE

Project Name

Project Address

RE: PROPOSED SATURDAY WORK SCHEDULE: [Insert Dates]

Dear Neighbor:

[Explain the purpose of letter is to inform neighbors that a 'request' has been made to Building Services to authorize work on numerous upcoming Saturdays, and that input from neighbors is being solicited.)

[Insert explanation of WHY this work needs to be accomplished outside of normal working DAYS or HOURS (i.e. M-F, 7am – 7pm).

[Explain the site management measures that are and will remain in place to control noise, dust, parking, traffic and other impacts related to this job site].

WHAT: Scope of Construction Activity that you are requesting to do, including size of work force, equipment to be used, etc... **[Work scope must be limited to relatively quiet work to satisfy the Oakland Noise Ordinance limit of 55 dba on weekends in residential areas. No material deliveries, off hauling, or other loud unenclosed activities]**

WHERE: Work location to be limited to inside only with windows and doors closed.

WHEN: 9am – 5pm, Saturdays from xx/xx/xx to yy/yy/yy. **[Our Office will only authorize up to 4 Saturdays at a time, until a track record of complaint-free performance is established that we can support. We also reserve the right to withdraw Saturday authorization for failure to satisfy important construction-related Planning Conditions of Approval]**

Please forward your comments, questions, or concerns to (contact info for project managers, including phone # and email address] or to Bill Quesada, Oakland Building Services, (510) 238-6345, bquesada@oaklandnet.com.

For emergencies or site complaints regarding this construction site, please contact the job superintendent (contact # and email of the on-site job superintendent). **[The GC must maintain a job superintendent on-site all day for each requested Saturday, to manage construction and complaints. No subs working alone].**

Municon Consultants

Vibration Monitoring, Construction Instrumentation, Photo Surveys

July 29, 2016

The Whiting-Turner Contracting Company
4690 Chabot Drive, Suite 120
Pleasanton, California 94588
Attn: Ryan Dotson

RE: **OAKLAND GLOBAL LOGISTICS CENTER PHASE I, NORTH EAST GATEWAY, OAKLAND, CA**
SUBJECT: **Proposal for Pre-construction and Post-Construction Haul Route Video Survey**

Please find herein our proposal for the truck haul route video survey for your project at **Oakland Global Logistics Center Phase I, North East Gateway, Oakland, California (the Project).** With extensive experience with all phases of construction monitoring and litigation mitigation in urban environments, we are uniquely qualified to handle this assignment. We have over 24 years of experience in the execution and document control for large and small scale pre-construction photo and video surveys.

* * *We are Reliable* * *

We have over 24 years of experience and a strong record of repeat clients.

* * *We are Experienced* * *

We have conducted more pre-construction photo surveys than other West Coast firms.

* * *We are Safety Conscious* * *

We hold regular weekly "toolbox" safety meetings as our personnel are regularly tending our equipment on or adjacent to contractor heavy construction sites.

* * *We are Certified* * *

▪ CA UCP - UDBE (12867) ▪ CA DGS-SBE (18229) ▪
SF HRC LBE/W CMD 31810741 ▪ SBA SBE (Woman-Owned) 79-9371554
CA DIR # 1000002530

Municon Consultants

Vibration Monitoring, Construction Instrumentation, Photo Surveys

PRE-CONSTRUCTION PHOTO AND VIDEO SURVEYS

Municon specializes in pre-construction photo and video surveys with large numbers of buildings (as many as 350) and the document control of data. We have performed photo surveys for the Cathedral Hill Hospital, the San Francisco City Hall, the Transbay Terminal demolition, demolition of San Francisco Pier 36, the Warren Avenue/BART/UPRR undercrossing in Fremont, the BART Oakland Airport Connector, and multiple other public works and private projects in San Francisco and the Bay Area. We have performed video surveys of the route leading to the Harry Tracy Water Treatment Plant, the project site for the Warren Avenue Undercrossing in Fremont, the route to the Calaveras Dam, and multiple other public works and private projects in San Francisco and the Bay Area.

PROJECT DESCRIPTION

On the Northeast Gateway site Prologis will construct a new 256,000 sf warehouse on a site covering approximately 702,000sf bordered by Maritime Street, Burma Road and West Grand Ave. The project site improvements will include new underground utilities, landscaping, concrete and ac paving and bio-swales. The new warehouse building will include 55 truck docks, 78 trailer parking stalls, 171 auto parking stalls and two electric vehicle charging stations.

Yours truly,
MUNICON Consultants

Aemero L. Hailemichael

Aemero L. Hailemichael

Barry C. Roth

Barry Roth, P.E. 16090
Principal Engineer

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Municon Consultants

Vibration Monitoring, Construction Instrumentation, Photo Surveys

1.00 PRE- AND POST-CONSTRUCTION VIDEO SURVEY OF TRUCK HAUL ROUTES.

1.01 General.

You have informed us that you need a pre- and post-construction video survey of the approved inbound and outbound truck haul routes of your project. The truck haul route map shows the use of city streets, freeway on- and-off ramps and city streets. We will perform a video survey of the pavement conditions of the streets you identified as truck haul routes. Maritime Street from West Grand Avenue to 7th Street, West Grand avenue from Frontage Road to Maritime Street and E. Burma Road which runs alongside the site, 7th Street from Maritime Street to Brush Street and Brush Street from 7th Street to 19th Street.

Our video survey is not a "Pavement condition evaluation" as we will offer no recommendations or conclusions as to the causes of distress observed or remaining service life of the pavement, and we will not perform deflectometer or other tests on the pavement.

1.10 Scope.

1.11 PRE-CONSTRUCTION VIDEO SURVEY

Municon will perform a pre-construction video survey of pavement conditions of **Maritime Street** from West Grand Avenue to 7th Street, **West Grand Avenue** from Frontage Road to Maritime Street, **Burma Road** from its intersection with Maritime Street to its end at the cul de sac of Burma, **7th Street** from Maritime Street to Brush Street and **Brush Street** from 7th Street to 19th Street. We will survey all the lanes, sidewalks, gutters and other existing facilities. We will document existing conditions in high definition digital videography using a HD digital video camera. We will contemporaneously narrate the video with descriptions of the location being viewed and any distress, damage or other anomalies, the direction of the camera view, and the date and time at the time of videotaping. We will perform the video survey of the pavement conditions for a:

LUMP SUM.....**$6,000.**

1.12 POST-CONSTRUCTION VIDEO SURVEY

Upon the end of your project, Municon will perform a post-construction video survey of pavement conditions of the same roads documented in our pre-construction video survey. We will perform the post-construction video survey of the pavement conditions for a:

LUMP SUM.....**$6,000.**

Municon Consultants

Vibration Monitoring, Construction Instrumentation, Photo Surveys

1.13 WORK PRODUCTS –VIDEO SURVEY RECORDS.

We will submit to you two (2) bound copies of our report, which will include DVDs (or, if permitted, USB storage device) with the original HD video files as recorded, a letter describing our survey and attesting to taking the video, and a site plan showing the areas surveyed. Electronic copies of the documentation will be included on the DVDs.

The costs for preparing the documentation and production of our reports are included in the costs for the survey above.

1.20 TIMING AND SCHEDULE.

We anticipate that we can complete our video survey in one full day in the field, including travel time. We request one week of advance notice, if possible, to begin work on the surveys.

Processing of the data and report production require additional office efforts beyond the field time. Reports will be delivered within two (2) weeks of the completion of the field survey.

VIDEO SURVEY TOTAL.....$12,000.

*** * * No sections 2, 3 or 4 in this proposal * * ***

Municon Consultants

Vibration Monitoring, Construction Instrumentation, Photo Surveys

5.00 CONTRACTUAL TERMS CONDITIONS & LIMITATIONS.

1. Authorization can be by simple purchase order or professional agreement referencing this proposal.

2. No certified payrolls; we are not a contractor, labor, trade nor union signatory. No retention. Payment within 30 days of invoicing.

3. We will provide insurance up to our existing limits and statutory workers compensation limits.

4. No indemnification of any person's active negligence.

5. Access arrangements to be provided by project owner unless explicitly offered herein.

6. Unless specifically called for or explicitly offered herein, written interpretations or professional opinions, and other data reports are not included.

7. Usage rates for equipment apply for each month, or part of a month, the equipment is deployed for use on your project. These rates will apply each month, if your work durations exceed our estimates.

We believe that the estimate and proposal herein addresses the requirements of the permit conditions for photo documentation, and we look forward to working with you on this project. All work proposed here will be under the direction of the undersigned.

Yours truly,
MUNICON Consultants

Aemero L. Hailemichael

Aemero L. Hailemichael

Barry C. Roth

Barry Roth, P.E. 16090
Principal Engineer

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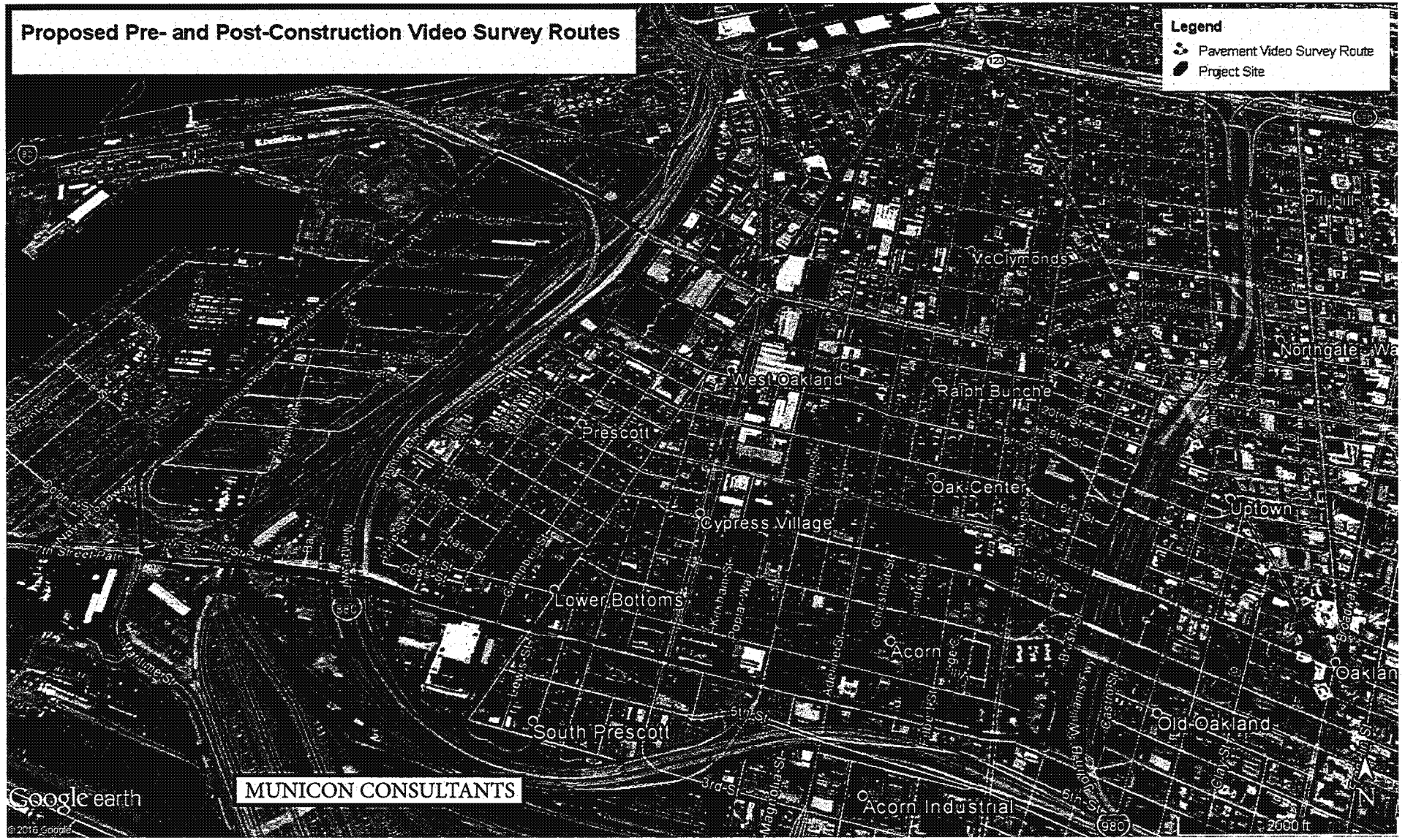
Proposed Pre- and Post-Construction Video Survey Routes
Legend
Pavement Video Survey Route
Project Site
West Oakland
Ralph Bunche
Prescott
Oak Center
Cypress Village
Lower Bottoms
Acorn
South Prescott
Old Oakland
Acorn Industrial
Uptown
Google earth
MUNICON CONSULTANTS

JGL ACOUSTICS, INC

July 15, 2016

Prologis, L.P.
3353 Gateway Blvd.
Fremont, CA 94538

Attention: Cory Chung
Subject: Oakland Global Logistics Center, Phase 1
Construction Noise Impacts

Ladies & Gentlemen:

This report addresses the issue of construction noise impacts from the proposed project located on the south side of West Grand Avenue between Maritime Street and Burma Road in Oakland, CA. Figure 1 shows the site location relative to the nearby freeways with the proposed project location highlighted in yellow. The proposed project will consist of a single warehouse building with an approximate floor area of 256, 216 square feet. The building will have loading docks on the north and south sides and a parking lot in the northeast corner. Figure 2 presents a site plan for the project. This report specifically addresses the issue of environmental noise impacts resulting from the construction of the Phase 1 building.

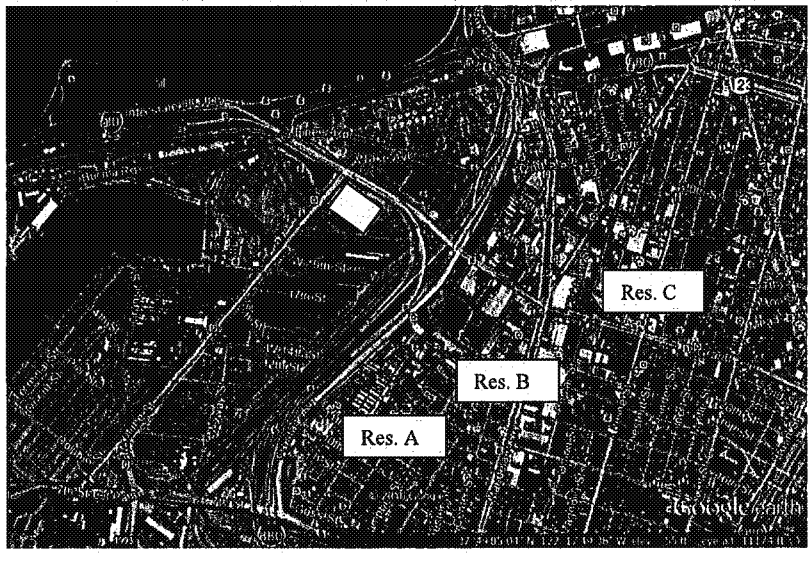

Figure 1.

Aerial view showing the location of the site (shown in yellow) relative to nearby freeways and nearest residences (shown by red triangles).

PROLOGIS WT Wilding Turner

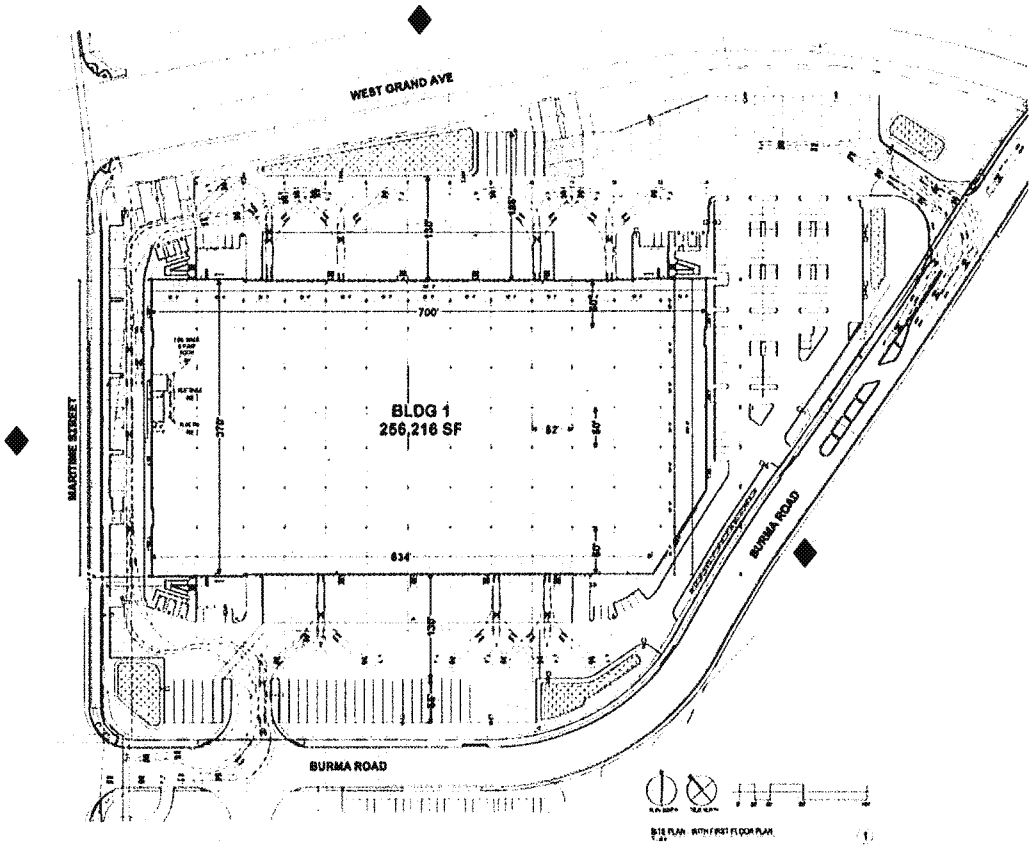

Figure 2. Site plan for the Phase 1 building showing noise model receiver locations.

As shown in Figure 2 the project is surrounded on all sides by local streets, and beyond these streets is additional industrial property. The nearest residential property is on the east side of I-880, more than 2,500 feet southeast of the proposed project.

Standard Conditions of Approval

This project has received several conditions of approval related to noise. SCA NOI-1 requires that construction activities are limited to 7:00 AM to 7:00 PM Monday through Saturday. It is my understanding that concrete work will occur outside of the allowed

construction hours for a period of 6 days to pour the building slab and 8 days to pour the tilt up walls. It will be important to ensure that late night construction work meets the requirements of OMC 8.18.020 relating to nuisance noise impacts to residential areas.

Oakland Construction Noise Ordinance

Table 17.120.04 in the Oakland Noise Ordinance establishes maximum allowable noise levels for construction projects impacting industrial, commercial, and residential receiving properties. The maximum allowable noise level during the 7 AM to 7 PM weekday period on commercial and industrial property is 85 dB for short term operations and 70 dBA for long term operations. . The maximum allowable noise level during the 7 AM to 7 PM weekday period on residential property is 80 dBA for short term operations and 65 dBA for long term operations. On weekends the maximum allowable levels are 15 dBA lower for short term operations and 10 dBA lower for long term operations.

Construction Noise Sources

According to the Contractor, Table 1 presents a listing of the major noise sources associated with the late night construction phase of this project. Table 2 identifies the noise sources that are expected to operate during normal construction hours. Equipment sound levels and usage factors were obtained from the FHWA Construction Noise Handbook. The usage factor represents the percentage of the time that the noise source is generating its maximum noise level.

Late night work is expected to last for 6 days to pour the building floor slab, with as many as 13 concrete trucks per hour and start times beginning as early as 1:00 AM and as late as 4:00 AM. Late night work for pouring the tilt up walls is expected to last for 8 days, with as many as 8 trucks per hour and a proposed start time of 4 AM. At any one time, the maximum number of concrete trucks on the construction site is expected to be 7.

Predicted Construction Noise Levels

Construction noise levels were computed in the vicinity of the subject project using the internationally recognized computer model CadnaA (ver. 4.6.156). The assessment of late night operations assumed continuous operation of 7 concrete trucks on site with 4 diesel generators to create power for the lights. The total on-site sound power level for all of the late night sources is126 dB (ref. 1 picowatt), taking into account the usage factor and the total number of concrete truck on site at one time. The predicted total late night construction noise level at the adjacent properties and at the nearest residences is shown in Table 3.

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Table 1. Late night noise sources and expected source noise level.

Source Description	Number of Sources/Hr.	Usage Factor (%)	LpA (dBA @ 50 feet)	Est. LwA (dB ref. 1 pW)
Concrete Trucks	13	40%	85	117
Generator (lights)	4	100%	80	112

Table 2. Construction noise sources and noise levels occurring from 7 AM to 7 PM.

Source Description	Number of Sources	Usage Factor (%)	LpA (dBA @ 50 feet)	Est. LwA (dB ref. 1 pW)
Grading Scraper	1	40	85	117
Loader	2	40	80	112
Grader	1	40	85	117
Water Truck	2	40	84	116
Skip Loader	2	40	80	112
Paving Machine	1	50	85	117
Roller Compactor	1	20	85	117
Vibratory Plate Compactor	1	20	80	112
Transfer Dump Truck	1	40	84	116
Power Tool Generator	2	50	82	114
Power Tool Compressor	1	40	80	112
Backhoe	2	40	80	112
Dump Truck	2	40	84	116
Concrete Truck	2	40	85	117
Concrete Pump	1	20	82	114
Concrete Saw	1	50	85	117
Crawler Crane	1	16	85	117
Diesel Boom Lift	2	20	85	117
Diesel Forklift	2	50	85	117
Street Sweeper	1	50	85	117
Excavator	1	40	85	117
Diesel Scissor Lift	1	20	85	117

JGL ACOUSTICS, INC

Table 3. Predicted late night noise levels (dBA).

Receiver	Distance to Nearest Source	Predicted	Max. Allowed
Across Maritime St.	120 feet	68.7	70
Across Burma Rd.	296 feet	68.6	70
Across W. Grand Ave.	120 feet	62.3	70
Residence A	2,516 feet	44.5	45
Residence B	2,621 feet	44.6	45
Residence C	3,661 feet	40.9	45

The predicted construction noise level shown in Table 3 meet the requirements of the Oakland noise ordinance. It should be emphasized that the nearest residences are all located on the other side of I-880, and the background noise level from this freeway will likely exceed the predicted construction noise levels by a significant margin, even in the middle of the night. As a result, it is extremely unlikely that the construction noise would be audible in the residential area.

Table 4 presents the predicted daytime noise level at each of the six receiver locations of interest. Interestingly enough, the total sound power level of all 31 daytime noise sources is virtually the same as the late night noise sources. As a result, the predicted daytime noise levels are nearly the same as the predicted nighttime noise levels.

Table 4. Predicted daytime noise levels (dBA).

Receiver	Distance to Nearest Source	Predicted	Max. Allowed
Across Maritime St.	120 feet	67.7	70
Across Burma Rd.	296 feet	66.6	70
Across W. Grand Ave.	120 feet	62.3	70
Residence A	2,516 feet	44.1	65
Residence B	2,621 feet	44.2	65
Residence C	3,661 feet	40.5	65

Note that the predicted daytime noise levels are at or below the maximum allowed noise levels, so the proposed project is expected to fully comply with the Oakland noise ordinance.

JGL ACOUSTICS, INC.

If you have any questions or comments regarding these findings, do not hesitate to contact me directly.

Very truly yours,
JGL Acoustics, Inc.

Jerry G. Lilly, P.E., FASA
President
Member INCE (*Bd. Cert.*), ASHRAE, ASTM, NCAC

Attachment E

Air Quality Plan Implementation at Army Base – Tentative Timeline

Oakland Army Base Redevelopment Project
Tentative Timeline for Air Quality Plan Implementation (subject to change)
September 8, 2016

Horizontal Infrastructure				
Site	**Developer**	**Facility Type**	**Construction-Phase Air Quality Plan**	**Construction Timeline**
Entire Site (City portion of Army Base)	City/CCIG	Infrastructure (e.g., streets & utilities)	Approved Dec. 2013	Dec. 2013 – Jun. 2017

Vertical Development						
Site	**Developer**	**Facility Type**	**Construction-Phase Air Quality Plan Estimated Timeline**	**Construction Estimated Timeline**	**Operational-Phase Air Quality Plan Estimated Timeline**	**Estimated Start of Operations**
Northeast Gateway[1]	Prologis	Trade & Logistics Warehouse	Mar. – Sep. 2016	Sep. 2016 – Jun. 2017	Jan. – Jun. 2017	Jun. 2017
New Central Gateway – Phase 1[2]	Prologis	Ancillary Maritime Support Services	Sep. – Nov. 2016	Nov. 2016 – Mar. 2017	Oct. 2016 – Mar. 2017	Mar. 2017
West Gateway	Oakland Bulk & Oversized Terminal	Marine Bulk Terminal	Oct. 2016 – Mar. 2017	Mar. 2017 – Aug. 2018	Mar. – Aug. 2018	Aug. 2018
Southeast Gateway[3]	Prologis	Trade & Logistics Warehouse	Feb. – Jul. 2017	Jul. 2017 – Mar. 2018	Oct. 2017 – Mar. 2018	Mar. 2018
New Central Gateway – Phase 2[4]	Prologis	Trade & Logistics Warehouse	Mar. – Aug. 2017	Aug. 2017 – Apr. 2018	Nov. 2017 – Apr. 2018	Apr. 2018
AMS Site	OMSS	Ancillary Maritime Support Services	May – Sep. 2017	Sep. 2017 – Dec. 2017	Jul. – Dec. 2017	Dec. 2017
North Gateway 1	CASS	Recycling	May – Sep. 2017	Sep. 2017 – Feb. 2019	Sep. 2018 – Feb. 2019	Feb. 2019
North Gateway 2	CWS	Recycling	Oct. 2017 – Mar. 2018	Mar. 2018 – Sep. 2020	Apr. – Sep. 2020	Sep. 2020
MH-1[5]	CCIG	Trade & Logistics Warehouse	Nov. 2019 – Apr. 2020	Apr. 2020 – Mar. 2021	Oct. 2020 – Mar. 2021	Mar. 2021

[1] "Northeast Gateway" is the northern portion of the East Gateway area.
[2] "New Central Gateway" is the eastern portion of the former Central Gateway area.
[3] "Southeast Gateway" is the southern portion of the East Gateway area.
[4] "New Central Gateway" is the eastern portion of the former Central Gateway area.
[5] "MH-1" is the western portion of the former Central Gateway area.

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Oakland Army Base Redevelopment Project
Tentative Timeline for Air Quality Plan Implementation (subject to change)
September 8, 2016

Air Quality Plan Components

The list below identifies which air quality-related requirements from the Oakland Army Base Standard Conditions of Approval / Mitigation Monitoring and Reporting Program ("SCAMMRP") are anticipated to be addressed in the Construction-Phase Air Quality Plan and the Operational-Phase Air Quality Plan.

Construction-Phase Air Quality Plan:

- Construction Management Plan (SCA AIR-1)
- Construction-Related Air Pollution Controls (SCA AIR-2)
- Construction Traffic and Parking (SCA TRANS-2)
- Traffic Control Plan – Hazardous Materials (Mitigation 4.3-13)

Operational-Phase Air Quality Plan:

- Truck Management Plan (Mitigation 4.3-7)
- Maritime and Rail-Related Emissions Reduction Plan (Mitigation 4.4-3b)
- Truck Diesel Emission Reduction Plan (Mitigation 4.4-4)
- Transportation Control Measures (Mitigation 4.4-5)
- Energy-Conserving Fixtures and Designs (Mitigation 4.4-6)
- Demonstration Projects (Mitigation 5.4-1)
- Parking and Transportation Demand Management (SCA TRANS-1)

ASSOCIATION OF BAY AREA GOVERNMENTS
Representing City and County Governments of the San Francisco Bay Area
ABAG

Mr. David R. Lloyd
Office of Land and Emergency Response
Office of Brownfields and Land Revitalization
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., MC:5105T
Washington, DC 20460

December 18, 2015

R09-16-A-003

RE: Transmittal Letter

Dear Mr. Lloyd:

This constitutes the Transmittal Letter for the Association of Bay Area Government's Brownfields Coalition Assessment Grant application.

Applicant:	Association of Bay Area Governments
DUNS number:	07-907-392000000
Funding Requested	
Grant type:	Brownfields Coalition Assessment Grant
Amount:	$600,000
Contamination:	Hazardous Substances ($300,000) and Petroleum Products ($300,000)
Location:	Cities of Oakland, San Leandro, and Hayward and County of Alameda California
Contacts:	Project Manager JoAnna Bullock, Senior Planner and Grants Administrator MetroCenter, 101 8th Street, Oakland, CA 510 464-7968 office 510 464-7985 fax joannab@abag.ca.gov
	Chief Executive Ezra Rapport, Executive Director MetroCenter, 101 8th Street, Oakland, CA 510 464-7900 office 510 464-7985 fax ezrar@abag.ca.gov
Date submitted:	December 18, 2015
Project Period:	July 2016 – July 2019
Population:	180,000

Thank you for your consideration of our grant application. We hope that we have developed a compelling justification for funding site assessments in the along the San Francisco Bay Area and look forward to advancing this important work to transform the East 14th Street/Mission Boulevard corridor.

Respectfully,

Ezra Rapport
Executive Director

1. COMMUNITY NEED

1.a Economic and Community Benefits

1.a.i. Targeted Community Description: The target area is located in the cities of Oakland, San Leandro and Hayward as well as the Ashland and Cherryland Census Designated Places in unincorporated Alameda County, within the East Bay of the San Francisco Bay Area. Together with the Association of Bay Area Governments (the coalition lead), these jurisdictions make up the coalition.

The coalition's proposal focuses on a 15 mile corridor of downtowns and mixed-use neighborhoods that have been identified by coalition members as Priority Development Areas (PDAs)—places with adopted local plans for sustainable, location-efficient redevelopment that also support the Bay Area's regional vision for an equitable, low carbon future.

The corridor is defined by the East Bay's historic main street—known as International Boulevard in Oakland, East 14th Street in San Leandro, and Mission Boulevard in unincorporated Alameda County and Hayward—and five adjacent Bay Area Rapid Transit (BART) stations. It served as a primary road and streetcar route through the East Bay from its urbanization in the 19th century until the completion of Interstates 880 and 580 in the late 1950s and continues to be a critical link between Oakland and Hayward. The five BART stations within the target area connect its residents to nearly a million jobs, as well as educational and cultural opportunities throughout the region.[1] To complement BART, the region's first Bus Rapid Transit (BRT) route will begin service in the corridor in 2017.

Historically, the corridor was an employment center with abundant industrial and commercial jobs, particularly for people of color.[2] Major corporations including Magnavox, General Electric and Montgomery Ward operated large scale divisions beginning in the 1920s through the mid-1970s. A significant portion of the Bay Area's African American and Latino residents formed communities in the corridor. As the target area's neighborhoods experienced suburban flight and industry moved away, jobs dwindled and the area began to fall into significant decline.[3] Accompanying this decline was a spike in crime, blight and the abandonment of commercial and industrial buildings and parcels—many of which are known or suspected brownfields.

Today the corridor is characterized by vacant lots, abandoned industrial facilities, gas stations, and dilapidated structures occupied by auto-repair shops, liquor stores, nail salons, and storefront churches. The current economic recovery has provided very limited benefits to the area while creating displacement pressure on corridor residents and businesses.[4] Environmental contamination—both documented and perceived—continues to pose an obstacle to community health and economic development.

1.a.ii. Demographic Information: As Table 1 illustrates, sensitive populations with greater susceptibility to many of the contaminants and cumulative environmental issues in the target area make up a disproportionate share of its residents—including minorities, the unemployed, the poor, children, and very young children. The target area also has high concentrations of populations with multiple risk factors that can exacerbate exposure to contaminants and cumulative issues, including children living in poverty (triple the rate in Alameda County and nearly double the state and national

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[1] Association of Bay Area Governments. (2013). *Plan Bay Area: Final Forecast of Jobs, Population and Housing.*

[2] Johnson, Marilyn S. (1993). *The Second Gold Rush: Oakland and the East Bay in World War II.*

[3] Self, Robert O. (2003). *American Babylon: race and the struggle for postwar Oakland.*

[4] Zuk, Miriam. (2015). *Regional Early Warning System for Displacement.* (Data on Target Area: http://www.urbandisplacement.org/research, accessed November 30, 2015)

rate), and the percentage of new single mothers in poverty (more than double the county rate and a well above the state rate).[5]

Table 1. Demographic Information

	Target Area	Remainder of Target Area Jurisdictions (portion outside target area)	Alameda County	California	United States
Population	191,000	512,000	1,560,000	38,100,000	314,000,000
% Minority	90%	64%	67%	61%	37%
% Unemployed	15%	10%	10%	11%	9%
Poverty Rate	22%	8%	9%	16%	16%
% Children (under 18)	27%	20%	22%	24%	23%
% Children in Poverty (under 18)	9%	3%	3%	5%	5%
% Very Young Children (under 5)	8%	6%	5%	7%	6%
Single mothers in poverty as % of women that gave birth in past year	24%	12%	10%	16%	18%
% Senior Citizens (over 65)	9%	14%	12%	12%	14%
Median HH Income	$42,826	$76,550	$ 73,775	$ 61,489	$ 53,482

Source for all data: 2009-2014 American Community Survey (ACS) (numbers rounded)

1.a.iii. Description of Brownfields: Suspected and known brownfields are present throughout the corridor, located directly adjacent to the homes, schools and parks of the sensitive populations disproportionately represented in its communities. Built before the advent of modern environmental standards, the corridor is a checkerboard of industrial, residential, civic and commercial land uses. Industrial operations that once attracted working families in search of better lives are now sources of contamination, blight and disinvestment that damage the health and welfare of an at-risk population. Oakland's General Electric (GE) transformer assembly plant provided 300 middle wage jobs during its operation between 1927 and 1975. Today, it remains abandoned with no solid plans for reuse, its soils contaminated with polychlorinated biphenyls (PCBs) from coolants and lubricants in electrical equipment.[6] Groundwater contamination from trichloroethylene (TCE) (commonly used to clean metal parts)[7] extends beyond the site, which is surrounded on two sides by neighborhoods. Residents of these neighborhoods, which are in the top 4 percentile statewide for impaired water risk and face elevated levels of toxic releases, have the highest cancer mortality rate in Alameda County—more than 60% above the county as a whole and well above neighborhoods with similar demographic characteristics.[8] These neighborhoods also have elevated incidence of low birth weight–which, like cancer, has been identified as a potential impact of PCB and TCE exposure, and

[5] 2009-2014 American Community Survey (ACS)
[6] CA DTSC Public Notice, "Approval of Final Remediation Plan, Former General Electric Facility," July 2011
[7] Ibid
[8] California Office of Environmental Health Hazard Assessment *Enviroscreen*, 2015; Alameda County Public Health Department, *Alameda County Vital Statistics Files 2011-2013*

which is especially harmful to a community with a high proportion of young children and single mothers in poverty.[9] Between mid-June and mid-December 2015, 485 violent crimes were recorded in a one-mile radius of the site, including 96 robberies and 3 murders.[10]

The GE plant is a microcosm of the impact of brownfields on the corridor; a symbol of disinvestment, poor health, and lost opportunity. It is one of 670 brownfields in the target area identified by the California Department of Toxic Substances Control (DTSC),[11] all of which are located within 1,000 feet of a residential area and many of which share a property line with a residence. 170 of the sites identified by DTSC remain open, including 90 Leaking Underground Storage Tanks (LUST)—primarily former gas and service stations. Frequently identified contaminants at the LUST sites include TPH (particularly benzene) as well as PCBs, TCEs and PCEs—creating soil, groundwater, and indoor air contamination. A wide variety of contaminants have been identified at the other open cleanup sites, reflecting a diversity of historic land uses that available records indicate ranged from heavy manufacturing plants (producing glass containers, plastic, and many other products) to an excavation pit and a bulk petroleum distribution facility. Frequently identified contaminants from these sites include PCE, PCBs and TCEs, with contamination from volatile organic compounds (VOCs), TCA, and lead also found at several locations.[12]

In addition to known brownfields left behind by historic land uses, many businesses operating today in the target area are associated with contaminants. This includes 65 gas stations, 81 laundromats, and 529 manufacturing businesses.[13] Like identified brownfields in the target area, all of these businesses are within 1,000 feet of a residential area, which as noted in *Demographic Information* are made up of a disproportionate share of sensitive populations such as children in poverty.

1.a.vi. Cumulative Environmental Issues: Contributing to the risks created by brownfields, one operating and nine non-operating hazardous waste facilities are within one mile or less of the target area, among them an active electronics and universal waste recycling plant and several plating and beverage container companies.[14] The target area is also adjacent Interstate 880, which is used heavily by trucks in route to the Port of Oakland, one of the busiest ports in the country, leading to elevated particulate matter emissions—particularly during commute hours when trucks idle.[15] Exposure is increased by the frequent use of operable windows to ventilate homes and other buildings, as well as the proximity of public spaces such as playgrounds and parks to I-880 and to the target area's other high-pollution roadway, International Blvd/East 14th St/Mission Blvd.

Based upon a cumulative analysis of all mobile and stationary sources of pollution, the target area was identified by the Bay Area Air Quality Management District (BAAQMD) as a cumulative impact area, reflecting elevated levels of Toxic Air Contaminants (TAC) and fine particulate matter (PM).[16] BAAQMD also designated the target area a CARE community—a designation used to identify communities with sensitive populations overburdened by air quality and other environmental risks.[17] In addition to these challenges, much of the target area is underserved by grocery stores, has a deficit of parks relative to population compared to other parts of the county, and is more susceptible to the

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[9] Alameda County Public Health Department, *Alameda County Vital Statistics Files 2011-2013*; 2009-2014 ACS

[10] Oakland Police Department and crimemapping.com, accessed 12/13/15

[11] DTSC *Geotracker Database*, accessed 12/14/15

[12] Ibid.

[13] Dunn and Bradstreet NETS data 2014

[14] DTSC *EnviroStor Database*, accessed 12/16/15

[15] Ibid

[16] MTC and ABAG. (2013). *Plan Bay Area Environmental Impact Report*

[17] BAAQMD Community Air Risk Evaluation Program (CARE), http://www.baaqmd.gov/plans-and-climate/community-air-risk-evaluation-care-program, accessed 12/16/15

urban heat island effect than other areas.[18]

1.b. Impacts on Targeted Communities: Target area residents have dramatically lower health outcomes than residents of adjacent neighborhoods, Alameda County, and California. Many of these negative outcomes are potentially linked to exposure to the contaminants present in target area brownfields—which can take place through direct contact, overland flow dispersion of toxic compounds, wind, groundwater drainage and vapor intrusion—and the cumulative environmental issues in the area. The presence of sensitive populations highlighted above in *Demographic Information* likely exacerbates the impact of these exposures.

The cancer mortality rate, which is a potential effect of exposure to the PCBs and TCE contamination in the target area, ranges from 168 per 10,000 to 230 per 10,000 in the zip codes within the target area, compared to 146 per 10,000 in Alameda County and 131 per 10,000 in California. Asthma hospitalization, potentially liked to exposure to the high levels of PM and TAC in the target area, is 40% above the county and 240% percent above the state for children under 5 and 44% above the county and 350% percent above the state overall. The prevalence of diabetes and obesity are 17% and 28% above county averages, respectively.[19]

Hospitalization from violent assault (which includes murder) is 200% higher in target area zip codes than the county, resulting from a higher crime rate potentially related to blight and lack of access to opportunity. Reflecting the confluence of multiple risk factors, life expectancy at birth in parts of the target area is 70, 10 years below the county average and as many as 29 years below wealthier communities in the county. This ranks 117th worldwide, equal to Bangladesh.[20]

In addition to explicit health and safety impacts, vacant brownfields contribute to a land use pattern that does not provide the basic necessities needed by community members such as community centers, grocery stores and parks. The underutilization of the area's land also represents a missed opportunity to provide space for job training, small business incubation, and much-needed housing within walking distance of inexpensive public transit that in less than half an hour reaches the region's major job centers and educational opportunities (and in the process provides an environmentally sustainable commute mode).

1.c. Financial Need

1.c.i. Economic Conditions: Regional and local funding is not available to conduct the assessments that will be supported by this grant. In 2011, the State of California eliminated Redevelopment Agencies, which had utilized tax increment financing for the acquisition, assessment, remediation, and reuse of blighted properties—including many brownfields. The elimination of Redevelopment resulted in an estimated $28 million budget shortfall for the City of Oakland in Fiscal Years 2011-12 and 2012-13 alone.[21] In Alameda County, this figure is $60 million annually, and in Hayward $5 million annually.[22] The loss of Redevelopment compounded longstanding fiscal crises in coalition jurisdictions, which face rising costs for government services coupled with stagnant sales taxes and local property taxes capped by state law at 1%.

The area's protracted industrial decline, beginning with the closure of major factories in the 1960s and 1970s and compounded by decades of vacancy on the large parcels of land left behind (many of them known or suspected brownfields), has contributed to the persistently high unemployment and

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[18] Greenbelt Alliance; UC-Berkeley (2014). *Mapping Climate Change Exposures*

[19] All data in this paragraph: Alameda County Public Health Department, *Alameda County Vital Statistics Files, 2011-2013*

[20] Ibid., US Central Intelligence Agency (2013). *2013 CIA Factbook.*

[21] City of Oakland Press Release, 11/29/11 "Community and Economic Development Agency Dissolved", http://www2.oaklandnet.com/Government/o/CEDA/index.htm, accessed 12/18/ 14

[22] City of Hayward, 2012 *Comprehensive Annual Financial Report* http://www.hayward-ca.gov/CITY-GOVERNMENT/DEPARTMENTS/FINANCE/documents/2012/FY2012_Hayward_CAFR.pdf, accessed 12/18/14

poverty rates highlighted in *Demographic Information.* The GE plant closure described above, which cost the area 350 jobs, was part of a broader trend of lost economic opportunity: between 1950 and 1970, Oakland alone lost 10,000 jobs alone, many of them like GE along the International Blvd/East 14th Street corridor. The resulting lack of buying power has for decades depressed sales taxes—a critical revenue source for California cities and a potential source of funding for remediation and cleanup. This was exacerbated by the closure of major department stores along the corridor, including a 9 story Montgomery Ward in 1989 in Oakland and Mervyn's 340,000 flagship store and headquarters in Hayward. The area's industrial decline also led to dramatically lower home values and rental rates, as highlighted in *Economic Effects of Brownfields* below.

Together, these factors severely limit the ability of any of the Coalition members to address the shared brownfields challenge alone. The formation of the Coalition and its collaborative proposal reflect the need to work together to overcome an economic and fiscal obstacle that no member can tackle individually.

1.c.ii. Economic Effects of Brownfields: The prevalence of vacant and underutilized parcels in the target area contributes to a lack of economic activity, reducing potential demand for local businesses, dampening sales and property taxes while also reducing opportunities for community-building and visual surveillance—potentially facilitating the hubs of criminal activity on the corridor.[23] Data collected by the US Postal service indicates that vacancies at business addresses are 24% higher in target area Census Block groups with clusters of four or more brownfields than elsewhere in Alameda County.[24]

These conditions have created a negative perception among businesses and potential investors that are reflected in rents and property values. A comparison on Loopnet.com in December 2015 found that the average price of retail space along the corridor averages $19/square foot; in contrast, rents along three retail corridors in surrounding areas averaged $26/sf (Castro Valley Blvd), $34/sf (Alameda Park St), and $54/s (Oakland Lakeshore/Grand).[25] According to the 2014 American Community Survey, the median residential rent in the corridor is $1,150—17% below the rent in other parts of coalition jurisdictions and 20% below Alameda County. Negative perceptions are also reflected in home values, which are a proxy for property taxes: At $250,000, the median home value in the target area is $200,000 below neighborhoods elsewhere in coalition jurisdictions and more than $230,000 below Alameda County.[26] These figures underscore the opportunity costs created by underutilized known or suspected brownfields. While no comprehensive analysis has been completed of the economic impact of blight and brownfields on the corridor, if the median value of the corridor's 28,000 homes were equal to the County, these homes would generate approximately $90 million each year in additional property taxes.[27]

Combined with other risk factors, the preponderance of vacant lots and blight created by known and suspected brownfields has reduced access to opportunity for local residents by limiting the number of potential jobs and local services within target area communities, contributing to the disproportionately high unemployment and poverty rates illustrated in *Table 1.*

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[23] For example, the northern part of the corridor is known as a hub for child trafficking in the western United States: http://www.sfgate.com/crime/article/How-girls-fall-into-clutches-of-pimps-4705407.php, accessed 12/1/15.

[24] HUD, 2014, *HUD Aggregated USPS Administrative Data On Address Vacancies*; Calculations by ABAG.

[25] Loopnet.com: http://www.loopnet.com/xNet/MainSite/Listing/Search/SearchResults.aspx#/Retail/For-Lease/clARYC$BAQIBDYVTQG2U20JAtunRyAThQkABAACoB4xcwAEAANgphV7A, accessed 12/1/15. Note that Loopnet is a site to advertise properties, not a comprehensive data source.

[26] 2009-2014 American Community Survey.

[27] ACS 2009-2014; Assumes a typical 1.2% property tax rate in the target area (including locally imposed and voter adopted taxes)

2. Project Description and Feasibility of Success

2.a. Project Description, Project Timing and Site Selection

2.a.i. Project Description: This grant will fund 20 Phase I and 6 Phase II environmental site assessments (ESAs) of high-impact suspected brownfields, implementing an integrated regional and local strategy for environmental, social and economic sustainability. In 2013, Bay Area elected officials adopted Plan Bay Area—a blueprint for growth and transportation investment that achieves the State of California's GHG emissions reduction target for the region. The foundation of Plan Bay Area's sustainable growth strategy is a network of Priority Development Areas (PDAs)—transit-rich places planned by cities for mixed-income housing, commercial development, and local services. The PDAs that make up the target area are expected to add 44,000 new housing units and 58,000 new jobs by 2040.[28] Land use plans recently adopted by coalition members for these PDAs set the stage for implementation by identifying opportunity sites for a mix of housing, employment, local services, and public spaces to create dense walkable communities. These sites are typically vacant, large enough for significant redevelopment that fulfills a community vision, and in need of assessment to confirm or remove suspicion of the presence of contaminants.

Because a comprehensive environmental review was conducted as part of each local PDA plan, projects on opportunity sites are exempt from most aspects of the entitlement process—reducing much of the uncertainty associated with development in disinvested areas. However, parcel-level analysis of potential contamination has still not been completed on most sites. Combined with longstanding concerns about known and suspected brownfields, the uncertainty surrounding many sites presents a barrier to both private and public investment. The perceived complexity and potential delays involved in conducting assessments deter investors from taking on the additional cost and instead investing in an area with fewer perceived issues. The ESAs funded by this grant will fill this gap, setting the stage for catalyst projects that align with local and regional plans, as well as state and federal sustainability principles.

The Memorandum of Agreement (MOA) established between coalition members at the outset of the grant will create a framework for defining site selection criteria, conducting site selection, creating a community engagement plan, and selecting consultants to perform ESAs. A minimum of four sites will be assessed in each jurisdiction. To prime the assessed sites for reuse, the coalition will conduct preliminary schematic design with engagement from Bay Area LISC, which has funded numerous reuse projects, set the stage for a more detailed cleanup plan.

The activities funded by this grant will position the high-impact sites selected by coalition members to acquire and leverage funding sources such as the state of California's Affordable Housing and Sustainable Communities program, the Golden State Acquisition Fund, the Bay Area Transit-Oriented Affordable Housing fund and the DTSC revolving loan fund, as well as to forge public-private partnerships and to take advantage of the influx of private capital seeking development sites in the Bay Area.

Outputs: 20 Phase I and 6 Phase II ESAs; 6 Preliminary Schematic Site Designs; Priority Sites Inventory; at least 7 Community Meetings

Outcomes: $230-$560 Million in investment; 2,050-4,100 Jobs; $7-$14 Million in ongoing revenues; Reduced community exposure to contaminants; Improved health outcomes

2.a.ii. Project Timing: The project is anticipated to commence in spring 2016 and close in spring 2019. Within a month of the grant award, the coalition members will sign a Memorandum of Agreement and the Association of Bay Area Governments (the project sponsor) will complete a Work Plan and schedule that will be included in the Cooperative Agreement with EPA. Project tasks and milestones established in the Work Plan will be tracked on a weekly basis and reported to EPA

[28] ABAG and MTC (2013). *Plan Bay Area Final Forecast of Jobs, Population and Housing*

as part of the Quarterly Report. The report will identify percentage completion of each task and progress toward milestones. In the case of delays, ABAG will provide EPA's project manager with an explanation for the delay and identify corrective action.
ABAG will coordinate site selection, contractor selection and oversight, public outreach, site access, and development of reuse strategy, working with Coalition Members through the process formalized in the MOA.

Table 2. Project Schedule

	Q2 2016	Q3 2016	Q4 2016	Q1 2017	Q2 2017	Q3 2017	Q4 2017	Q1 2018	Q2 2018
Notice of Award	x								
MOA Adoption	x								
Issue RFP & Consultant Selection		x							
Contract Award									
Site Selection		x	x	x					
Public Engagement	x	x		x			x		x
Assessments					x	x	x	x	
Schematic Designs							x	x	x

2.a.iii. Site Selection: Through the MOA, coalition members will establish a governance structure for establishing site selection criteria and for selecting sites. Detailed criteria will expand upon several general principles, prioritizing parcels that are: identified as opportunity sites with significant redevelopment potential in locally adopted plans; within 1/2 mile of frequent transit service; and meet EPA Brownfield site eligibility guidelines. Each coalition member jurisdiction will submit a set of preliminary priority sites from which a final set will be identified utilizing the process established by the coalition. A minimum of four ESAs will be performed in each local coalition member's jurisdiction.
Coalition members will pursue securing Site Access Agreements and once agreements are in place, public and privately-owned sites will be assessed. If access cannot be obtained for a blighted vacant priority site, coalition members may consider utilizing state laws such as the Gatto Act to gain access, or another site on the priority list may be assessed instead. Assessment sites are expected to be evenly divided between those with suspected petroleum contamination and those with suspected hazardous substances contamination.

2.b. Task Description and Budget Table

2.b.i. Task Description: With the exception of reporting, project tasks will be performed in collaboration with local jurisdiction and community based partners. ABAG staff will convene a series of meetings with local jurisdiction partners to assist with the process of developing a list of sites. Sites under consideration for inclusion on the list will first be screened using EPA site eligibility criteria and vetted with the California Department of Toxic Substances Control (DTSC). While the list is under development, we will convene community organization partners and begin the community engagement process. Regular meetings with local jurisdiction and community organization partners will be convened for the duration of the project.

Task 1 – Partner Engagement and Site Identification ***$35,472***

Local jurisdiction partners will develop an initial list of potential sites. Sites will be evaluated using the criteria and process established by the Coalition following adoption of the MOA. The list of potential sites will be vetted using EPA guidelines and in consultation with the community

organization partners, resulting in a final list of sites and site access as discussed in *Site Selection.*
Outputs: MOA, Priority sites inventory; Site assessment list
Staff time: Senior Regional Planner: 11.1 hours/month @88.68/hour for 36 months = $35,472
Total: $35,472
Cost Basis (Petroleum Products): $17,736 Cost Basis (Hazardous Substances): $17,736

Task 2 – Community Engagement ***$34,318***
Community engagement efforts are an integral component of the MOA and will include community communication materials, regular community briefings, project web site, and messaging developed by local jurisdictions and community based organization partners. This effort will be coordinated by ABAG's Communication Specialist in collaboration with community organization partners resulting in a community engagement plan, at least five community meetings and two focus group meetings.
Outputs: Community engagement plan, Minimum five community meetings; Minimum two focus group meetings
Cost Basis
Pass-through: Capacity building for Community Based Organizations = $5,000
Supplies: printed material, website = $4,698
Staff time: Communication Specialist: 5.5 hours/month @$98.10/hour for 36 months = $19,620
Total: $34,318
Cost Basis (Petroleum Products): $17,159 Cost Basis (Hazardous Substances): $17,159

Task 3 – Phase I and Phase II Assessments ***$460,000***
The partnership will conduct a thorough consultant selection process to identify the most appropriate firm for this project. This portion of the project includes consultants performing Phase I and II Environmental Assessments as well as Quality Assurance Project Plans, Health and Safety Plans, Sampling and Analysis Plans, and other related reports as warranted.
Outputs: 20 Phase I ESAs; 6 Phase II ESAs
Cost Basis
Contractual: 20 Phase I ESAs @ $8,000 per Phase I ESA = $160,000
Contractual: 6 Phase II ESAs @ 50,000 per Phase II ESA = $300,000
Total: $460,000
Cost Basis (Petroleum Products):$230,000 Cost Basis (Hazardous Substances): $230,000

Task 4 –Preliminary Schematic Designs ***$13,302***
As land reuse is one of the primary goals of the project, ABAG staff and the project partnership will produce schematic designs for up to five sites that are deemed locations with high redevelopment potential and aligned with adopted local plans. Bay Area LISC will be consulted regarding feasibility.
Outputs: 6 Preliminary Schematic Designs
Cost Basis
Staff time: Regional Planner: 12.5 hours/month @88.68/hour for 12 months = $13,302
Total: $13,302
Cost Basis (Petroleum Products): $6,651 Cost Basis (Hazardous Substances): $6,651

Task 5 - Project Management and Reporting **$56,908**
This task includes staff time for general oversight of the project ACRES and general reporting requirements for the grant award. ABAG project staff will hold weekly project meetings to monitor progress, identify and develop strategies to resolve issues that arise, and generate quarterly reports.
Outputs: Quarterly Reports
Cost Basis

Staff time: Senior Regional Planner: 2.7 hours/month @$110.12/ hour for 36 months = $15,416
Senior Regional Planner: 5.5 hours/month@ $88.68/hour for 36 months = $17,736
Finance Specialist: 2.2 hours/month @ $76.35/hour for 36 months = $6,108
Indirect costs of financial and performance reporting: = $17,648
Total: $56,908
Cost Basis (Petroleum Products): $28,454 Cost Basis (Hazardous Substances): $28,454

2.b.ii. Budget Table: Separate budget tables are included for the hazardous substance and petroleum work that distinguish hazardous substances related tasks from petroleum related tasks.

Table 3. Hazardous Substance Budget

Budget Categories	Task 1	Task 2	Task 3	Task 4	Task 5	Total
Personnel	$17,736	$9,810		$6,651	$19,630	**$53,827**
Indirect Cost					$8,824	**$8,824**
Travel		$100				**$100**
Website		$475				**$475**
Printing		$630				**$630**
Contractual			$230,000			**$230,000**
CBO Support		$5,000				**$5,000**
Meetings		$1,144				**$1,144**
Total	**$17,736**	**$17,159**	**$230,000**	**$6,651**	**$28,454**	**$300,000**

Table 4. Petroleum Products Budget

Budget Categories	Task 1	Task 2	Task 3	Task 4	Task 5	Total
Personnel	$17,736	$9,810		$6,651	$19,630	**$53,827**
Indirect Cost					$8,824	**$8,824**
Travel		$100				**$100**
Website		$475				**$475**
Printing		$630				**$630**
Contractual			$230,000			**$230,000**
CBO Support		$5,000				**$5,000**
Meetings		$1,144				**$1,144**
Total	**$17,736**	**$17,159**	**$230,000**	**$6,651**	**$28,454**	**$300,000**

2.c. Ability to Leverage: ABAG is a regional planning agency that enables its members to develop sustainable projects. The coalition members have resources and leveraging opportunities to bring projects along this corridor to redevelopment. The coalition proposal is designed to position projects in corridor opportunity sites to attract investment that leverages existing and future funding sources, providing a substantial return on investment for the ESAs funded by the EPA.
Existing sources for cleanup and redevelopment include: the California DTSC Revolving Loan Fund, which provides up to $2.5M in low-cost financing for cleanup to facilitate projects similar to those anticipated on corridor opportunity sites; the California Water Resources Board's $200M Storm Water Grant Program, which can be used to fund new public spaces such as parks and community gardens identified on brownfield sites in community plans; the $400M state Affordable Housing and Sustainable Communities fund, which provides grants for mixed-income housing, active

transportation and green infrastructure in PDAs (including more than $7M won by Coalition Members in 2015); more than $100M in annual Low-Income Housing Tax Credits available to Bay Area Community Development Finance Institutions (such as community partner Bay Area LISC) to support affordable housing and community facilities; the $60M Transit Oriented Affordable Housing (TOAH) fund administered by MTC in partnership with ABAG. In addition to these existing sources, a range of potential new sources are under discussion, such as a Bay Area regional housing bond (potentially $500M annually) and a state housing bond similar to Proposition 1C ($3B), which was used successfully to support multiple brownfields reuse projects.

Local government partners may also choose to utilize California's Gatto Act to recover cleanup costs in cases where assessments reveal contamination for which there is a viable responsible party. The City of Oakland, for example, previously negotiated a $700,000 settlement from Chevron Corporation for cleanup of contamination characterized under a prior US EPA Assessment Grant for Oakland's Uptown Area.

In future years, coalition members may also establish Enhanced Infrastructure Finance Districts (EIFD), which would also become a source of leveraging. Enabled by a recent state law, EIFDs permit limited tax increment financing to fund infrastructure as well as remediation in areas (such as target area PDAs) consistent with regional Sustainable Communities Strategies (i.e. Plan Bay Area).

3 Community Engagement and Partnerships

3.a. Plan for Involving Targeted Community & Other Stakeholders; and Communicating Project Outcomes

3.a.i. Community Involvement Plan: The coalition's proposal leverages deep relationships with community stakeholders built during recent local and regional initiatives including Plan Bay Area, the HUD-funded Regional Prosperity Strategy, and recently adopted plans for the corridor's Priority Development Areas. After completing the MOA, coalition members will work with established partner community organizations to develop a community engagement plan tailored to the needs of the corridor's communities. We anticipate the community engagement plan will include the following:

- Convene five public meetings to: share information including project overview, composition and goals of the coalition, desired project outcomes, and timeline; receive input and feedback from community groups, property owners, local businesses and residents about site selection and land reuse planning; and share outcomes and discuss next steps
- Hold focus group meetings with interested members of the community to receive detailed input into project goals, site selection, and reuse planning
- Develop printed and online material on the overall project, opportunities for engagement, ESAs, and reuse planning; disseminate brochures in heavily traveled places along the corridor where they will be highly visible and accessible

3.a.ii. Communicating progress: The coalition will utilize methods that have proven successful in past regional and local planning initiatives. We are confident these methods will prove useful for this project but are continuously seeking best practices and open to modifying our approach if more effective methods are discovered. We anticipate that these will include:

- Establish community assistance telephone line to respond to inquiries from interested parties and residents; this will be particularly helpful for those without access to internet
- Create a web site that describes short and long term plans for the corridor, provides status of projects, and updates on overall progress (with translation as appropriate)

3.b. Partnerships with Government Agencies

3.b.i. Local/State Environmental Authority: The **California Department of Toxic Substances Control** (DTSC) oversees the investigation and remediation of Brownfield sites in the state. The target area is located in DTSC's Region IX Brownfield program. DTSC will be available to consult on the grant and provide input on site selection and other key decisions, as well as provide guidance on opportunities obtain future cleanup funding through sources such as its voluntary cleanup program and revolving loan fund.

3.b.ii. Other relevant Governmental Partnerships: ABAG is the sister organization to the Metropolitan Transportation Commission, which oversees regional transportation project funding. Together, ABAG and MTC are responsible for developing and implementing Plan Bay Area. In addition, ABAG maintains strong longstanding relationships with other regional planning and regulatory organizations including the San Francisco Regional Water Quality Control Board, Bay Area Air Quality Management District, and the County of Alameda's Department of Health Services and Public Health Department.

3.c. Partnerships with Community Organizations

3.c.i. Community Organization Description and Role: Community organization partners for this project include organizations that participated in the development of Plan Bay Area and community plans in coalition jurisdictions. ABAG and local coalition members have long standing relationships with many of these organizations and has successfully worked with them on many issues including housing, land use and social justice.

These organizations serve large communities along the corridor and focus on a number of issues including housing, open space and social equity. In addition to the organizations named, we will build on relationships and capacity developed through the HUD Sustainable Communities Grant. The coalition's goal is to design the work so that community organizations can maximize their effectiveness. To ensure community participation in this project, the budget includes funds to increase capacity and support these vital organizations.

Within 3 months of establishment of the MOA, ABAG will convene the community partners to provide a project overview, develop the community engagement plan, and solicit input about issues relevant to their areas of expertise. With assistance from the Coalition, community organization partners will organize and conduct public meetings in the portions of the corridor in which they have an established presence.

OCCUR is a community organization that brings together East Bay residents, merchants and governments to stimulate the economic development potential of emerging communities; it will focus on outreach and meeting facilitation. The **Unity Council** is a non-profit community development corporation with expertise in mixed-use development and building health communities; the Unity Council will provide insight into the development process as well as conduct outreach. **TRANSFORM** is a sustainable transportation organization active across the Bay Area and California, with a particular focus on the East Bay; TRANSFORM will focus on meeting facilitation and technical assistance around Transit-Oriented Development. **Greenbelt Alliance** is a Bay Area non-profit with expertise in meeting facilitation and smart growth policy; it will focus on meeting facilitation and providing technical assistance around conservation. **Bay Area LISC** is a community development finance institution (CDFI) responsible for distributing federal low-income tax credits and providing comprehensive place-based support to low income communities; LISC, which has built nearly 12,000 homes and apartments and over 1.4M square feet of community-serving development in the East Bay and larger Bay Area, will provide insight into funding strategies for projects on opportunity sites.

4. Project Benefits

4.a.i. Health and/or Welfare Benefits: The ESAs and reuse strategies funded by this grant are an important step in addressing the severe health impacts discussed in *Community Need.* Assessment followed by cleanup and redevelopment will help eliminate the risks of exposure to site contaminants, thereby protecting nearby and sensitive populations such as children and young single mothers in poverty. Reducing the population's exposure to contaminants will have the long term effect of potentially reducing cancer rates, increasing life expectancy and improving quality of life while also reducing risks to workers involved in future construction projects on these sites. Assessments that remove suspicions of contamination would provide the additional level of certainty required for public and private investment, allowing projects that implement community priorities to move ahead.

As local PDA plans recommend land uses that serve the existing community, including parks and affordable housing, the redevelopment of opportunity sites facilitated by this grant will combine health, welfare and economic benefits. In addition to creating job opportunities and reducing blight, many projects will provide services that address the immediate challenges facing corridor residents. Health and wellness centers, for example, are integrated into recent mixed-use housing developments in the area such as the Lion Creek Crossings in Oakland, a Phoenix Award winner. Other recent projects, such as the REACH Ashland Youth Center, a park with youth services, provide comprehensive wrap-around services including literacy, job training, and health.

Bringing new homes and businesses into target area will also help address disproportionately high levels of obesity and diabetes by increasing the number of local services, such as grocery stores, that can be reached on foot while also supporting higher levels of transit service. Consistent with local plans, projects on opportunity sites will provide easements for new pedestrian and bicycle connections, improving opportunities for active transportation and increasing greenspace. By increasing the use of sustainable modes of transportation, reuse will also help reduce emissions associated with asthma such as TAC and PM.

4.a.ii. Environmental Benefits: The ESAs funded by this grant will facilitate the removal of an array of contaminants that have for years damaged the soil, groundwater, stormwater, and indoor air quality of the target area such as PCBs, TCE, PCE, and TPH. In addition to addressing community environmental quality, contaminant removal will reduce risks to the health of the San Francisco Estuary from contaminated stormwater and the East Bay's water supply from groundwater contamination. The ESAs will also provide clarity on the relative risk of different sites, allowing future cleanup efforts to focus on locations that pose the greatest risks.

As development in the target area advances—spurred by the brownfield revitalization that this project and major transit investments will support—transportation options will expand and travel along the corridor will shift toward more sustainable modes. This will help reduce the pollution associated with auto travel, reducing concentrations of PM and TAC due to growing congestion on I-880. The addition of urban greening as amenities and required mitigation measures in new projects will also play an important role in comprehensively addressing air quality and other potential environmental and health risks. Parks, for example, will mitigate air quality impacts by adding trees that filter airborne contaminants while also mitigating soil and groundwater contamination through stormwater features such as bioswales that remove silt and pollution from surface runoff water.

4.b. Environmental Benefits from Infrastructure/Sustainable Reuse

4.b.i. Policies, Planning and Other Tools: The project will leverage a host of local and regional policies, tools and infrastructure investments. Community plans adopted across the target area provide zoning, anti-displacement and environmental mitigation measures that together support the development of affordable and mixed-income housing, retention of local residents, and increased

transportation choices, and healthier. Green building programs in each of the coalition partner cities will help insure that redevelop in the corridor is energy-efficient and promotes human health.

Supporting these policy tools is: regional technical assistance on placemaking, active transportation, and parking management provided by ABAG and the Metropolitan Transportation Commission through the regional PDA planning program; forthcoming Healthy Communities guidelines from the Bay Area Air Quality Management District; and stormwater best management practices disseminated by the SF Estuary Partnership.

Redevelopment in the target area spurred by the grant will leverage major federal, state and regional transit investments, including: the $200 million East Bay BRT, the first full Bus Rapid Transit route in the Bay Area; more than $1B in improvements to BART to increase frequency, capacity and safety; and multiple complete streets projects that support active transportation funded by Plan Bay 2013 regional transportation funding.

4.b.ii. Integrating Equitable Development or Livability Principles: The project will implement HUD-DOT-EPA Livability Principles as well as the equitable development policies integrated in the adopted local and regional plans of coalition members. To achieve HUD-DOT-EPA Livability Principles, it will **provide more transportation choices** by focusing mixed-use development at transit-supportive densities within walking distance of frequent, affordable public transit (BART and East Bay BRT), improving the public realm and travel conditions for healthy, active transportation such as walking and bicycling; **promote equitable, affordable housing** by setting the stage for projects that implement community plans calling for mixed-income housing that serves all age groups and backgrounds, addresses displacement pressures that are increasingly pushing low-income Bay Area families to move to outer areas of the region with higher transportation costs, and building homes in places with strong green building codes; **enhance economic competitiveness** by reducing the blight in the target area to make it more attractive to investors and small businesses, enlarging the customer base for local shops and services, setting the stage for major job-producing projects envisioned in local plans, and increasing access to transit that reaches the region's major employment and educational opportunities within ½ hour ; **support existing communities** by facilitating land recycling that will revitalize the corridor's communities, make efficient use of existing infrastructure, and focusing development on opportunity sites identified in plans driven by existing communities; **coordinate and leverage federal policies and investment** by taking an integrated implementation approach that aligns with recent federal investments including East Bay BART ($81M FTA Small Starts Grant), eight pilot projects in the target area to support equitable transit-oriented development and job creation (through the Bay Area's $5M HUD Sustainable Communities Grant), and hundreds of energy retrofits and renewable energy installations funded through Renewable Energy and Consumer Energy Efficiency Tax Credits; and **value communities and neighborhoods** by facilitating future development that includes much-needed public space, public realm improvements, and health care and other supportive services currently not adequately provided—improving community health, safety and walkability.

The project will also implement Play Bay Area policy to increase community stability and support affordable housing in transit-rich.[29] By helping build the mixed-income projects identified in local plans for opportunity sites, it implements anti-displacement policies in community plans for target area neighborhoods, such as the International Blvd TOD Plan's policy to provide equitable housing choices that leverage East Bay BRT stops[30] and the Ashland/Cherryland Business District Specific

[29] ABAG and MTC (2013), *Plan Bay Area*

[30] City of Oakland (2011). *International Blvd TOD Plan*

Plan's policy to reinforce the area's cultural diversity by promoting the area as a cultural and economy center.[31]

4.c Economic and Community Benefits

4.c.i. Economic and Other Benefits: Completion of these assessments will build a pipeline of mixed-use transit-oriented projects in locally identified opportunity sites along the corridor, positioning these struggling neighborhoods to take advantage of private investment and new local, state and regional funding. In addition to a growing pool of private real estate investment, new competitive public funding sources such as California's Affordable Housing and Sustainable Communities (AHSC) program (which uses the proceeds of Cap and Trade auctions) have emerged to support affordable housing and active transportation. The target area is among the most competitive in the state for this funding as a result of its demographic and environmental challenges; in the fund's first year alone, the corridor received $13 million in funding which will support construction of 220 units, leveraging $60 million in additional funds. The fund more than triples in 2016 and is expected to grow further in future years, increasing the timeliness of completing ESAs. The anticipated economic benefit of redevelopment facilitated by this grant is estimated at between $230 million to $560 million in immediate benefits and between $7 million to $14 million in ongoing annual local government revenue—enough to fund 35 to 70 mid-level police officers. Job creation is estimated at between 1,600 to 3,200 immediate jobs and between 450 and 900 ongoing positions supported by the redevelopment. One to two thousand new mixed-income homes are expected, as well as commercial development, community services and retail.[32] A 1% increase in the value of existing homes in the corridor spurred by reinvestment would create approximately $10 million in additional property taxes per year.

4.c.ii: Job Creation Potential: Partnerships with Workforce Development Programs: The Coalition will identify a process for integrating workforce development programs into the assessment, cleanup and redevelopment of sites for which ESAs are conducted. This will involve consulting with and identifying partners such as the Alameda County Workforce Investment Board (WIB) and recent EPA Environmental Workforce Development and Job Training Grantees in Oakland and Richmond. In the redevelopment process, local first source hiring policies would leverage workforce development programs as well.

5 Programmatic Capability and Past Performance

5.a. Programmatic Capability: ABAG is the Council of Governments for the San Francisco Bay Area and is well qualified to undertake the role of administering the Brownfields Coalition Assessment grant. As the designated regional planning agency for the Bay Area, ABAG has a long standing history of successfully tackling complex regional issues such as housing, hazard mitigation, resilience, economic development, regional land use, and the conservation. The staff that will administer the grant are directed by the Executive Director, the Finance Director and Planning Director. **JoAnna Bullock** is a Senior Planner and Grant Administrator; she will oversee the overall project ensuring that coalition partnerships, community engagement and site assessments are managed and projected outcomes are achieved. She has 30 years of project management experience and expertise in grant management, environmental issues including hazardous waste sites and community engagement. **Mark Shorett** is a Senior Regional Planner; he will lead day to day

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[31] County of Alameda (2014).

[32] Calculations in this paragraph based upon National Association of Homebuilders *Economic Impact of Home Building in a Typical Local Area* (2015), assuming between 10 and 20 100-unit multifamily housing projects as a result of redevelopment, consistent with a parcel size of 2 acres at 50 du/acre per local zoning. Similarly sized projects in the area include the Marea Alta apartments and Fruitvale Transit Village.

engagement with coalition members and community partners. Currently managing PDA Implementation and the East Bay Corridor Initiative, he has twelve years of experience in project management, redevelopment, urban design (including schematic architectural and site design), and economic development.

Through a consensus process established in the MOA, ABAG and other coalition members will hire contractors with the expertise required to conduct the ESAs involved in completing the grant. All procurements will follow EPA requirements.

5.b. Audit Findings: ABAG's most recent audit did not disclose any significant deficiencies, or material weaknesses or instances of noncompliance material to the basic financial statements. ABAG has implemented procedures to ensure compliance with all reporting requirements of federal grants and maintain evidence of submission accordingly.

5.c. Past Performance and Accomplishments

5.c.i. Currently or Has Ever Received an EPA Brownfields Grant (N/A)

5.c.ii. Has Not Received an EPA Brownfields Grant but has Received Other Federal or Non-Federal Assistance Agreements:

Purpose: ABAG's Resilience Program has received five grant awards from the US Geological Survey (USGS) since 2010 (a total of $412, 087) to advance hazard mitigation and recovery efforts in the region including: "Using Risk Communication Research for Improved Integration of Hazard, Risk, and Mitigation Information into ABAG's Bay Area Earthquake Website" (2010, $80,000); "A Sub-Regional Review of Earthquake-related Hazards in the San Francisco Bay Area" (2012, $80,000); "Bay Area Population and Earthquake Risk" (2013, $93,000); "Local Government Resilience Toolkit" (2014, $90,816); "Bay Area Housing Risk Communication" (2015, $68,271). ABAG also received a Smart Growth Implementation Assistance grant from the Environmental Protection Agency (EPA)'s Smart Growth Program (2014, $93,000), entitled Creating Safe, Smart Growth Strategies for the San Francisco Bay Area.

Accomplishments: ABAG utilized 2010 and 2012 USGS grants to redesign its natural hazards resilience website and to improve overall communication of risk and distribute mitigation strategies to local governments and the general public. The 2013 USGS grant enabled ABAG to assess the overlapping risks of disaster-vulnerable housing types, vulnerable populations, and areas subject to earthquakes and current and future flooding; this effort culminated in a suite of strategies for local governments for housing and community resilience. ABAG utilized a 2014 grant to refine a selection of these strategies to assist local governments in adopting mitigation and adaptation actions such as soft-story ordinances. A 2015 grant is enabling ABAG to more accurately model housing loss during major disasters and to improve tools to assist residents in retrofitting their homes and preparing for disasters.

The EPA Smart Growth Implementation Assistance grant leveraged the USGS 2013 grant to develop responsive, regionally-appropriate strategies to address the housing and vulnerable population risks identified in the project for both existing and future development.

2. Compliance with Grant Requirements: Our staff worked cooperatively with USGS; tasks were performed according to work plans, work products were delivered on schedule, terms and conditions of past grants were strictly adhered to, all reporting requirements were met, and the grants were properly closed. Staff worked closely with USGS, meeting monthly to develop the deliverable and ensure that the schedule was met.

ATTACHMENT A

Letter from California Department of Toxic Substances Control

Matthew Rodriquez
Secretary for
Environmental Protection

Department of Toxic Substances Control

Barbara A. Lee, Director
700 Heinz Avenue
Berkeley, California 94710-2721

Edmund G. Brown Jr.
Governor

November 20, 2015

Ms. Noemi Emeric-Ford
Site Assessment Manager
Brownfields and Site Assessment Section
USEPA Region 9
600 Wilshire Boulevard
Los Angeles, California 90017-3212

Dear Ms. Emeric-Ford:

The California Department of Toxic Substances Control (DTSC) has lead regulatory responsibility for investigating and remediating hazardous substances release sites in California. DTSC fully supports the Association of Bay Area Governments (ABAG) grant application for a $600,000 ($300,000 for hazardous substances and $300,000 for petroleum) Community-wide U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County. ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro, Hayward and Alameda County.

The coalition proposes to use the Community-Wide Assessment Grant, to assess sites identified by the local jurisdictions based on previous land use and location. Assessments would focus on areas within low-income neighborhoods that have been disproportionately impacted by pollutants and contamination. These Brownfields funds would help advance the growth of housing, local businesses and services within these communities.

We appreciate the opportunity to voice our support for this crucial funding.

Please contact me at (510) 540-3833 or janet.naito@dtsc.ca.gov if you have any questions.

Sincerely,

Janet Naito, Branch Chief
Berkeley Cleanup Operations Branch
Brownfields and Environmental Restoration Program

cc: JoAnna Bullock (via electronic mail to: JoAnnaB@abag.ca.gov)
Association of Bay Area Governments

ATTACHMENT B

Memorandum of Agreement

East Bay Corridor Brownfields Coalition

MEMORANDUM OF AGREEMENT
EAST BAY CORRIDOR BROWNFIELDS COALITION

This Memorandum of Agreement (MOA) is entered into by and between the following participating entities:
Association of Bay Area Governments
County of Alameda
City of Hayward
City of Oakland
City of San Leandro

I. Purpose of the Agreement

The purpose of this agreement sets out the terms by which the participating entities will work together to implement a Brownfields site identification and assessment program along the East Bay Corridor. This agreement will remain in effect from July 2016 to June 2019 and Senior Regional Planner Mark Shorett will be the key contact for ABAG.
This agreement sets out the terms by which the County of Alameda and the Cities of Oakland and Hayward will meet, make decisions, select sites, hire consultants and work with stakeholders and the communities surrounding the project area.

II. Background

In September 2013, the East Bay Corridors Initiative was formed as an implementation strategy for realizing Plan Bay Area, the region's long range sustainable growth plan. The East Bay Corridor is divided into two segments: the Oakland-Union City Corridor and the San Pablo Corridor. This agreement concerns a significant portion of the Oakland-Union City segment.

The activities to be undertaken by coalition Participants of the East Bay Corridor Initiative include:

- develop strategies to create thriving neighborhoods and downtowns
- identify and develop funding sources for plan implementation
- endorse joint applications by coalition Participants for grants and other funding that support agreed upon strategies

The East Bay Corridor Brownfields Coalition Assessments align well with the activities of the East Bay Corridors Initiative. Identifying and conducting site assessments along the Oakland, San Leandro, Hayward, Alameda County segment of the corridor will improve public health, advance implementation of local plans, increase marketability of land and greatly enhance land re-use along the corridor.

III. Proposed Activities

The Participants of the coalition will undertake the following activities.

- Meet on a regular basis as determined by coalition Participants
- In partnership with community organizations, develop a robust community engagement plan
- Allocate funding to increase capacity of community organization partners
- Develop a site selection process that prioritizes sites with high redevelopment impact potential

- Hire most appropriate and qualified consultants to conduct site assessments
- Assist with the development of land re-use plans

IV. Roles and Responsibilities
Each Participant of the coalition will have the following responsibilities:

- Each coalition Participant will assign a representative to the EBC Brownfields Program
- Each coalition Participant will participate in regular meetings, development of public engagement plan, site selection and consultant hiring process

V. Structure and Governance
For ease of formation and administration and to maintain flexibility, the East Bay Corridor Brownfields Coalition is structured as an unincorporated association of local and regional public entities. The coalition Participants agree that this MOA is independent of any other contract(s) or agreement(s) between or among the coalition Participants, or the contracts(s) or agreement(s) between or among any Corridor Jurisdiction that are promulgated to implement a grant or local plan.

Each coalition Participant will assign a representative and these representatives will collectively coordinate activities undertaken pursuant to this MOA. Through a unanimous vote representatives may establish rules related to decision making for the coalition.

Every representative has the right to appoint an alternative to the coalition.

VI. Participant Resources and Compensation
The coalition Participants acknowledge that the East Bay Corridor Brownfields Coalition is likely to require some investment of resource to be effective. Each coalition Participant will assign staff, at no cost, to act as its representative.

Financial support will be provided to community and non-profit organizations to facilitate their active participation in the project.

VII. Withdrawal and Termination
This MOA will continue until terminated by majority vote of the representatives, but coalition Participants may withdraw from this MOA on sixty (60) days notice to other coalition Participants. If a coalition Participant withdraws from the coalition, management of active Phase I and II assessments in their jurisdiction will be transferred to ABAG.

VIII. Amendments
This MOA may be amended by written agreement executed by the Participants in the same manner as this MOA.

IX. Effective Date
This MOA is effective upon the date the Participants execute the MOA

X. Signatures of Parties' Principals

ATTACHMENT C

Letters of Support

East Bay Corridor Brownfields Coalition Participants

ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

PLANNING DEPARTMENT

Chris Bazar
Agency Director

Albert Lopez
Planning Director

224
West Winton Ave.
Room 1[illegible]

Hayward
California
94544

phone
510.670.5400
fax
510.785.8793

www.acgov.org/cda

December 14, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments (ABAG)
101 8th Street
Oakland, CA 94607

Dear Mr. Rapport:

The County of Alameda is pleased to commit to supporting and participating in the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro and Hayward and Alameda County. This grant supports implementation of the County's Ashland-Cherryland Business District (ABCD) Specific Plan, Plan Bay Area, and our ongoing partnership to collaborate with ABAG and our neighboring jurisdictions through the East Bay Corridors Initiative.

The grant award would set the stage for the redevelopment of key opportunity properties identified by community members and in the ABCD Specific Plan. Strong support exists for creating much-needed community services, mixed-income housing, and economic development in this area, but ongoing concerns regarding environmental issues have limited the potential for achieving these objectives. The recent loss of our redevelopment agency and our ongoing budgetary limitations has also contributed to these challenges. In concert with ABAG and coalition jurisdictions, we will utilize this grant to assess our highest priority potential brownfield sites, engage community members, and work collaboratively with our neighboring jurisdictions.

The grant would leverage multiple grant-funded city projects, including our update to the Ashland-Cherryland Specific Plan funded by MTC and ABAG, the REACH youth center, and multiple streetscape improvements. We view this application as an opportunity to build on these resources and implement a collaborative vision for the transit corridors that connect us to our neighboring cities and the East Bay.

Please feel free to contact us with any questions regarding these commitments.

Sincerely,

Albert Lopez
Planning Director

CITY OF
HAYWARD
HEART OF THE BAY

November 20, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments (ABAG)
101 8th Street
Oakland, CA 94607

Dear Mr. Rapport:

The City of Hayward is pleased to commit to supporting and participating in the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro and Hayward and Alameda County. This grant supports implementation of the City's Mission Blvd Corridor Specific Plan/Form-Based Code and South Hayward/Mission Boulevard Form-Based Code, Plan Bay Area, and the East Bay Corridors Initiative—our ongoing effort to collaborate with ABAG and our neighboring East Bay jurisdictions.

The grant award would set the stage for the redevelopment of key opportunity properties identified in our recently adopted plans for Mission Boulevard. Strong support exists for creating new mixed-income housing, community services, and job-creating land uses in this area. However, ongoing concerns regarding environmental issues have limited somewhat the potential for achieving these objectives. The recent loss of our redevelopment agency and our ongoing budgetary limitations has also contributed to these challenges. In concert with ABAG and coalition jurisdictions, we will utilize this grant to assess our highest priority potential brownfield sites, engage community members, and work collaboratively with our neighboring jurisdictions.

The grant would leverage multiple grant-funded city efforts, including the current Downtown Hayward Specific Plan project, transportation improvements to Mission Boulevard and Foothill Boulevard, and redevelopment sites along Mission Boulevard and in Downtown. We view this application as an opportunity to build on these resources and implement a collaborative vision for the transit corridors that connect our cities. Please feel free to contact me with any questions regarding these commitments.

Sincerely,

David Rizk
Development Services Director
City of Hayward

Development Services Department
777 B Street, Hayward, CA 94541-5007
Tel: 510/583-4234 Fax: 510/583-3650 TDD: 510/247-3340 Website: www.hayward-ca.gov

002799 2020-10-29

CITY OF OAKLAND

DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 3315 • OAKLAND, CALIFORNIA 94612-2032

Office of the City Administrator
Department of Economic and Workforce Development

(510) 238-3627
FAX (510) 238-2226
TDD (510) 238-3254

December 17, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments (ABAG)
101 8th Street
Oakland, CA 94607

Dear Mr. Rapport,

The City of Oakland is pleased to commit to supporting and participating in the U.S. EPA Brownfields Coalition Assessment Grant for the International Boulevard/East 14th Street/Mission Boulevard corridor, including five Bay Area Rapid Transit (BART) station areas, in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro and Hayward and Alameda County. This grant supports implementation of the City's recently adopted Coliseum Area Specific Plan, International Boulevard Transit-Oriented Development (TOD) plan, Plan Bay Area, and our ongoing partnership with ABAG and our neighboring jurisdictions in the East Bay Corridors Initiative.

The grant award would set the stage for the redevelopment of key opportunity properties identified by community members. Our recent planning efforts have created momentum for implementing community priorities (i.e. affordable housing, local parks, and job creation) on these sites, but ongoing concerns regarding safety and environmental issues have limited public and private capacity for redevelopment. In addition, the loss of redevelopment agencies and city budgetary limitations has significantly diminished our resources to fund the type of effort that would be supported by this grant. In concert with ABAG and coalition jurisdictions, we will utilize this grant to assess our highest priority potential brownfield sites, engage community members, and continue to participate in the creation of a successful transit corridor between Oakland and Hayward.

The grant would leverage multiple planning and infrastructure investments, including the Oakland Sustainable Neighborhoods Initiative (OSNI) and International Blvd TOD Plan supported by the California Strategic Growth Council (SGC), the East Bay Bus Rapid Transit (BRT) project funded by AC Transit, ongoing investments in BART and improvements to International Blvd and other streets in the corridor funded by the Alameda County Transportation Commission. This application provides an opportunity to build upon these resources while implementing a collaborative local, regional, and corridor vision for smart, healthy, equitable development.

Sincerely,

Mark Sawicki
Director
Economic & Workforce Development Department

City of San Leandro
Civic Center, 835 E. 14th Street
San Leandro, California 94577
www.sanleandro.org

December 3, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments (ABAG)
101 8th Street
Oakland, CA 94607

Dear Mr. Rapport,

The City of San Leandro is pleased to support and participate in the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro and Hayward and Alameda County. This grant supports implementation of two key City specific plans, the Downtown TOD Strategy and East 14th South Area Strategy, as well as Plan Bay Area and our ongoing partnership with ABAG and neighboring East Bay jurisdictions through the East Bay Corridors Initiative.

The grant award would set the stage for the redevelopment of key opportunity properties identified by the City Council and community in our adopted Downtown and East 14th Street plans. Strong public support exists for creating much-needed community services, mixed-income housing, and economic development in these areas, but ongoing concerns regarding environmental issues are a factor in developing some of the opportunity sites. The recent loss of our redevelopment agency and our ongoing budgetary limitations have also contributed to these challenges. In concert with ABAG and coalition jurisdictions, we will utilize this grant to assess our highest priority potential brownfield sites, engage community members, and work collaboratively with our neighboring jurisdictions.

The grant would leverage multiple and recent grant-funded City projects including streetscape improvements in the Downtown TOD plan area and the Bay Fair TOD Specific Plan currently underway. We view this application as an opportunity to build on these resources and implement a collaborative vision for the transit corridors that connect us to our neighboring cities and the East Bay.

Please feel free to contact Tom Liao, Deputy Community Development Director, 510-577-6003, with any questions regarding these commitments.

Sincerely,

Cynthia Battenberg, Community Development Director

Pauline Russo Cutter, Mayor

City Council: Deborah Cox, Jim Prola, Benny Lee, Ursula Reed, Corina N. López, Lee Thomas

CITY OF SAN LEANDRO INCORPORATED 1872

ATTACHMENT D

Letters of Support

East Bay Corridor Brownfields Coalition

Community Organization Partners

GREENBELT ALLIANCE

San Francisco Office
312 Sutter Street, Suite 510
San Francisco, CA 94108
(415) 543-6771

December 17, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments
101 8th Street
Oakland, CA 94607

RE: U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor

Dear Mr. Rapport:

Greenbelt Alliance is the champion of the places that make the Bay Area special. We ensure the right development happens in the right places. Through land-us policy and planning expertise, engagement with decision makers, and efforts to educate and engage Bay Area residents, we work to protect the region's open spaces and make sure cities grow in a way that creates great neighborhoods for everyone.

Greenbelt Alliance has worked with community leaders and residents across the Bay Area to develop plans and approaches to bring development that will help meet community needs to areas around transit stations and along major transportation corridors. Done right, growth of this type will help reduce pressure to sprawl into the Bay Area's greenbelt, mitigate our region's impact on the climate, revitalize long neglected areas, and provide homes and access to jobs for Bay Area residents most in need.

Because of its consistency with our objectives, **Greenbelt Alliance supports the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG).** ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro and Hayward and Alameda County.

The East 14th Street/Mission Boulevard corridor has a rich cultural history and formerly served as an employment center, particularly for people of color. This major corridor provides a critical linkage between East Bay cities and is home to a diverse group of residents. Though the corridor has received little in the way of public and private investment over the past three decades, its importance in the regional long range sustainable growth plan make it a major focus for future growth and development.

002796 2020-10-29

The grant award would set the stage for the redevelopment of key opportunity properties identified by local jurisdictions and community members. The funds will be utilized to assess high priority potential brownfield sites, work collaboratively with neighboring jurisdictions, and engage community members. The desired outcome is to advance land reuse and promote growth and development along the corridor.

Greenbelt Alliance looks forward to participating in the community engagement process and the overall project. We anticipate that this will be a successful project that has the potential to improve services and increase mixed-income housing and economic development in East 14th Street/Mission Boulevard communities.

Sincerely

Jeremy Madsen
Executive Director

LISC Bay Area

December 14, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments
101 8th Street
Oakland, CA 94607

Dear Mr. Rapport,

Bay Area Local Initiatives Support Corporation (LISC) supports the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro and Hayward and Alameda County.

The East 14th Street/Mission Boulevard corridor has a rich cultural history and formerly served as an employment center, particularly for people of color. This major corridor provides a critical linkage between east bay cities and is home to a diverse group of residents. Though the corridor has received little in the way of public and private investment over the past three decades, its importance in the regional long range sustainable growth plan make it a major focus for future growth and development.

The grant award would set the stage for the redevelopment of key opportunity properties identified by local jurisdictions and community members. The funds will be utilized to assess high priority potential brownfield sites, work collaboratively with neighboring jurisdictions, and engage community members. The desired outcome is to advance land reuse and promote growth and development along the corridor.

Bay Area LISC will participate in the community engagement plan and the overall project. We look forward to successful project outcomes which have the potential to improve services and increase mixed-income housing and economic development in our communities.

Sincerely,

Marsha G. Murrington
Director of Economic Development

LOCAL INITIATIVES SUPPORT CORPORATION
369 Pine Street, Suite 350 ▪ San Francisco, CA 94104 ▪ Phone 415-397-7322 ▪ Fax 415-397-8605
WWW.BAYAREALISC.ORG

OCCUR

Creating Communities of Opportunity

December 16, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments
101 8th Street
Oakland, CA 94607

Dear Mr. Rapport,

OCCUR supports the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application of behalf of itself, the Cities of Oakland, San Leandro and Hayward and Alameda County.

The East 14th Street/Mission Boulevard corridor has a rich cultural history and formerly served as an employment center, particularly for people of color. This major corridor provides a critical linkage between east bay cities and is home to diverse group of residents. Though the corridor has received little in the way of public and private investment over the past three decades, its importance in the regional long range sustainable growth plan make it a major focus for future growth and development.

The Grant award would set the stage for the redevelopment of key opportunity properties identified by local jurisdictions and community members.The funds will be utilized to assess high priority potential Brownfields sites, work collaboratively with neighboring jurisdictions, and engage community members. The desired outcome is to advance land reuse and promote growth and development along the corridor.

OCCUR will participate in the community engagement plan and the overall project. We look forward to successful project outcomes which have the potential to improve services and increase mixed-income housing and economic development in our communities.

Sincerely,

Sondra Alexander
Executive Director

1330 Broadway, Suite 905 | Oakland, CA 94612 ph (510) 839-2440 fax (510) 268-9065 occur@sbcglobal.net
www.occurnow.org

TransForm

Our communities. Our transportation. Our future.

December 11, 2015

Ezra Rapport, Executive Director
Association of Bay Area Governments
101 8th Street
Oakland, CA 94607

Dear Mr. Rapport,

TransForm supports the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application on behalf of itself; Alameda County; and the Cities of Oakland, San Leandro and Hayward.

The East 14th Street/Mission Boulevard corridor has a rich cultural history and formerly served as an employment center, particularly for people of color. This major corridor provides a critical linkage between East Bay cities and is home to a diverse group of residents. Though the corridor has received little in the way of public and private investment over the past three decades, its importance in the regional long range sustainable growth plan make it a major focus for future growth and development. The grant award would set the stage for the redevelopment of key opportunity properties identified by local jurisdictions and community members. The funds will be utilized to assess high priority potential brownfield sites, work collaboratively with neighboring jurisdictions, and engage community members. The desired outcome is to advance land reuse and promote growth and development along the corridor.

TransForm will participate in the community engagement plan and the overall project. We look forward to successful project outcomes which have the potential to improve services and increase mixed-income housing and economic development in our communities.

Sincerely

Stuart Cohen

Stuart Cohen
Executive Director

MAIN OFFICE: 436 14TH STREET, SUITE 600, OAKLAND, CA 94612 | T: 510.740.3150 |
SACRAMENTO: 717 K STREET, SUITE 300, SACRAMENTO, CA 95814 | T: 916.441.0204 |
SILICON VALLEY: 48 SOUTH 7TH STREET, SUITE 103, SAN JOSE, CA 95112 | T: 408.406.8074 |

WWW.TRANSFORMCA.ORG

THE UNITY COUNCIL

Date: December 9, 2015

The Unity Council supports the U.S. EPA Brownfields Coalition Assessment Grant for the East 14th Street/Mission Boulevard corridor in Oakland, San Leandro, Hayward, and unincorporated Alameda County submitted by the Association of Bay Area Governments (ABAG). ABAG is submitting the application on behalf of itself, the Cities of Oakland, San Leandro, and Hayward and Alameda County.

The East 14th Street/Mission Boulevard corridor has a rich cultural history. This major corridor provides a critical linkage between East Bay cities and is home to a diverse group of residents. Though the corridor has received little in the way of public and private investment over the past three decades, its importance in the regional long range sustainable growth plan make it a major focus for future growth and development. In light of the current Bus Rapid Transit line in development along International Boulevard/E. 14th Street, this vital artery is poised to play a center role in the area's ability to undergo sustainable growth.

The grant award would set the stage for the redevelopment of key opportunity properties identified by local jurisdictions and community members. The funds will be utilized to assess high priority potential Brownfield sites, work collaboratively with neighboring jurisdictions, and engage community members. The desired outcome is to advance land reuse and promote growth and development along the corridor.

The Unity Council will participate in the community engagement plan and the overall project. We look forward to successful project outcomes including improved services and increased mixed-income housing and economic development in our communities.

Sincerely,

X

Erin Patch
Executive Vice President

The Unity Council
1900 Fruitvale Ave Ste 2A, Oakland, CA 94601
510-535-6900 Office • 510-534-7771 Fax • www.unitycouncil.org

OMB Number: 4040-0004
Expiration Date: 8/31/2016

Application for Federal Assistance SF-424

* 1. Type of Submission:
- [ ] Preapplication
- [x] Application
- [ ] Changed/Corrected Application

* 2. Type of Application:
- [x] New
- [ ] Continuation
- [ ] Revision

* If Revision, select appropriate letter(s):

* Other (Specify):

* 3. Date Received: 12/18/2015

4. Applicant Identifier:

5a. Federal Entity Identifier:

5b. Federal Award Identifier:

State Use Only:

6. Date Received by State:

7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name: Association of Bay Area Governments

* b. Employer/Taxpayer Identification Number (EIN/TIN): 94-2832478

* c. Organizational DUNS: 0790739200000

d. Address:

* Street1: MetroCenter, 101 8th Street
Street2:
* City: Oakland
County/Parish:
* State: CA: California
Province:
* Country: USA: UNITED STATES
* Zip / Postal Code: 94607-4756

e. Organizational Unit:

Department Name: Planning Department

Division Name:

f. Name and contact information of person to be contacted on matters involving this application:

Prefix: Ms.
* First Name: JoAnna
Middle Name:
* Last Name: Bullock
Suffix:

Title: Senior Grants Administrator

Organizational Affiliation: Association of Bay Area Governments

* Telephone Number: 510 464-7968
Fax Number: 510 464-7985

* Email: joannab@abag.ca.gov

Application for Federal Assistance SF-424

*** 9. Type of Applicant 1: Select Applicant Type:**

E: Regional Organization

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

*** 10. Name of Federal Agency:**

Environmental Protection Agency

11. Catalog of Federal Domestic Assistance Number:

66.818

CFDA Title:

Brownfields Assessment and Cleanup Cooperative Agreements

*** 12. Funding Opportunity Number:**

EPA-OSWER-OBLR-15-04

* Title:

FY16 Guidelines for Brownfields Assessment Grants

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Add Attachment | Delete Attachment | View Attachment

*** 15. Descriptive Title of Applicant's Project:**

East Bay Corridor Brownfields Coalition Assessments

Attach supporting documents as specified in agency instructions.

Add Attachments | Delete Attachments | View Attachments

Application for Federal Assistance SF-424

16. Congressional Districts Of:

* a. Applicant CA-013 * b. Program/Project CA-013

Attach an additional list of Program/Project Congressional Districts if needed.

Add Attachment | Delete Attachment | View Attachment

17. Proposed Project:

* a. Start Date: 07/01/2016 * b. End Date: 06/30/2017

18. Estimated Funding ($):

* a. Federal	600,000.00
* b. Applicant	0.00
* c. State	0.00
* d. Local	0.00
* e. Other	0.00
* f. Program Income	0.00
* g. TOTAL	600,000.00

*** 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

☒ a. This application was made available to the State under the Executive Order 12372 Process for review on 12/18/2015.

☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.

☐ c. Program is not covered by E.O. 12372.

*** 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**

☐ Yes ☒ No

If "Yes", provide explanation and attach

Add Attachment | Delete Attachment | View Attachment

21. *By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

☒ ** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: Ms. * First Name: JoAnna

Middle Name:

* Last Name: Bullock

Suffix:

* Title: Senior Grants Administrator

* Telephone Number: 510 464-7968 Fax Number: 510 464-7985

* Email: joannab@abag.ca.gov

* Signature of Authorized Representative: JoAnna Bullock * Date Signed: 12/18/2015

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 8/17/2017 9:39:29 PM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]
Subject: Pls let me know if attachment doesn't come through: Port response to T6 cplt
Attachments: Port Letter to EPA - Response to Title VI Complaint.pdf

PORT OF OAKLAND

J. Christopher Lytle
Executive Director

August 16, 2017

VIA EMAIL AND UPS OVERNIGHT MAIL

Mr. Charles E. James, Sr.
Director
Office of the Secretary of Transportation
Departmental Office of Civil Rights
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Ms. Lilian S. Dorka
Director
External Civil Rights Compliance Officer
Office of General Counsel
U.S. Environmental Protection Agency
Mail code 1201A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

Dear Mr. James and Ms. Dorka:

I am writing on behalf of the Board of Port Commissioners ("Board") and the Port of Oakland (collectively referred to as the "Port") to respond to the U.S. Department of Transportation ("DOT") and U.S. Environmental Protection Agency's ("EPA") July 18, 2017, Notification of Acceptance for Investigation ("Acceptance Letter") issued to the Port and the City of Oakland ("City"), and the April 4, 2017, West Oakland Environmental Indicators Project ("WOEIP") Complaint Under Title VI of the Civil Rights Act of 1964 against the Port and the City ("Complaint").[1] This letter is written solely on behalf of the Port and not the City. I understand that the City is providing a separate letter to the DOT and EPA in response to the Acceptance Letter.

As further described in Section I below, while the Port is a department of the City, it is a separate legal entity from the City. The Port holds all Port property in trust for the people of the

[1] The information provided in this letter is submitted in the spirit of cooperation and for the sole purpose of assisting with the DOT and EPA investigation in this matter. This letter is not intended to be used, nor does the Port consent to its use, in any other administrative, trial, or other proceeding. While we believe this letter to be accurate in all respects, as further information becomes available, the Port may modify, correct, or supplement the information contained in this letter, but undertakes no obligation to do so.

State of California and must use and maintain its trust assets consistent with its Tidelands Trust obligations to promote commerce and navigation.

EXECUTIVE SUMMARY

In the Acceptance Letter[2], DOT and EPA state that their investigation will focus on:

(1) whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the OAB subjects the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 ("Title VI"); and

(2) whether the City's and Port's methods, including their public participation process, for approving and authorizing new development and expanded activities at the Port of Oakland and the OAB subject the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI.[3]

With respect to the first focus of the EPA-DOT investigation, the Port was not involved in the City's approval of a construction management plan or permission for groundbreaking on the Northeast Gateway development project and has no role in that project.[4] Accordingly, the Port will focus this letter and the legal analysis provided in Section III below, on the second prong of DOT's and EPA's investigative focus: the public participation process and other methods for approving and authorizing new development and expanded activities at the Port.

As we will show in this letter, the Port strives to operate both as a significant contributor to the local, regional, and national economies and as a steward of the public interest in management of Port assets. The health and welfare of residents who are the Port's neighbors is an integral concern of the Port's day-to-day operations. The Port has built into its decision-making process and operations various channels and manners of soliciting input from stakeholders, the public, and local communities, including when planning new development or activities. Indeed, there are multiple avenues for public participation and engagement in the Port's decision-making process,

[2] Although EPA and DOT have already determined that the WOEIP Complaint meets the agencies' jurisdictional requirements, the Port notes that the Complaint was submitted to DOT and EPA more than 180 days after the City's October 4, 2016, approval of the Northeast Gateway construction management plan. Furthermore, although specific dates of any Port action are not alleged in the Complaint, the Port's Oakland Army Base ("OAB") development project began years ago, and certainly more than 180 days prior to filing of the WOEIP Complaint.

[3] Acceptance Letter, p. 2.

[4] *See* October 4, 2016, Northeast Gateway development project approval from the City, attached as Exhibit A.

including, but not limited to: (1) the Board's open public meetings held in accordance with the Brown Act and the Port of Oakland Sunshine Ordinance No. 4265 ("Sunshine Ordinance")[5]; (2) the Port's Social Responsibility Department's ("SRD") engagement with community members at various West Oakland venues to solicit feedback on a variety of Port programs; (3) specific community outreach associated with the OAB development; and (4) meaningful public engagement and environmental mitigation pursuant to the California Environmental Quality Act ("CEQA").

Through its process of robust public engagement, the Port has committed to measures and procedures to address Port-related air pollutant emissions that have broken new ground and often have exceeded State and Federal regulatory requirement. These efforts include, but are not limited to: (1) developing a precedent setting Air Quality Mitigation Program associated with the Vision 2000 Maritime Development Program ("V2K Program"); (2) voluntarily undertaking emissions inventories; (3) cooperating with a State-led health risk assessment for West Oakland; (4) developing and implementing a Maritime Air Quality Improvement Plan ("MAQIP"); (5) developing and implementing a Comprehensive Truck Management Program ("CTMP") for the Port; (6) working with the City to develop a City-Port Truck Management Plan for the entire OAB; (7) supporting a cutting-edge battery-powered big rig truck pilot test at the Port; and (8) applying for and securing grants to aid in the design and construction of the necessary infrastructure to provide "shore power" so that vessels can plug in while at berth. This effort includes commissioning a high-voltage cable-on-reel system that will connect more vessels to the Port's landside shore power grid.

As we demonstrate below, the WOEIP Complaint mischaracterizes the Port's public engagement and air emissions reduction achievements. At the crux of WOEIP's Complaint, WOEIP alleges that the Port has "continuously refused, to engage the community in a meaningful process by which to receive and incorporate their input."[6] WOEIP's allegation simply is not true. In fact, community groups in West Oakland, including WOEIP, have publicly acknowledged the collaborative approach taken by the Port to reduce air pollutant emissions while expanding Port operations.

For example, in 2011, the Port announced that it was allocating $2.7 million to the Port of Oakland's Shore Power Program and to an Energy Efficiency and Renewable Energy Study. At the time of this announcement, Margaret Gordon, co-chair of the WOEIP and at that time a member of the Board of Port Commissioners, stated that "[t]his action is delivering real emission reduction results that benefit the community and paves the way for an innovative approach to energy and the

[5] Port Ordinance No. 4265: Ordinance Approval and Adopting Rules and Requirements for Noticing, Agendizing and Posting of Board of Port Commissioners Meetings, Assuring Public Access and Participation and Providing Cure and Correction of Non-Compliance with Open Meeting Laws, adopted Dec. 12, 2013, attached as Exhibit B

[6] Complaint, p. 28.

environment going forward...I am pleased that the Port and West Oakland community worked collaboratively to get us here and look forward to more collaborative partnerships as these projects are implemented."[7]

Ray Kidd, co-chair of the West Oakland Neighbors, had similar comments, stating that "West Oakland residents and many Port stakeholders have benefited from the emission reductions that have been achieved through the Port-community dialogue targeting sources such as trucks, buses, tugboats, cargo handling equipment, and now ships. We are pleased the Port has also embraced the community's suggestion of directing funding to an innovative and exciting energy research initiative in partnership with the community."[8]

As will be demonstrated in this letter, the Port's commitment to an open and public decision-making process, as well as its commitment to reducing Port-related emissions, goes back decades and has continued to the present day. The facts show that this public engagement and collaborative decision making has yielded huge reductions in air pollutants from Port-related sources.

The facts here simply do not support a Title VI disparate impact claim. The Port's methods for approving and authorizing new development and expanded activities provide for robust public engagement and have resulted in reduced air emissions. Even if there were a valid argument that the Port's public engagement methods were insufficient (which they are not), there is no causal link between those methods and the alleged disparate air quality in West Oakland, particularly because the Port is not the primary cause of air pollution in West Oakland.

In Section I below, we briefly describe the Port of Oakland and its critical role as part of the local, State, and national economy. In Section II, we provide some further factual background, including the Port's commitment to public engagement and emissions reductions, a description of air quality in West Oakland, and a description of the Port's strong civil rights and anti-discrimination policies. In Section III, we discuss the applicable legal standards and our conclusion that the Port has not discriminated against communities of color in violation of Title VI, and confirm the Port's commitment to environmental stewardship and its willingness to cooperate with this investigation. The Port believes DOT and EPA should close this investigation without any finding of discrimination against the Port. Nevertheless, the Port remains open to discussing the possibility of an informal resolution of this investigation.

[7] Press Release, Port Allocates $2.7 Million for Shore Power & Innovative Energy Study, April 4, 2011 ("Shore Power Press Release")(available at: http://www.portofoakland.com/press-releases/press-release-223/).
[8] Shore Power Press Release.

I. THE PORT OF OAKLAND

A. Port Established in 1927 Pursuant to an Amendment to The Charter of the City of Oakland: Duty to Promote Commerce, Shipping, and Navigation

Since the Port was founded in 1927, the Oakland maritime port ("Seaport") has served as a principal ocean gateway of the nation for international containerized cargo shipments. It is currently the 3rd busiest Seaport in California and the 7th busiest Seaport in the U.S., both as measured by cargo volume. Unlike some "operating port authorities" (*i.e.,* ports with employees who directly operate cargo handling facilities), the Port is mainly a "landlord" Seaport; that is, the Port leases land and facilities to various private companies (such as marine terminal operators and logistics businesses) who handle maritime cargo at various points in the supply chain. The Port does not engage in day-to-day operations of shipping, cargo handling, or transportation.

The Port is an independent department of the City governed by the Board, which is vested with exclusive control and management of Port property, Port facilities, and revenues by the Charter of the City of Oakland ("Charter").[9] The Port was established pursuant to an amendment to the Charter "[t]o promote and more definitely insure the comprehensive and adequate development of the Port of Oakland through continuity of control, management and operation."[10] The Board has the complete and exclusive power, and duty for and on behalf of the City to make provisions for the needs of commerce, shipping, and navigation of the Port and to promote, develop, construct, repair, maintain and operate all water front properties including piers, wharves, docks, and warehouses. Said Board power and duty includes the obligation to establish, equip and operate all other facilities or aids incident to the development, protection, and operation of the Port, as may be deemed proper and desirable in its judgment; the Board may modify its plans from time to time as the requirements of commerce, shipping, and navigation may demand.[11]

B. Port Holds All Port Property in Trust for the People of the State of California: Obligation to Comply with Tidelands Trust

The State of California holds all right, title, and interest in tide and submerged lands and beds of navigable waterways within its borders, and all such lands are held in trust for the benefit of the people of California. Beginning in 1919, the State granted the City of Oakland the right to the tidelands and submerged lands at the Port of Oakland. In that grant, the State limited the use of the tidelands:

> Only for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips,

[9] Article VI, Section 601 (Adopted by the people of the City of Oakland, Nov. 5, 1968).
[10] Article VII, Section 700 of the Charter.
[11] Article VII, Section 706(2) of the Charter.

quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation.[12]

Under the State's grant and the Tidelands Public Trust Doctrine, uses on the Port's public trust lands must serve statewide, as opposed to purely local, public purposes; those purposes are limited to water dependent or related uses, including commerce, fisheries, navigation, ecological preservation, and recreation. Thus, the Port is constrained in how it can use the land, and has the affirmative duty to use and develop the land consistent with these tideland trust consistent uses. Moreover, the Port is strictly constrained by the Tidelands Public Trust to use all of its assets consistent with trust purposes. Finally, the Port must not only comply with environmental laws and regulations, but also must comply with a myriad of other Federal and State laws and regulations, including the Shipping Act, which imposes restrictions and requirements on how the Port interacts with its tenants and customers.

C. Port Divided into Three Major Geographical Areas

The Port's property is divided into three major areas which are managed by three revenue divisions: the Oakland Seaport or Maritime area managed by the Maritime Department; the Oakland International Airport ("Airport") managed by the Aviation Department; and commercial properties managed by the Commercial Real Estate Department. All of the allegations in the Complaint relate to the Port's Maritime operations, which will be the focus of this response letter.

D. Port's Fundamental Role in the Economy

The Oakland Seaport consists of 1,300 acres of maritime-related facilities serving a local market of over 14.5 million consumers, 34 million within a seven-hour drive, and 50% of the US population by rail.

The Port is a fundamental part of the Bay Area and national economy. In Fiscal Year 2016, a total of approximately 2.3 million 20-foot equivalent units ("TEUs") of containerized cargo moved through the marine terminals located at the Port.[13] In 2010, the Port's Seaport operations were responsible for nearly 11,000 direct jobs, and another 17,000 induced or indirect jobs. In 2010, the Port paid more than $538 million in employee wages and salaries and generated approximately $233 million in State and local taxes.[14] About 80 percent of the containerized cargo exported through the Port is estimated to originate in the Bay Area and Northern California, and 85 percent of the containerized imports are consumed in the region.[15]

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[12] Chapter 516, Statutes of 1919.
[13] Port of Oakland Comprehensive Annual Financial Report for the Years Ended June 30, 2016 and 2015, p. ii.
[14] The Economic Import of the Port of Oakland – 2010, Martin Associates, April 18, 2011 ("Economic Impact Report"), pp 12-14, attached as Exhibit C.
[15] Economic Impact Report, p. 33.

II. FACTUAL BACKGROUND

A. The Port's Demonstrated Commitment to Public Engagement

The Port embraces environmental stewardship as one of its core organizational principles. As stated in the Port's Board-approved Strategic Plan, one of the "Prioritized Goals" for the Port is to "[s]ustain healthy communities through leading edge environmental stewardship." The objectives of this goal include, "[e]nsure effective communication and education regarding environmental and safety standards with business partners and the community."[16] At the Port, the "environment" includes both the natural environment and the human built environment and communities. In line with these goals, and in concert with community stakeholders, the Port has developed and implemented numerous programs to reduce the impacts of Seaport operations and development on the environment.

1. Board Adopted Sunshine Ordinance To Require More Notice And Promote Full Public Participation in the Port's Decision-Making Process Beyond State Law Requirements

The Port is a public entity with a strong commitment to an open and public decision-making process. Any approval or authorization made by the Board goes through a thorough public notice and review process. All major projects are presented to the Board of Port Commissioners in a public meeting and are included in advance on the public agenda, pursuant to California's open meetings law. In addition to following the public-notice and participation requirements of State law - the Brown Act - the Port of Oakland follows its own enhanced[17] public notice and participation rules in its Sunshine Ordinance.

The Board adopted the Sunshine Ordinance "to assure public access to and information of Board meetings and transparent public notice, information and input are essential for the proper administration and discharge of the Board's duties and powers and for the management and government of the Port and facilities."[18] Section 1.B. of the Sunshine Ordinance provides: "Requiring the noticing and posting of Board meetings beyond the requirements of the Brown Act provides for more time for the public and Board members to obtain and study the items on the Board's agenda, enhances understanding of the issues and encourages public input to and participation in the Board's decision-making."[19] In addition to the notice requirements, the

[16] Port of Oakland Strategic Plan, Fiscal Years 2011-2015 ("Strategic Plan"), p. 21.
[17] For example, under the Brown Act, there is a general requirement to post agendas 72-hours in advance of regular meetings, whereas under the Port's Sunshine Ordinance, agendas must be posted 10 days in advance of regular meetings. Sunshine Ordinance No. 4265, § V.A.1.
[18] Sunshine Ordinance No. 4265, p. 1.
[19] Sunshine Ordinance No. 4265, § 1.B.

Sunshine Ordinance provides for public comment in writing or at Board meetings on any item on the agenda and on any other item of interest that a member of the public would like to raise.[20]

The Board's open meeting process provides the public notice of, and the opportunity to comment on, all major Port activities, including development projects like those at the OAB. All of the emissions reduction programs and development projects discussed below went through the Board's open meeting and public participation process, in addition to any special efforts undertaken to incorporate public engagement for an individual project. Thus, the public had ample notice and opportunity to provide meaningful comment on these important Port plans.

2. The Port Implements Comprehensive Outreach Coordinated by Two Port Departments that Specifically Engage the Public

The Port's SRD is charged with engaging community stakeholders and instilling institutional culture and programs to fulfill the Port's social responsibilities. The SRD holds multiple public forums throughout the year to update residents living near Port property on Port activities, gathers community feedback, and follows up on suggestions and complaints. These meetings are open to all who are interested in learning about the Port's activities and providing feedback. Additionally, SRD employees regularly go to the Port's neighboring communities, like West Oakland, to attend community meetings as representatives of the Port and to solicit feedback from residents on a variety of Port projects and initiatives.

EPA recently recognized the Port's SRD as a "successful example" of a program that "can be tailored to emphasize investments in near-port communities and/or communities experiencing high rates of poverty, unemployment and underemployment."[21] The report describes the Port's efforts to invest in near-port communities, and highlights the following programs: "a small local business utilization policy, a disadvantaged business enterprise program, a Maritime and Aviation Project Labor Agreement (which includes a commitment to local hiring and local workforce development), and a living wage policy."[22]

The Port's Environmental Programs and Planning Department ("EPPD") leads the Port's programs specifically to ensure the highest standards of regulatory compliance and environmental performance. The EPPD works to improve responsiveness to environmental concerns raised by the community and Port customers, and increase the Port's capacity to respond to emerging environmental regulations, policies, and conditions.

[20] Sunshine Ordinance No. 4265, § X.
[21] U.S. EPA, A Ports Primer for Communities, Section 6.4 Case Studies: Job and Benefits, published July 2016 ("EPA Ports Primer") (available at https://www.epa.gov/ports-initiative/ports-primer-64-case-studies-job-and-benefits#oakland).
[22] EPA Ports Primer.

These Port Departments help to focus the Port on environmental impacts on neighboring communities and incorporate community concerns in the Port's decision-making process. In addition, the public has ready access to the Port's public website, which provides a wide variety of information about the Port's operations and future plans.[23] Board agendas and resolutions are posted on the website, along with many of the technical and planning documents discussed herein. The Port's website has a "live chat" option that connects members of the public with a member of the Port staff, who will respond to all nature of inquiries and requests, and, if necessary, connect the member of the public with the appropriate technical person at the Port.

3. *The Port Fully Complies With The California Environmental Quality Act Which Is Designed To Provide For Meaningful Public Input on Proposed Development*

CEQA is a State statute that requires State and local agencies to identify the significant environmental impacts of their proposed discretionary actions and any feasible alternatives or feasible mitigation measures that would substantially lessen the significant environmental effects of those actions.[24] Public disclosure and participation are "Basic Purposes of CEQA."[25]

Consistent with its Charter-conferred duties and powers, the Board functions as a Lead or Responsible Agency under CEQA. As defined in the CEQA Guidelines, the Lead Agency is "the public agency which has the principal responsibility for carrying out or approving a project"[26] and a Responsible Agency is an agency that is not the Lead Agency, but also has some discretionary approval power over the project, and consults with the Lead Agency regarding CEQA review."[27] For example, the Port acted as the Lead Agency for the Vision 2000 EIR (1998) and as a Responsible Agency for the City's Oakland Army Base Redevelopment Plan EIR (2002).

Pursuant to CEQA, if there is substantial evidence that a project may have a significant effect on the environment, the Lead Agency must prepare an environmental impact report ("EIR"). The EIR process requires multiple layers of public review and opportunity to comment.[28]

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[23] *See*, www.portofoakland.com.
[24] Public Resources Code § 21002.
[25] 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a).
[26] CEQA Guidelines, § 15367.
[27] CEQA Guidelines, § 15381.
[28] Public Resources Code § 21080(d). The Lead Agency must provide public notice that it is preparing an EIR; other agencies and the public then have 30 days to comment on the scope of the EIR. Public Resources Code § 21092(a). The Lead Agency then issues the Draft EIR, which must contain a project description and identify the project's environmental setting, significant environmental effects, unavoidable significant adverse effects, growth-inducing impacts, cumulative impacts, mitigation measures, and alternatives. The Lead Agency must provide public notice of the availability of the Draft EIR, with a minimum 45-day public comment period for most projects. The Lead Agency must evaluate comments on environmental issues, prepare written responses to comments, and include those responses in a Final EIR published prior to the Lead Agency's decision to approve or disapprove the project. If the project

The CEQA Guidelines provide that "Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities."[29] A primary substantive goal of CEQA (which is different from the federal National Environmental Policy Act process) is to require identification and implementation of feasible mitigation measures to reduce environmental impacts to less than significant levels.

The Vision 2000 EIR and the OAB Redevelopment Plan EIR fully complied with CEQA, including its public participation requirements, as have the Port's subsequent approvals of activities that implement these approved plans. As discussed below with regard to the OAB development project, the Board consulted with the City on its EIR (through Port staff), and then, acting as a Responsible Agency, adopted findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program ("MMRP") after considering the record, including the City's 2002 OAB Redevelopment EIR. The Port and the City are implementing mitigation measures in the MMRP as approved developments at the OAB proceed. Although litigation challenging the adequacy of projects' CEQA compliance is common, the approvals of the OAB Development Plan did not lead to CEQA litigation.

To the extent the Complaint asserts that it is inappropriate, due to the passage of time, for the Port and the City to continue to look to the 2002 OAB EIR (see Complaint p. 24), it is incorrect. Under CEQA, once an EIR has been certified for a project, further CEQA review is disfavored.[30] When considering a new discretionary action that would implement the approved project, the public agency must determine only whether new, or substantially more severe, significant environmental impacts would result compared to those identified in the earlier EIR, due a change in the project, a change in its circumstances, or new information that could not have been known with the exercise of reasonable diligence at the time the EIR was certified.[31] Mere passage of time

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would cause significant environmental impacts that cannot be reduced to a less-than-significant level through feasible mitigation measures or project alternatives, the Lead Agency can still approve the project, but only by identifying to the public, in a "statement of overriding considerations," why the benefits of the project outweigh its remaining significant environmental effects. Public Resources Code § 21081. A Responsible Agency must also make its own statement of overriding considerations if it decides to approve a project with significant unavoidable environmental effects.

[29] CEQA Guidelines, § 15201; see also CEQA Guidelines § 15002, subj. (i).

[30] Public Resources Code § 21166; *Friends of the College of San Mateo Gardens v. San Mateo Comity Coll. Dist.*, 1 Cal. 5th 937 (2016).

[31] Public Resources Code § 21166; CEQA Guidelines § 15162.

does not undermine reliance on a previously certified EIR; the question is whether the EIR remains relevant.[32]

B. The Port's Success in Reducing Air Pollutants from Port Sources

Through means described in this section, the Port's 2015 Seaport Emissions Inventory shows that the Port's emissions reductions efforts have been successful, resulting in major reductions in emissions associated with the Port from 2005 to 2015:

- Truck Diesel Particulate Matter ("DPM") emissions have decreased from 16 tons to 0.4 tons.
- Total DPM emissions at the Oakland Seaport decreased by 76%
    - Trucks - DPM down 98%
    - Locomotives - DPM down 89%
    - Cargo handling equipment - DPM down 82%
    - Ocean going vessels - DPM down 75%
    - Harbor Craft - DPM down 53%[33]

Independent sources have also confirmed that Port-related DPM emissions have significantly decreased, confirming what the Port has found in its Emissions Inventories. In 2015 and 2016, the University of California, Berkeley published independent research studies on Port trucks.[34] The studies evaluated truck emissions before and after the State Drayage Truck Regulation requirements took effect and required drayage trucks to use diesel particulate filters and selective catalytic reduction systems. The study found that between 2009 and 2015, black carbon and particulate matter ("PM") emissions from trucks serving the Port reduced by approximately 73% and 74%, respectively.[35]

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[32] *Friends, supra; Committee for Re-Evaluation of the T-Line Loop v. San Francisco Mun. Transp. Agency*, 6 Cal. App. 5th 1237 (2016) (upholding reliance on 1998 EIR); *Citizens Against Airport Pollution v. San Jose*, 227 Cal. App. 4th 788 (2014) (upholding 8th addendum to 1997 EIR).

[33] 2015 Seaport Air Emissions Inventory, Final Report, October 2016 ("2015 Emissions Inventory"), p. 8, attached as Exhibit D.

[34] Effects of Particle Filters and Selective Catalytic Reduction on Heavy Duty Diesel Drayage Truck Emissions at the Port of Oakland Preble, et al., *Environmental Science and Technology*, June 26, 2015 ("2015 UC Berkeley Study"); Effects of Exhaust After-Treatment and Fleet Modernization on Port of Oakland Truck Emissions Following Complete Implementation of California's Drayage Truck Regulation, Draft Final Report, Preble, et al., Department of Civil and Environmental Engineering, University of California, Berkeley, November 2016 ("2016 UC Berkeley Study"), attached as Exhibit E.

[35] 2016 UC Berkeley Study, p. v.

Numerous efforts and programs have contributed to these emissions reductions at the Port, including:

- A truck management program (described later in this letter) including a $38 million grant program to upgrade and replace the oldest trucks operating at the Port and a ban on "dirty" drayage trucks years ahead of California State truck emission requirements.
- Shipping lines switching to cleaner burning, low sulfur fuel, while they are within a certain distance of land.
- A $60 million project to construct a power grid that ships can plug into at berth rather than run auxiliary diesel engines.

In addition, the Port's strategic management decisions also help to mitigate emissions and other environmental impacts of the Port's operations, including:

- Based on need, night and/or weekend operations at marine terminals, to spread out truck traffic and reduce idling.
- Appointments to pick up international cargo, further reducing congestion.
- $100 million railyard developed to bring more cargo by rail and cut truck traffic.
- Warehousing/distribution developments planned adjacent to docks to cut truck traffic on roadways outside the Port.
- Shipping lines loading more cargo on fewer ships to cut vessel traffic.
- The Port is negotiating to bring a fueling station and truck service center to the Seaport which is intended to keep trucking-related activities out of the adjoining neighborhoods.

Finally, it is important to note that the above emissions reductions were achieved over a period of time in which the Port saw an increase in container volume. In the period from 2005-2012, TEU container volumes increased by 3% while overall DPM emissions decreased by 70%. The Port is now conducting an update to its Emissions Inventory which is expected to show continued reduction in air emissions generated from Port operations.

C. Chronological History of Port Emissions Reduction Programming and Commitment to Continued Public Engagement

1. *Vision 2000 Maritime Development Program: Air Quality Mitigation Program with $9 Million for Emissions Reductions*

The Port has been working for decades to continually reduce the impacts of its operations and development on local communities. In 1997, the Port embarked on the redevelopment of the former Fleet Industrial Supply Center, Oakland ("FISCO"), in a project known as the V2K

Program. The V2K Program included developing two new marine terminals, a rail terminal, a public park, roadways, and ancillary facilities. Most of these facilities have been completed.

As part of the V2K Program, the Port established a groundbreaking Air Quality Mitigation Program ("AQMP") and committed to fund the AQMP with nearly $9 million. The V2K AQMP was guided by a Technical Advisory Committee ("TAC"). The AQMP TAC included community members (including WOEIP), industry members, Federal and State environmental agencies, and other interest groups. The AQMP TAC met regularly to discuss project updates and seek guidance on new projects and programs, like the Truck Replacement Project discussed below.

Projects funded under the AQMP included:

- **Truck Replacement Project:** The Port subsidized the retrofit of truckers' diesel truck engines with new engines meeting California emission standards for new diesel engines, or add-on exhaust treatment devices;

- **Cargo-handling Equipment:** The Port subsidized the retrofit of tenants' diesel cargo-handling equipment with new engines meeting California emission standards for new diesel engines, or add-on exhaust treatment devices; and

- **Air Quality Baseline Study:** The Port initiated an air quality and meteorological monitoring program in April 1997 to measure the levels of PM in West Oakland.[36]

2. Port Voluntarily Undertakes Emissions Inventories

Following the progress made related to the V2K Program, the Port instituted policies to monitor and evaluate emissions associated with its operations on a regular basis. Beginning in 2005, the Port engaged consultant Environ International Corporation (n/k/a Ramboll Environ) to prepare an air Emissions Inventory for its Seaport operations. A copy of the 2005 Emissions Inventory is attached hereto as Exhibit F. Although not legally required to create such an inventory, the Port voluntarily chose to prepare the air Emissions Inventory and update it periodically over subsequent years. The Port conducted subsequent air Emissions Inventories in 2012 and 2015. Copies of the 2012 and 2015 Emissions Inventories are attached hereto as Exhibits G and D, respectively. The Emission Inventories provide estimates for emissions of five air pollutants: reactive organic gas ("ROG"), carbon monoxide ("CO"), nitrogen oxides ("NOx"), PM (including diesel), and sulfur oxides ("SOx").[37]

[36] Summary Report to West Oakland Neighbors, Vision 2000 Air Quality Mitigation Program, December 2006, attached as Exhibit H.
[37] Port of Oakland 2005 Seaport Air Emissions Inventory, Environ International Corp., March 14, 2008 ("2005 Emissions Inventory"), p. ES-2.

Emissions were estimated for the five major source categories at the Port: ocean-going vessels, harbor craft, cargo handling equipment, drayage trucking, and locomotives.[38] Beginning in 2012, the Seaport Emissions Inventories also include other off-road equipment, for example from construction. The results of the Port's Emissions Inventories are published on the Port's public website. The Emissions Inventories have been a crucial tool in evaluating how the Port could reduce air emissions and determining how successful emissions reductions programs have been over the past decade. Indeed, the 2012 and 2015 Emissions Inventories have shown dramatic decreases in Port-related emissions, as discussed above.

3. *Port Cooperates with* CARB *Health Risk Assessment*

During the Port's development of the Emissions Inventory, the California Air Resources Board ("CARB") announced that it intended to conduct a health risk assessment ("HRA") of the potential health effects of DPM on the neighborhood of West Oakland. The Port worked closely and cooperatively with CARB to assist with the HRA, and adapted the Port's Emissions Inventory to align with CARB's methodologies at the time. CARB published its report, "Diesel Particulate Matter Health Risk Assessment for the West Oakland Community Preliminary Summary of Results," in 2008.[39] We will address the findings of the CARB HRA in more detail below.

4. *Port Spearheads Development and Implementation of Maritime Air Quality Improvement Plan Shaped by Local Communities and Regulatory Agencies*

During the first Emissions Inventory and the CARB HRA for West Oakland, the Port partnered with neighborhood and business representatives and air quality regulators to develop the MAQIP.[40] The MAQIP is attached hereto as Exhibit I. The MAQIP planning process involved extensive public stakeholder participation. The MAQIP process began in 2006, when discussions with community groups, regulatory agencies, and other interested parties led to the formal initiation of the Port's air quality plan and establishment of the MAQIP Task Force.

The MAQIP Task Force was comprised of 35 stakeholders, including the WOEIP, and was created to develop goals and actions to guide air quality improvement efforts at the Port.[41] Members of the MAQIP Task Force were selected through a public nomination process from community members, Port tenants, environmental advocacy groups, air quality and health agencies, and maritime-related businesses. The MAQIP Task Force had four co-chairs: the Executive Director of the Port, the Executive Officer of the Bay Area Air Quality Management

[38] 2005 Emissions Inventory, p. ES-1.
[39] Diesel Particulate Matter Health Risk Assessment for the West Oakland Community Preliminary Summary of Results, California Air Resources Board, December 2008 ("CARB HRA").
[40] Port of Oakland Maritime Air Quality Improvement Plan, Final, Approved by Board of Port Commissioners, April 2009 ("MAQIP").
[41] MAQIP, pp. 16-19.

District ("BAAQMD"), the Co-Chair of WOEIP, and the Executive Vice President of GSC Logistics Inc.[42]

The MAQIP Task Force met seven times at roughly one to two-month intervals during the plan development phase. The role of the Task Force included proposing or reviewing meeting topics, prioritizing air emissions reduction measures, deliberating on the merits of proposed actions, contributing to strategies for implementation, monitoring, and adaptive management and generally shaping plan content. The process was led by staff from a neutral facilitator, all Task Force meetings were open to the public, and comment was solicited from both Task Force and non-Task Force members. Stakeholder deliberations routinely included brainstorming sessions, break-out group exercises, and roundtable discussions following various presentations by select stakeholder groups. Port staff worked in consultation with Task Force members and other stakeholders to develop broad-based consensus on the elements of the MAQIP, although no formal voting procedure was used to decide on the final MAQIP content.[43] In short, while the Board was responsible for approving the final content of the MAQIP through the formal approval of the plan, the policy direction and content were shaped by the Port's planning partners through this consultative process – which included WOEIP as a Co-Chair.

The MAQIP Task Force identified seven guiding principles, including:

> **Promote Environmental Stewardship:** The Port of Oakland holds environmental stewardship as one of its core organizational goals. The Port is committed to ensuring that Seaport activities are carried out in an environmentally responsible manner, minimizing adverse impacts on our neighbors and the environment, and striving to improve the environmental conditions in the Seaport area for the benefit of both present and future generations;
>
> **Engage Stakeholders:** The Port of Oakland Seaport commits to actively engage and partner with its diverse stakeholder community in developing, implementing, and monitoring the MAQIP. The Port recognizes the need to especially collaborate and partner with those who are most affected by Seaport operations, including, but not limited to, labor, tenants, customers, and neighboring residents; and
>
> **Promote Environmental Justice:** The Port of Oakland seeks to prevent and address adverse impacts to communities that experience disproportionate environmental and economic effects.[44]

The MAQIP Task Force also adopted two planning goals:

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[42] MAQIP, p. 16.
[43] MAQIP, p. 17.
[44] MAQIP, pp. 19-20.

Goal 1: Reduce the adverse public health impacts of the Port of Oakland's Seaport-related air emissions at the Seaport area and in neighboring communities that are most affected by goods movement at the Seaport (in particular West Oakland) and on workers in the maritime area, as expeditiously as feasible; and

Goal 2: Reduce the adverse impacts of the Port of Oakland's Seaport-related air emissions on ambient air quality in West Oakland and more generally in the San Francisco Bay Area Air Basin, as expeditiously as feasible.[45]

The MAQIP was finalized in 2009, and it provides a master plan for the Port's long-term commitment to reducing the air quality and health risk impacts of its maritime operations. It builds upon the Port Maritime Air Quality Policy Statement ("Policy Statement"), adopted by the Board in March 2008, which sets a goal of reducing the excess community cancer health risk related to exposure to DPM emissions associated with the Port's maritime operations by 85% from 2005 to 2020, through all practicable and feasible means.[46] In the Port's Policy Statement, the Board affirmed "that it has the social responsibility to minimize exposure of neighboring residents to air pollution from Port sources and to support the rights of community, local businesses and workers to clean air and fair working conditions."[47] The Board committed to funding air emissions reductions and to adopt air emissions reductions measures prior to the dates such measures are required under State or Federal law. In addition to the significant public participation measures in the MAQIP process, the Port's Policy Statement was publicly noticed on the Board's agenda in advance of the Board meeting, and discussed at the Board's public meeting, with full opportunity for members of the public to comment. Then-Board Commissioner Margaret Gordon (co-chair of WOEIP) voted in favor of the Policy Statement, along with all other Board Commissioners.

In line with the guiding principles and planning goals established by the MAQIP Task Force, the MAQIP not only supports current and future State and local emission reduction requirements, but also enhances these requirements through early implementation goals and by pursuing emission reductions that exceed legally mandated requirements when and where feasible.

The MAQIP identified concrete and high-impact control measures and strategies the Port would undertake independently or together with its tenants to significantly reduce emissions, including:

- Early action retrofit and/or replacement of Port drayage trucks;

[45] MAQIP, p. 20.
[46] MAQIP, p. ix; Board Resolution No. 08057, adopted March 18, 2008.
[47] Board Resolution No. 08057.

- Construction of infrastructure to enable compliance with CARB's "shore power" regulation, even though the Port was not required to take any such action under the regulation;
- Design and operational efficiencies;
- Participation in pilot and verification projects for NOx and DPM reduction strategies;
- Early action construction emissions reduction;
- Support enforcement of regulations by CARB and BAAQMD through coordination with tenants; and
- Accountability, monitoring and reporting.[48]

In addition to the above strategies, the MAQIP Task Force identified 355 initiatives that had the potential to achieve emissions and risk reductions beyond regulatory requirements. The TAC reviewed and evaluated all of these initiatives; ultimately, Port staff identified a number of primary and secondary interest air quality initiatives for potential implementation.[49]

To ensure the Port's accountability in implementing its emissions reductions programs going forward, the Port committed to convene a stakeholder group to serve as a forum for sharing project information, to prepare written status reports, and to reconvene the MAQIP Task Force in five and ten years to review progress towards the plan's goals.[50] In satisfaction of this commitment, on November 19, 2013, Port staff held a public meeting to present a progress report on the MAQIP to MAQIP Task Force members and other interested members of the public; over 30 people attended this meeting. In connection with MAQIP progress reports, the Port is committed to reconvening the MAQIP Task Force.

5. Port Comprehensive Truck Management Program Bans Dirty Port Drayage Trucks Ahead of State Regulations

As part of its CTMP, the Port in 2009 adopted a ban[51] from entry into the Port of drayage trucks that fail to meet the State of California truck emission standards. This ban prohibits access to drayage trucks with 1993 or older engines as well as trucks with 1994-2003 model year engines unless equipped with a verified diesel particulate filter. In 2011, the Port modified its truck ban[52]

[48] MAQIP, p. 65.
[49] MAQIP, pp. 75-94.
[50] MAQIP, p. 70.
[51] Port Ordinance No. 4112.
[52] Port Ordinance No. 4174.

to require all drayage trucks to meet or exceed 2007 model year California or Federal emissions standards.

To help truckers transition to clean trucks ahead of the State regulatory requirements, the Port spent over $5 million to subsidize truck conversions. Overall implementation of the CTMP was estimated at the time to cost over $15 million, with Port staff costs around $1 million for the first 3 years.[53] Port staff estimates that the Port has spent more than $21 million on outside vendors for CTMP-related costs. This section describes the history and success of the Port's CTMP.

In conjunction with the MAQIP process, in 2007, the Port began work on the CTMP.[54] The CTMP was finalized in 2009 and, through certain of its components, fulfilled a key mitigation measure of the 2002 OAB EIR.[55] The CTMP is attached hereto as Exhibit J; it sets forth plans and actions for comprehensively addressing air quality, safety and security, business and operations, and community issues associated with drayage. Through adoption and implementation of the CTMP, the Port sought to identify drayage trucks serving the Seaport, support regulations to reduce emissions of air pollutants, increase safety and security domain awareness, improve operations, reduce traffic and congestion, and involve and educate all Seaport stakeholders.[56]

Similar to the process that took place to develop the MAQIP, the Port established a CTMP TAC to assist Port staff in developing the CTMP. The TAC was comprised of State and Federal regulators, marine terminal operators, trucking companies, and West Oakland residents, including the WOEIP.[57] The TAC met formally on multiple occasions and provided ideas and solutions that shaped the development of a truly comprehensive plan that incorporated a number of inter-related issues ranging from air quality to security.

The efforts made by the Port under the CTMP have resulted in significant improvements to truck traffic and air pollution in West Oakland. Key components of the CTMP include:

- **Port Registry & Truck Ban:** Only Licensed Motor Carriers ("LMCs") and trucks associated with those LMCs that have agreed to fully comply with all applicable laws and entered their information into the Port Registry database are allowed to serve the Port's Seaport facilities;

- **Clean Trucks:** The Port contributed $5 million, in addition to local, State and Federal funding, to provide grants to retrofit and/or replace trucks to meet CARB emissions standards, notably the CARB Drayage Truck and Statewide Truck and Bus Regulations.

[53] CTMP, p. 6.
[54] Port of Oakland Maritime Comprehensive Truck Management Program, A MAQIP Program, Adopted June 16, 2009 ("CTMP").
[55] Mitigation Measure 4.3-7.
[56] CTMP, p. 1.
[57] CTMP, pp. 20-22.

The Port also severely restricted the ability of "dirty" trucks from serving Port facilities, while providing truckers an opportunity to comply with clean truck standards before having to consider alternative employment to Seaport-related trucking;

- **Traffic and Congestion:** The Port participated in traffic, congestion, and parking studies, and made improvements to reduce congestion and truck idling. The Port also provides approximately 55 acres of truck parking and service facilities on Port property, which alleviates the problem of trucks parking in West Oakland; and

- **Customer Service Center:** The Port established and continues to fund and manage the Customer Service Center, which maintains the Port Registry and manages turned away trucks.[58] During the initial stage of the State's Drayage Truck Regulation, the Port translated materials into the languages representing the demographic make-up of port truckers. Additionally, the Customer Service Center continues to provide assistance in multiple languages, to facilitate the needs of the diverse port trucker community.

6. Port Actively Developing Joint City-Port Truck Management Plan

The Port is currently engaged with the City in the planning stages of developing a joint truck management plan, focused on West Oakland, the Port, and the OAB ("Truck Management Plan"). The Truck Management Plan will be developed over the next year, in a process that will involve meaningful communication and input from the West Oakland community and other interested stakeholders. The Port and the City are conducting outreach to WOEIP and numerous other West Oakland community groups to participate in the Truck Management Plan planning process. The Truck Management Plan is a key mitigation measure of the 2002 OAB EIR.[59]

As part of the Truck Management Plan process, the Port has hired a transportation engineering firm, Kittleston & Associates, Inc., to conduct a truck study that specifically looks at drayage truck parking in the West Oakland neighborhood. This was one of several truck parking surveys conducted in 2015, 2016, and 2017. In addition, on August 27, 2015, Port employees participated in the WOEIP "Yard Party" where the Port set up a table and solicited input from community members for the West Oakland truck parking study. West Oakland residents were asked to identify truck parking "hot spots" in West Oakland, and that information was collected by the Port's consultant for use in the parking survey.

The Port is committed to making the public engagement in the updated Truck Management Plan as inclusive and meaningful as possible and has begun outreach to initiate that process. The Port and the City are designing a robust public engagement process as a component of the Truck Management Plan. Pursuant to this process, Port staff are currently conducting outreach to community groups, commerce associations, elected officials and residents in West Oakland,

[58] CTMP, pp. 2-5.
[59] Mitigation Measure 4.3-7.

including the WOEIP, to solicit input on the Truck Management Plan. Under the public engagement process, the Port and the City are planning public meetings, many of which will take place in West Oakland, to engage with the public and incorporate their feedback into the plan. The public meetings will be facilitated by a professional communications consultant and include information and reports from a transportation consultant.

The joint Truck Management Plan, coupled with the Port's existing CTMP, demonstrate the decades-long Port commitment to addressing truck-related impacts comprehensively.

7. The Port Continues to Implement Emissions Reductions Programs

The above programs highlight just some of the efforts the Port has undertaken to ensure that its activities take into account the views of its neighboring communities and to design, fund, and implement programs that minimize potentially adverse effects and maximize beneficial effects on the surrounding area's health and wellbeing. The Port is proud of its track-record of public engagement and emissions reductions which is well-documented.

The Port continues to implement practices and policies that will further reduce emissions from Port operations and maintain contact and collaboration with the local community. The Port has accomplished significant emissions reductions over the past 15 years, and the Port continues to look for new and innovative ways to further reduce the impact Port operations have on the environment and local communities. One example of this continuing effort is the very recent announcement, made on August 2, 2017, that a major Port of Oakland-based trucking operator plans to test battery-powered (i.e., non-diesel) big rig technology at the Port beginning in September.[60] The Port trucking operator will conduct a three-year trial with a heavy-duty, all-electric truck as part of a statewide effort to determine the feasibility of zero-emission freight hauling. This will be the first ever test of battery-powered trucks in Northern California, and is the next logical step in the Port's effort to reduce diesel emissions with the corresponding goal of improving the local public health.

Another example of this continuing effort is an even more recent announcement, made on August 14, 2017, that the Port has commissioned a high-voltage cable-on-reel system that will connect more vessels to the Port's landside shore power grid.[61] The mobile platform can be deployed alongside any vessels thus allowing vessels with limited onboard power cables to be able to reach the Port's landside shore power grid thereby further reducing air emissions from ships.

[60] Press Release, Port of Oakland-based firm first to test battery-powered big rig, August 2, 2017, available at: http://www.portofoakland.com/press-releases/port-oakland-based-firm-first-test-battery-powered-big-rig/.

[61] Press Release, Port of Oakland OKs new high-power line to plug in more ships, August 14, 2017, available at:http://www.portofoakland.com/press-releases/port-oakland-oks-new-high-power-line-plug-ships/.

8. Emissions Reduction Grants

The Port has made numerous requests for grants related to emissions reductions in recent years. WOEIP's claims that the Port has refused to accept or apply for funding to support emissions reduction efforts is simply not true.[62] Indeed, WOEIP references a 2013 EPA grant awarded to the Port through EPA's National Clean Diesel Reduction Program.[63] In fact, the Port has completed this Clean Diesel Reduction project, and on July 11, 2017, the Port submitted to EPA its final close-out reports for that project.

Other examples of emissions reductions grants pursued and received by the Port include grants from the BAAQMD Mobile Source Incentive Fund, CARB Good Movement Emission Reductions Program ("GMERP"), federal funds administered locally by the Metropolitan Transportation Commission ("MTC"), and Transportation Investment for Generating Economic Recovery ("TIGER") administered by the U.S. DOT and Maritime Administration, all to install grid-based shore power infrastructure at the Seaport marine terminal in 2011-2014. The grant funding totaled approximately $29 million. In addition, Port tenants obtained grant funding independently to construct additional shore power infrastructure and/or reduce vessel emissions. This infrastructure project allows the Port to offer electric plug-ins for ships at berth at the Port, allowing those ships to turn off auxiliary diesel engines and reduce DPM emissions.

In 2010, the Port conducted outreach and education on the Port's implementation of shore power in an effort to secure the maximum funding from CARB's GMERP. Outreach was made to the wider community including West Oakland residents, and the community was overwhelmingly supportive of the Port's efforts to secure funding for this program. Indeed, numerous community organizations and groups, including the West Oakland Community Advisory Group, sent letters to CARB in support of the Port's efforts and asked CARB to award maximum shore power funding to the Port.

In 2016, the Port applied for California Energy Commission ("CEC") grant funding to demonstrate zero-emission hydrogen fuel cell trucks, and also supported BAAQMD's application for demonstration of zero-emission container yard equipment and trucks. In sum, the Port has sought and received numerous grants to enhance sustainability through infrastructure improvements and innovative projects to reduce emissions.

D. The Oakland Army Base Development

1. CEQA Review Process

The U.S. Army designated the OAB for closure in 1995 pursuant to the Defense Base Closure and Realignment Act of 1990. In July 2000, the City adopted and approved the

[62] *See* Complaint, p. 30.
[63] Complaint, p. 6.

Redevelopment Plan for the OAB Redevelopment Project, and established an approximately 1,730-acre redevelopment project area. The City, as the Lead Agency, prepared a Draft EIR in accordance with CEQA for the OAB Area Redevelopment Plan. The Redevelopment Plan divides the OAB into the City's Gateway Development Area (approximately 193 acres) and the Port Development Area (approximately 187 acres).

The City issued a Notice of Preparation of the Draft EIR in August 2001 and held a Planning Commission meeting to take public comments on the EIR's scope in September 2001. All public comments received during the scoping process were included and addressed in the Draft EIR.[64] The City made the Draft EIR available for review and comment by government agencies and by the general public. Copies of the Draft EIR were sent to those who provided input regarding the EIR's scope, to responsible agencies, and to those who had requested copies. In addition, copies were placed in libraries in Oakland, made available at the planning Department of the City, and on the City's web site.[65] A 45-day public EIR review and comment period occurred between April 29 and June 12, 2002. As a Responsible Agency, the Port both consulted with the City on the Draft EIR and submitted comments on it. The City conducted a public hearing to solicit comments on June 5, 2002, at the Oakland Planning Commission.[66] Numerous parties commented on the Draft EIR, and those comments were all addressed in the Response to Comments section of the Final EIR.[67]

The City issued a Response to Comments and a Final Environmental Impact Report ("Final EIR"), certified the EIR, and adopted a Final OAB Reuse Plan on July 31, 2002, for the OAB Area Redevelopment Plan.[68] Shortly thereafter, as a Responsible Agency, the Port adopted its own

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[64] Draft EIR, pp. 1-8 - 1-17; Appendix 1.

[65] Response to Comments and Final Environmental Impact Report for the OAB Area Redevelopment Plan, July 2002 ("Final EIR"), p. 1-1.

[66] Final EIR, p. 1-1.

[67] WOEIP did not comment on the 2002 EIR. WOEIP now cites, as the sole basis for its claim that community concerns were ignored, a June 11, 2002, comment made by a representative of the West Oakland Citizens Advisory Group ("WOCAG"). Complaint, p. 18, fn. 56 & 57. The Complaint claims the comment asserted 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." Complaint, p. 18. The comment, however, did not say this and did not discuss community benefits; instead, it objected that WOCAG's own plan for the OAB was not analyzed in the EIR and advocated adoption of the Gateway Adaptive Reuse/Eco-Park Alternative "although it would not meet the very high job generation goals." (See Exhibit K.) In addition to mischaracterizing the comment letter, the Complaint does not mention that detailed responses were provided in the Final EIR, including explanations of the ways in which certain WOCAG recommendations had been incorporated into the proposed plan and alternatives studied in the EIR (see pages 3-12 to 3-17 of Final EIR).

[68] Final EIR, p. 1-1.

findings, statement of overriding considerations, and mitigation program. The Final EIR was not challenged in any administrative or court proceedings.

In addition to analyzing the impacts of anticipated development on the portion of OAB designated for City ownership, the EIR analyzed the environmental impacts -- including impacts to air quality and human health risk -- of future Port cargo throughput of 4.05 million TEUs per year. The Final EIR identified numerous mitigation measures that the City and/or Port would undertake related to the OAB plan's air quality impacts, including the following:

> **Mitigation Measure 4.4-3:** The Port shall develop and implement a criteria pollutant reduction program aimed at reducing or off-setting Port-related emissions in West Oakland from its maritime and rail operations to less than significant levels, consistent with applicable Federal, State, and local air quality standards. The program shall be sufficiently funded to strive to reduce emissions from redevelopment related contributors to local West Oakland air quality, and shall continually reexamine potential reduction toward achieving less than significant impacts as new technologies emerge. The adopted program shall define measureable reductions within specific time periods.
>
> **Mitigation Measure 4.4-4:** The City and the Port shall jointly create, maintain, and fund on a fair share basis, a truck diesel emission reduction program. The program shall be sufficiently funded to strive to reduce redevelopment related contributions to local West Oakland diesel emissions to less than significant levels, consistent with applicable Federal, State, and local air quality standards. The adopted program shall define measureable reduction within specific time periods.
>
> **Mitigation Measure 5.4-1:** The City and the Port shall encourage, lobby for, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality.[69]

The Port is implementing these mitigation measures through, among other things, its MAQIP and the CTMP (including the ongoing process to develop the Truck Management Plan), and the testing of low diesel emission technologies.

In 2012, the City adopted an amended OAB Reuse Plan, supported by an Addendum to the 2002 Final EIR. The primary difference between the 2002 Reuse Plan and the 2012 Reuse Plan is a shift at the City's Gateway Development Area from office and research and development square footage to a greater amount of warehouse distribution and maritime-related logistics.[70] Other project modifications include plans to designate approximately 27.3 acres in the Gateway Development Area for recycling facilities. Notably, the recycling facilities are currently operating

[69] Draft EIR, pp. 4.4-26 – 28, 5-20.
[70] 2012 Oakland Army Base Project Initial Study / Addendum, May 2012 ("2012 EIR Addendum"), p. 4.

in the West Oakland neighborhood. In response to community concerns about the health, trucking, and noise effects of the current neighborhood-based recycling companies, the City is providing for these companies to relocate out of the West Oakland neighborhood and into the OAB property. This will remove a significant (non-Port-related) source of air pollution, truck traffic and parking, and noise from the West Oakland neighborhood. The Port has entered into a purchase and sale agreement with the City to sell to the City approximately 1.6 acres of land without which relocation of the recycling facilities would be precluded or limited.

The 2012 Oakland Army Base Initial Study concluded that none of the circumstances necessitating preparation of additional CEQA review, as specified in CEQA and the CEQA Guidelines were present[71]. In particular, the Initial Study concluded that the 2012 Project air quality impacts would be lower than those identified in the 2002 EIR, and that no further CEQA review, for example, a supplemental EIR, was required.[72] The City documented these conclusions in an Addendum to the 2002 Final EIR.

After publication of the 2002 EIR, the City of Oakland adopted Standard Conditions of Approval ("SCA") that are applicable to all development projects within the City. Many requirements of the SCA apply directly to air emission impacts, including: SCA AIR-1: Construction Management Plan; SCA AIR-2: Construction-Related Air Pollution Controls (Dust and Equipment Emissions); SCA AIR-3: Exposure to Air Pollution (Toxic Air Contaminants: Particulate Matter); and SCA TRANS-1: Parking and Transportation Demand Management.[73] These SCA requirements provide additional emissions controls and reductions beyond the mitigation measures implemented under the 2002 EIR.

In sum, the 2002 EIR and the 2012 Addendum identified mitigation measures that would greatly reduce impacts related to air quality impacts of the OAB development projects. All development projects at the OAB are required to comply with those mitigation measures.

2. *The Port's OAB Development*

Between 2003 and 2007, some portions of the OAB were transferred to City-related entities and other portions were transferred to the Port. The Port is developing the Port Development Area, either directly or in coordination with prospective Port tenants, into a logistics center ("Seaport Logistics Complex") that will include new logistics facilities (including rail-served warehouses to transload cargo), new rail yards (manifest, support, and intermodal), and related facilities. The development will facilitate the efficient movement of cargo in and out of the Port's marine terminals, improve intermodal service, and position the Port to stay competitive. The first phase of development – construction of the manifest and support rail yards – was completed in January 2017. The Port is currently finalizing negotiations with a developer to lease an approximate 27-

[71] 2012 EIR Addendum, p. 1.
[72] 2012 EIR Addendum, p. 146.
[73] 2012 EIR Addendum, p. 126-28.

acre site on which a new logistics facility would be built (by the developer), and the Port anticipates executing a lease for this parcel in Fall 2017.

Further development of the former OAB, including additional intermodal rail capacity and logistics buildings, is anticipated to be phased based on market demand. Currently, the Port anticipates that development of the entire Port Development Area will take at least ten years to complete. The Port currently does not anticipate reaching throughput of 4.05 million TEUs per year - the amount assumed and analyzed in the OAB EIR - before the year 2040.

The redevelopment of the Port Development Area of the OAB will have significant and enduring impacts on the economic success and viability of the Port. The San Francisco Bay Conservation and Development Commission ("BCDC") acknowledged the significance of the Port's OAB development in its most recent San Francisco Bay Area Seaport Plan ("Seaport Plan"). In the Seaport Plan, BCDC designated the Port's OAB property as "port priority use" property, and noted that the OAB "creates an opportunity for the Port to increase its container cargo throughput without significant Bay fill."[74]

The Port's OAB development will allow the Port to efficiently manage the distribution of goods through the Port, making the Port more profitable while also offering opportunities to lessen the Port's environmental impact. For example, the Port Development Area contains approximately 55 acres of truck parking and approximately 15 acres of servicing facilities; these facilities have reduced and will continue to reduce the amount of trucks parking and driving through West Oakland. Likewise, the Port's realignment of its rail yard will increase the movement of cargo directly to rail, thereby decreasing the need for drayage trucks.

The Port's plans to redevelop its portion of the OAB property have been part of an ongoing, open, and public process over the last fifteen years. In addition to the public CEQA process, and as with all significant Port projects and decisions, the Port's decisions related to redevelopment of the OAB were subject to full public notice and comment pursuant to the Brown Act and the Port's Sunshine Ordinance, discussed above. All major decisions were and continue to be presented to the Board for approval at public meetings, and are fully analyzed in advance in publicly-noticed Agenda Reports prepared by Port staff, which are posted on the Port's public website.

For example, the decision to start the process to issue a request for qualifications, seeking a qualified party to enter into a long-term lease for the operation, maintenance and development of the Port's OAB property, was proposed in Board Agenda Report No. M-4, presented at a public Board meeting on December 2, 2008. The Agenda Report explained the background of the OAB development project and identified how the project conformed to the EIR. The associated Resolution Number 08254 was voted on by the Board of Port Commissioners in the December 2,

[74] San Francisco Bay Area Seaport Plan, San Francisco Bay Conservation and Development Commission and Metropolitan Transportation Commission, April, 18, 1996 as amended through January 2012.

2008, public meeting.[75] WOEIP co-chair, Margaret Gordon, was a Port Commissioner at the time this OAB proposal was presented to and voted on by the Board, and Commissioner Gordon voted for this proposal.

Thus, the public had ample notice and opportunity to comment on this decision as well as on the Port's other development plans and proposals for the OAB. Additionally, Port staff facilitated public participation on the June 30, 2009 "Proposal Interview Panel" by including the Chairperson of the West Oakland Community Advisory Group, Mr. George Bolton, on the selection panel. A live viewing or simulcast of the session for members of the public to attend was also part of the public participation.

Additionally, the Port is currently engaged in a collaborative process with community groups in West Oakland to develop a jobs policy and community agreement related to the first logistics development on the Port Development Area of the OAB. The Port held over 18 working sessions in 2016 to develop an agreement that would enhance the Port's local hire policy, provide financial support for job readiness, and create a community advisory group. The Port has been working cooperatively on these agreements with the Oakland Works Coalition, of which WOEIP is a member, and the Revive Oakland Coalition, a broad coalition representing 30 community based organizations.

E. Air Quality in West Oakland

As discussed above, the Port has worked on numerous projects explicitly designed to decrease Port-related emissions that might impact West Oakland for many years. In 2008, CARB finalized its HRA for West Oakland, specifically analyzing health effects from Port and non-Port DPM emissions on residents of West Oakland.[76] As mentioned above, the Port fully cooperated in the development of the CARB HRA and supplied data to CARB from the Port's Emissions Inventory. The CARB HRA found that the West Oakland community is exposed to DPM ambient concentrations at higher levels than background in the Bay Area.[77] Due to exposure to higher DPM in the ambient air, the CARB HRA concluded that the West Oakland community had an increased estimated lifetime potential cancer risk.

The CARB HRA determined that 80% of the increased cancer risk was due to non-Port and non-railroad operations, while 4% of the increased cancer risk was due to railroad operations and only 16% was due to Port-related operations.[78] In fact, according to the CARB

[75] Board of Port Commissioners, City of Oakland, Resolution No. 08254, Dec. 2, 2008.
[76] CARB HRA, p. 1.
[77] CARB HRA, p.2.
[78] CARB HRA, p. 25.

HRA, the largest contributors of DPM pollution impacting West Oakland are on-road heavy-duty trucks not associated with Port operations.[79]

CARB has not updated the HRA since its publication in 2008. As discussed above, the Port's DPM emissions have dropped significantly since the HRA was conducted. Although CARB has not updated the 2008 CARB HRA, air quality data in West Oakland have been collected over the past several years. Beginning in 2013, the City began collecting air quality data at the OAB and in West Oakland.[80] The BAAQMD also collects air quality data from a monitor in West Oakland. The data from these monitors show that while there were some periods whose emissions exceeded EPA's 24-hour $PM_{2.5}$ (fine particulate matter) standard, the ambient air concentrations at these monitors was below the EPA standard for the majority of the time over the past several years.[81]

In addition, researchers from the Environmental Defense Fund ("EDF"), working with the University of Texas at Austin, Google Earth Outreach, and Aclima, have measured and charted air quality in Oakland using Google Street View mapping cars equipped with mobile air monitors.[82] The 2017 EDF study does not evaluate health impacts from the air quality and does not determine what air pollution might be associated with the Port versus other sources. The data collected in this project does provide a snapshot of air quality in West Oakland, and indicates the heaviest concentrations of air pollutants are present along transportation corridors (interstate highways) and near industrial facilities (concrete supply company, metals recycling business).[83] The Port understands that the City and EDF, along with other regulatory agencies, continue to collect air quality data in West Oakland.

F. The Port Maintains Strong Civil Rights and Anti-Discrimination Policies

The Port requires that its staff, customers, and tenants abide by all Federal, State, and local civil rights statutes and internal Port anti-discrimination policies. The Port maintains an Equal Opportunity Policy to promote, facilitate, and encourage the fullest possible participation by all persons, including women and minorities, in the activities of the Port.[84] The Port's Equal Opportunity Policy applies to Port personnel, public works contracts, and tenants leasing and businesses operating on Port property. In addition, the Port has a policy requiring reasonable accommodation for individuals with disabilities and discrimination complaint procedures. Under these policies, any employee who believes she has been the subject of discrimination can contact

[79] CARB HRA, p. 2.
[80] Oakland Global Air Quality Web Portal (available at: http://ngem.com/OAB_AQM/).
[81] Oakland Global Air Quality Web Portal.
[82] See EDF website, available at: https://www.edf.org/airqualitymaps.
[83] *See* Environ. Sci. Technol., *High-Resolution Air Pollution Mapping with Google Street View Cars: Exploiting Big Data*, J. Apte et al., 2017, 51, 6999–7008, available at: http://pubs.acs.org/doi/pdf/10.1021/acs.est.7b00891.
[84] Port of Oakland Policy No. AP 450, Equal Opportunity, attached hereto as Exhibit L.

the Port's Office of Equal Opportunity ("OEO"). The OEO will investigate the claim of discrimination under procedures detailed in the Port's policy.

Additionally, contracts issued by the Port contain standard provisions prohibiting discrimination by bidders, contractors, subcontractors, licensees, lessees, and permittees. Contract provisions specifically prohibit discrimination in violation of Title VI of the Civil Rights Act and related regulations. For example, the standard language in Port Professional Service Agreements ("PSAs") with certain types of vendors contains the following:

> The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Similar language is found in the wide range of agreements the Port enters on a regular basis. This language and these policies are further evidence of the Port's commitment to equal opportunity and prohibiting discrimination in its operations.

G. WOEIP Mischaracterizes the Port's Public Engagement and Air Emissions Reductions

As the Port has demonstrated above, it has engaged in an open and public process to expand or modify operations while simultaneously significantly reducing air emissions associated with Port operations. The facts alleged by WOEIP in its Complaint regarding the Port's public participation and air emissions are largely inaccurate or misleading.[85] WOEIP alleges that "most of the pollution burden West Oakland residents shoulder directly results from the activities taking place at and around the Port and OAB."[86] However, as discussed in the previous section, the CARB HRA, which WOEIP relies on to substantiate adverse health impacts, clearly states that as of 2005, 80% of DPM emissions impacting West Oakland come from on-road heavy-duty trucks NOT associated with Port operations.[87] Thus, contrary to WOEIP's claims, "most of the pollution" impacting West Oakland comes from sources other than the Port.

[85] While the Port is addressing and rebutting certain allegations made by WOEIP, it has not responded to every statement made in the Complaint. The Port's failure to rebut any specific statement should not be deemed acceptance of that statement. Furthermore, many of WOEIP's allegations relate solely to the City, and the Port is not responding to those City-specific statements.
[86] Complaint, p. 13.
[87] CARB HRA, p. 25.

Furthermore, WOEIP's claims completely ignore the fact that while the CARB HRA used data from 2005, as of 2015, the Port has reduced aggregate DPM emissions from Port sources by 76 percent from 2005 levels – from 261 tons emitted in 2005 to 63 tons emitted in 2015.[88] Thus, the Port's contribution to air quality impacts in West Oakland is even lower today than it was in 2005, and is certainly not the source of "most of the pollution" in West Oakland. This further puts into question WOEIP's claim that "[f]urther expansions of the Port's activities will...further [elevate] the amount of diesel particulate matter in the air throughout West Oakland."[89]

Additionally, WOEIP often lumps together the City and the Port, implying that many decisions regarding the OAB expansion involved both entities. For example, WOEIP alleges that "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."[90] In fact, the Port has no involvement with the Gateway or Oakland Global Logistics Center development projects. Including the Port in this allegation is misleading and inappropriate.

Finally, many of the "Less Discriminatory Alternatives" sought by WOEIP have already been implemented by the Port or are underway.[91] WOEIP alleges that the Port has refused to engage the community in a meaningful process by which to receive and incorporate community input regarding continued expansion of the Port's activities.[92] Specifically, and as directed to the Port, WOEIP alleges that the Port has: (1) refused to develop a meaningful emissions reduction plan for activities at the Port and OAB; (2) failed to produce or require a comprehensive truck management plan; and (3) refused to mitigate the negative air quality and health impacts caused by increase in truck traffic to and from the Port and the OAB.

These allegations are directly refuted by the facts laid out above. In fact, the Port has robust public engagement policies at all levels of decision making; these policies allow for and in many cases require public participation and input above and beyond any statutory requirements. As described above, the Port organized numerous stakeholder task forces to guide development of both the MAQIP and the CTMP. Currently, the City and the Port are collaborating on, and seeking to organize, similar stakeholder groups to develop a joint Truck Management Plan to address quality of life impacts that might be caused by truck operations resulting from operations at the facilities developed at the OAB. Likewise, and as acknowledged by WOEIP and other community organizations, the Port has implemented and funded numerous emission mitigation projects that have and will continue to have a significant positive impact on the air quality and related public health in West Oakland.

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[88] 2015 Emissions Inventory, Final Report, p.8.
[89] Complaint, p. 14.
[90] Complaint, p. 21.
[91] Complaint, pp. 28-30.
[92] Complaint, p. 28.

III. LEGAL ANALYSIS

WOEIP alleges that the Port has violated Title VI and the associated DOT and EPA civil rights regulations, because the Port did not have a meaningful public participation process to address the adverse impacts of the Port's expansion of activities, which resulted in a disproportionate impact on the communities of color in West Oakland, and the Port has failed to implement less discriminatory alternatives.[93] This allegation is flatly refuted by the facts above.

In the Acceptance Letter, DOT and EPA state that their investigation will focus on:

(1) whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the OAB subjects the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964; and

(2) whether the City's and Port's methods, including their public participation process, for approving and authorizing new development and expanded activities at the Port of Oakland and the OAB subject the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI.[94]

As indicated in the Executive Summary above, with respect to the first prong of the EPA-DOT investigation, the Port was not involved in the City's approval of a construction management plan or permission for groundbreaking on the Northeast Gateway development project.[95] Accordingly, the Port will focus its legal analysis on the second prong of DOT's and EPA's investigative focus: the public participation process.

As the facts described above make clear, the Port has developed a meaningful process with robust procedures in place to involve the public in a wide spectrum of activities at the Port. In fact, the public generally, and WOEIP specifically, have been deeply engaged for decades in the Port's development projects and the Port's air emissions reduction efforts. The Port has not discriminated against the communities of color in West Oakland, nor do its public engagement policies related to development or activities have a disparate negative impact on those communities.

The Port's development activities are necessary and integral to the Port's institutional mission. The Port, including the Port's expanded development at the OAB, are located on Port priority property and necessarily have to remain in that water-adjacent location. Due to the location

[93] Complaint, pp. 26-30.
[94] Acceptance Letter, p. 2.
[95] *See* October 4, 2016, approval from the City.

constraints of the Port's operations, no less-impactful alternative exists, beyond the significant efforts the Port has already undertaken to reduce emissions related to its operations.

A. Title VI Background

Title VI provides that "[n]o 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. § 2000d; *see also* 49 C.F.R. § 21.5(a); 40 C.F.R. § 7.30. Discrimination under Title VI can take the form of intentional discrimination or discrimination through disparate impacts. DOT and EPA regulations provide specific prohibitions on: (1) the use of criteria or methods of administering a program or activity which have the effect of subjecting individuals to discrimination based on their race, color, national origin or sex; and (2) choosing a site or location of a facility that has the purpose or effect of subjecting individuals to discrimination under any program or activity on the basis of race, color, national origin or sex. 49 C.F.R. § 21.5(b)(2) and (3); 40 C.F.R. § 7.35(a) and (b).

In situations where allegations of discrimination are based on disproportionate or disparate impacts, Courts and agencies look to a three-part test to determine whether a recipient of Federal funding has violated Title VI: (1) Does the adverse effect of the policy or practice disproportionately affect members of a group identified by race, color, or national origin? (2) If so, can the recipient demonstrate the existence of a substantial legitimate justification for the policy or practice? (3) Is there an alternative that would achieve the same legitimate objective but with less of a discriminatory effect? *Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1407 (1993). Causation between the recipient's policy or practice and the alleged disproportionate impact must be present to prove a disparate impact claim, just as in a direct discrimination investigation. *Id.* Thus, a Title VI disparate impact claim will fail "if the evidence tends to show that even had the [recipient] not engaged in the challenged practice, the same disparate impact would nonetheless have existed." *Id.*

B. The Port Has Not Discriminated Against the Communities of Color in West Oakland

The Port's receipt of Federal funding from DOT and EPA makes it subject to the requirements of Title VI because it is receiving "Federal financial assistance." 42 U.S.C. § 2000d. The Port takes seriously its obligations under Title VI and has complied with its mandate. In short, the Port has not discriminated against communities of color in West Oakland, and a straightforward evaluation of the facts and circumstances surrounding the Port's methods for approving its operational and development projects demonstrates that the Port has, in fact, actively and consistently included WOEIP and other local community groups in the decision making processes for its development, air quality, and truck management programs.

1. Disparate Impact

The first step in evaluating whether a recipient of Federal funds impermissibly discriminated against a protected group based on the disparate impacts of its actions is to identify the specific policy or practice at issue. *Elston*, 997 F.2d at 1407. Here, DOT and EPA have identified the Port's practices at issues as: the Port's methods, including their public participation process, for approving and authorizing new development and expanded activities at the Port and OAB.

Next, and most crucially, DOT and EPA must evaluate: (1) whether there is actual adversity or harm to West Oakland residents; (2) whether that harm is disproportionately impacting communities of color; and (3) whether the Port has caused that disproportionate harm. *See New York City Envtl. Justice All. v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000) (plaintiffs must "allege a causal connection between a facially neutral policy and a disproportionate and adverse impact on minorities.")

The Port acknowledges that the CARB HRA provides some factual support for WOEIP's claims that West Oakland residents (who are predominantly minorities) are harmed by poor air quality, which causes health impacts at a disproportionate rate compared to other communities in the Bay Area. However, this does not prove that the Port's methods for approving new development and activities are the cause of that poor air quality. The speculative chain of causation implied in the Complaint between the Port's public participation methods and air quality in West Oakland is simply too tenuous on its face. **Moreover, the CARB HRA establishes that the Port is not the primary cause of those health impacts**. In fact, on-road heavy duty diesel trucks, not associated with the Port, are responsible for the vast majority of the DPM pollution in West Oakland. Indeed, due to the Port's ongoing emissions reductions efforts which were crafted in collaboration with WOEIP and other West Oakland community members, DPM emissions from Port-related operations have decreased from 261 tons in 2005 (the data used in the CARB HRA) to 63 tons in 2015.

Thus, **regardless** of the Port's public participation methods, and even if the Port ceased all operations at its Seaport and at the OAB, West Oakland residents would still have air quality impacts from industrial business and on-road heavy-duty trucks traveling on the highways surrounding the community. Because the primary cause of air pollution in West Oakland is sources not related to the Port, there is no causal link between the Port's public participation methods and the alleged disproportionate health impact in West Oakland. *See Elston*, 997 F.2d at 1407.

In sum, there is a fatal lack of causation in WOEIP's Complaint. Even if DOT and EPA find that there is a disparate negative health impact on communities of color in West Oakland, the Port is not the primary cause of that disparate impact, nor is the Port's public participation process. Accordingly, the Port cannot be held liable under Title VI.

2. *Legitimate Justification*

As discussed above in the previous section, the Port's activities and expansion practices do not cause a disproportionate adverse impact on West Oakland residents. Nevertheless, the Port separately notes that it has a substantial legitimate justification for its operations and development practices and is duty bound by the Charter and the Tidelands Trust to promote navigation and commerce.

The Port is a crucial part of the local, State, and national economy. As discussed above, the Port of Oakland was established "[t]o promote and more definitely insure the comprehensive and adequate development of the Port of Oakland through continuity of control, management and operation."[96] The Port has the obligation to establish, equip, and operate its maritime operations and to update or modify its operations as the requirements of commerce, shipping, and navigation may demand.[97] In light of those obligations, the Port is continually looking for ways to grow to meet the needs of commerce, while necessarily improving its cargo handling efficiency and reducing its environmental impact.

Indeed, the Port has expanded operations and increased the volume of cargo traveling through the Port, while at the same time drastically reducing the emissions associated with Port activities. Recent development projects at FISCO and the OAB are necessary to meet the Port's legitimate needs to expand and modernize its operations. The Port is a water-dependent use, and is limited in the land it can use for development. Under the BCDC Seaport Plan, Port property, including the Port's OAB property, are designated as a "Port Priority" Area. Utilizing this property to provide modern rail and logistics facilities is legitimate, important, and integral to the Port's institutional mission and duty. *Elston*, 997 F.2d at 1413.

3. *Less Discriminatory Alternatives*

The Port has engaged in a thoughtful, transparent, and publicly accessible process to minimize the environmental impacts of its activities and development. In light of the water-dependent nature of the Port's operations, and the meaningful public process the Port engaged in to reduce its environmental impacts, there is no less discriminatory alternative available. *Elston*, 997 F.2d at 1407, 1413 (Title VI requires recipients to implement a less discriminatory alternative if it is feasible and meets their legitimate objectives).

WOEIP identifies several items that it believes are "Less Discriminatory Alternatives" that the City and/or the Port should implement.[98] However, as explained in detail above, the Port has already undertaken the planning, public engagement, and emissions reductions sought by WOEIP. WOEIP and other community groups have been intimately involved in the Port's AQMP, MAQIP,

[96] Article VII, Section 700 of the Charter.
[97] Article VII, Section 706(2) of the Charter.
[98] Complaint, pp. 28-30.

CTMP, and development of mitigation measures specific to the OAB under the EIR. In addition, the City and the Port are beginning the process to include robust public engagement in the joint City-Port Truck Management Plan that will address truck traffic and emissions at the Port and the OAB.

The remaining claims of the WOEIP in their proposed "Less Discriminatory Alternatives" are simply not true. WOEIP claims that the Port has failed to develop a meaningful emissions reductions plan, failed to develop a comprehensive truck management plan, and failed to mitigate the negative air quality impacts in West Oakland. As detailed above, WOEIP and other community groups were involved with the Port in planning related to all of those activities – with significant emissions reductions as a result.

In sum, WOEIP has not, and cannot, point to any less discriminatory alternatives that the Port has not already engaged in. As such, WOEIP's assertions fail.

******

The Port reiterates its commitment to environmental stewardship and its willingness to cooperate with this investigation. The Port is confident that DOT and EPA will find that it has not discriminated against communities of color in West Oakland in violation of Title VI. To the contrary, the Port has a demonstrated and acclaimed track record in public participation processes that are an integral part of the Port's decision making. As the record described herein shows, the Port utilizes all its decision making methods, including public participation, to promote the economic use of its public tidelands on behalf of increasing jobs, employment, public health, and improved quality of life for the Port's neighboring communities, the City of Oakland, and the entire region.

Please let us know if you need anything further from the Port to assist in your investigation.

Sincerely,

J. Christopher Lytle
Executive Director

Enclosures: 1) CD of Exhibits; and 2) List of Exhibits Provided on the Enclosed CD and Additional Materials Available Online

cc: Board of Port Commissioners
Joan Story, President
Cestra Butner, First Vice President
Andreas Culver, Second Vice President

Michael Colbruno, Commissioner
Earl Hamlin, Commissioner
Arabella Martinez, Commissioner
Alan Yee, Commissioner

Danny Wan, Port Attorney

City of Oakland
The Honorable Mayor Libby Schaaf
Barbara Parker, City Attorney
Sabrina Landreth, City Administrator

Exhibits Provided on the Enclosed CD

Exhibit	Title	Date	Page
A	Northeast Gateway development project approval from the City of Oakland	10/4/2016	2
B	Port Ordinance No. 4265: Ordinance Approval and Adopting Rules and Requirements for Noticing, Agendizing and Posting of Board of Port Commissioners Meetings, Assuring Public Access and Participation and Providing Cure and Correction of Non-Compliance with Open Meeting Laws ("Sunshine Ordinance")	12/12/2013	3
C	The Economic Import of the Port of Oakland – 2010, Martin Associates ("Economic Impact Report")	4/18/2011	6
D	2015 Emissions Inventory	October 2016	11, 13
E	Effects of Exhaust After-Treatment and Fleet Modernization on Port of Oakland Truck Emissions Following Complete Implementation of California's Drayage Truck Regulation, Draft Final Report, Preble, et al., Department of Civil and Environmental Engineering, University of California, Berkeley ("2016 UC Berkeley Study")	November 2016	11
F	2005 Emissions Inventory	3/12/2008	13
G	2012 Emissions Inventory	11/5/2013	13
H	Summary Report to West Oakland Neighbors, Vision 2000 Air Quality Mitigation Program	December 2006	13
I	Maritime Air Quality Improvement Plan ("MAQIP")	April 2009	14
J	Comprehensive Truck Management Program ("CTMP")	June 16, 2009	18
K	WOCAG Comment on the Draft EIR for the OAB Redevelopment Plan	June 11, 2002	22
L	Port of Oakland Policy No. AP 450-452, Equal Opportunity	April 2000	27

Additional Materials Available Online

- Press Release, Port Allocates $2.7 Million for Shore Power & Innovative Energy Study, April 4, 2011
    - http://www.portofoakland.com/press-releases/press-release-223/)

- Charter of the City of Oakland
  - https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=THCHOA

- Chapter 516, Statutes of 1919
  - http://www.slc.ca.gov/Programs/Granted_Lands/G01_Alameda/G01-05_City_of_Oakland/S1919_Ch516%20.pdf

- Port of Oakland Strategic Plan, Fiscal Years 2011-2015
  - http://www.portofoakland.com/files/pdf/about/strategicPlan2011-2015.pdf

- Port of Oakland Comprehensive Annual Financial Report for the Years Ended June 30, 2016 and 2015
  - http://www.govwiki.info/pdfs/Special%20District/CA%20Port%20of%20Oakland%202016.pdf

- U.S. EPA, A Ports Primer for Communities, Section 6.4 Case Studies: Job and Benefits, published July 2016
  - https://www.epa.gov/ports-initiative/ports-primer-64-case-studies-job-and-benefits#oakland).

- Port of Oakland Website
  - http://www.portofoakland.com/

- California Public Resources Code
  - https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=2.6.&article=&goUp=Y

- Title 14. California Code of Regulations, CEQA Guidelines
  - http://resources.ca.gov/ceqa/guidelines/art1.html
  - http://resources.ca.gov/ceqa/guidelines/art11.html
  - http://resources.ca.gov/ceqa/guidelines/art13.html
  - http://resources.ca.gov/ceqa/guidelines/art20.html

- Effects of Particle Filters and Selective Catalytic Reduction on Heavy Duty Diesel Drayage Truck Emissions at the Port of Oakland, Preble, et al., *Environmental Science and Technology*, June 26, 2015
  - http://pubs.acs.org/doi/abs/10.1021/acs.est.5b01117

- Diesel Particulate Matter Health Risk Assessment for the West Oakland Community Preliminary Summary of Results, California Air Resources Board, December 2008
  - https://www.arb.ca.gov/ch/communities/ra/westoakland/westoakland.htm

- Board of Port Commissioners Public Agenda Reports, Ordinances, Resolutions and Minutes
    - http://www.portofoakland.com/port/board-of-commissioners/board-meetings/archive/

- Oakland Army Base CEQA/EIR Documents
    - http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157

- Press Release, Port of Oakland-based firm first to test battery-powered big rig, August 2, 2017
    - http://www.portofoakland.com/press-releases/port-oakland-based-firm-first-test-battery-powered-big-rig/

- Press Release, Port of Oakland OKs new high-power line to plug in more ships, August 14, 2017
    - http://www.portofoakland.com/press-releases/port-oakland-oks-new-high-power-line-plug-ships/

- San Francisco Bay Area Seaport Plan, San Francisco Bay Conservation and Development Commission and Metropolitan Transportation Commission, April, 18, 1996 as amended through January 2012
    - http://www.bcdc.ca.gov/seaport/seaport.pdf

- Oakland Global Air Quality Web Portal
    - http://ngem.com/OAB_AQM/

- EDF air quality monitoring website
    - https://www.edf.org/airqualitymaps

- Environ. Sci. Technol., *High-Resolution Air Pollution Mapping with Google Street View Cars: Exploiting Big Data*, J. Apte et al., 2017, 51, 6999–7008
    - http://pubs.acs.org/doi/pdf/10.1021/acs.est.7b00891

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 8/17/2017 6:24:06 PM
To: McGowan, Patricia [PMcGowan@oaklandnet.com]
Subject: RE: Agenda and Information for OAB Stakeholder meeting August 23, 2017

Ah ha, thank you....

From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Thursday, August 17, 2017 11:20 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Agenda and Information for OAB Stakeholder meeting August 23, 2017

Hi Richard,
It's the attachment called "response to comments".

Patricia

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

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From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Thursday, August 17, 2017 10:08 AM
To: McGowan, Patricia <PMcGowan@oaklandnet.com>
Subject: FW: Agenda and Information for OAB Stakeholder meeting August 23, 2017

Patricia – could you clarify which of the attachments is the "memo which summarizes some of the key components of this Plan" mentioned in your note below ?

Thanks

Richard

From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, August 16, 2017 3:52 PM

Personal Address / Ex. 6

Personal Address / Ex. 6

Subject: Agenda and Information for OAB Stakeholder meeting August 23, 2017

Hello OAB Stakeholders,

Attached please find the agenda for the Stakeholder meeting next week. I have also attached the AQ plan which was distributed for public review on August 4, 2017 (attached herein just for convenience since it's the same one you received via e-mail on August 4) and a memo which summarizes some of the key components of this Plan. Some of you have e-mailed with questions about the Plan and I apologize for my delayed or lack of response; I was out on vacation. I hope this e-mail and the attachments will respond to your questions.

I'd would also like to provide some context about the draft air quality plan which was distributed for public review on August 4, 2017.

This is the third air quality plan that we have reviewed. The first was in 2013 and it was for the construction of the new roads, utilities and general infrastructure including upper Maritime Road, Burma Road, the road out to the future East Bay Regional Park (Gateway Park) etc. The second was for the construction of the first Prologis building on the Northeast Gateway site. And now this is the third one, and it will be used to guide the construction of the remaining two Prologis sites, called the Southeast Gateway and the New Central Gateway. There is a site plan on page 2 of the Plan showing the location of these sites.

Each time the plans have started with the City's list of conditions related to improving air quality during construction and the list of recommendations from the BAAQMD in the CEQA Guidelines. Then the applicant prepared a plan based on these lists of specific actions and additional air quality measures which the applicant proposed. At that point, the plans were released for public review, per the MM PO-1, and comments were received from yourselves: the agencies, the WOEIP and other stakeholders. The City and the applicant then worked on the plans again, sometimes with meetings with the agencies, e-mails, discussions, etc. And then another version, or versions, of the plan were submitted for the City to consider.

The Plans were enhanced by adding more measures to reduce emissions from construction equipment and reduce air quality impacts during construction. The comments of the agencies and the stakeholders were considered, studied and evaluated, and revised Plans were ultimately approved by the City Administrator.

Now we have the third such Plan to reduce emissions and air quality impacts during the construction of remaining two Prologis sites. The applicant submitted the Plan to the City in March 2017. Knowing that the agencies and stakeholders have already done a lot of work giving comments on the past two such Plans, the City undertook more staff work on this Plan before we started the official public review per MM PO-1. Staff worked on an administrative draft Plan with the applicant, and then had a staff-to-staff working session on the administrative draft in May. Discussions and comments from that meeting were subsequently considered and studied by the applicant and City staff. And now a Plan has been submitted which is ready for the official public review period, as outlined in MM PO-1.

So as to facilitate your review of this Plan, I have attached a table which shows the comments/recommendations resulting from the staff-to-staff review, and how the Plan has incorporated the recommendations, or a response as to why it is difficult or infeasible to do so. Hopefully this will make your review of the Plan easier.

We will discuss this Plan at next week's Quarterly Stakeholder meeting (August 23, 2017). Prologis will describe the Plan, how it has been enhanced based on past input, and we can discuss its specifics. We hope this will be a good working session.

I have attached the Plan to this e-mail, for your ease. It is the same Plan you received as an attachment to the Notice of Availability of this Plan, sent via e-mail of August 4, 2017. I have also attached a table which might help your review of the Plan. Along with the agenda, attached herein, this is all we have to distribute prior to the meeting. The report on air quality monitors is available at http://ngem.com/OAB_AQM/.

I hope this description helps and I hope you will be able to come to the Stakeholder meeting on Aug. 23.

Patricia

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/19/2017 7:37:48 PM
To: Temple, Kurt [Temple.Kurt@epa.gov]; Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: Recent events re Port/OAB: Oakland T6 Complaint

Kurt and Ryan

Deliberative Process / Ex. 5

Richard

-----Original Message-----
From: Temple, Kurt
Sent: Wednesday, July 19, 2017 8:52 AM
To: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Rivera, Yvette (OST) <yvette.rivera@dot.gov>
Cc: Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Ferguson, Selina (OST) <Selina.Ferguson@dot.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>
Subject: RE: Oakland T6 Complaint

Ryan and Yvette: Thanks for your assistance in getting the acceptance letters out yesterday, and to you Ryan, for dropping agreeing to personally them off at our office late in the day. Now that we have sent them, we should get the teams together for that next conversation about next steps, such as investigative plan, laboring oars, etc. Please let us know when is a good time to have the conversation and we will gather our Region 9 and ECRCO team. Look forward to talking further.

Thanks again.

Kurt T. Temple
Senior Advisor
External Civil Rights Compliance Office
EPA Office of General Counsel
1200 Pennsylvania Avenue, NW
Room 2524B
Washington, D.C. 20460
202-564-7299

-----Original Message-----
From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 6:06 PM
To: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Rivera, Yvette (OST) <yvette.rivera@dot.gov>
Cc: Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Ferguson, Selina (OST) <Selina.Ferguson@dot.gov>; Temple, Kurt <Temple.Kurt@epa.gov>
Subject: RE: Oakland T6 Complaint
Importance: High

Deliberative Process / Ex. 5

-----Original Message-----
From: Temple, Kurt

Sent: Tuesday, July 18, 2017 3:34 PM
To: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>
Cc: Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Ferguson, Selina (OST) <Selina.Ferguson@dot.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Rivera, Yvette (OST) <yvette.rivera@dot.gov>
Subject: RE: Oakland T6 Complaint

Ryan: Sorry for the delay. Please see attached and feel free to add your cc's if any.

Kurt

-----Original Message-----
From: Temple, Kurt
Sent: Tuesday, July 18, 2017 10:54 AM
To: 'Rivera, Yvette (OST)' <yvette.rivera@dot.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <olone.mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Ferguson, Selina (OST) <Selina.Ferguson@dot.gov>
Subject: RE: Oakland T6 Complaint

Yvette: Attached are the most recent drafts of the joint acceptance letters for your review and approval. We added some clarifying edits to the draft you sent forward last week. You will see those changes highlighted in the text. Also, DOT needs to insert its file number into the subject line. Please let me know if you have any questions about what we have done, or if you're ready to exchange signatures on final drafts. Thanks for your help.

Kurt T. Temple
Senior Advisor
External Civil Rights Compliance Office
EPA Office of General Counsel
1200 Pennsylvania Avenue, NW
Room 2524B
Washington, D.C. 20460
202-564-7299

-----Original Message-----
From: Rivera, Yvette (OST) [mailto:yvette.rivera@dot.gov]
Sent: Thursday, July 13, 2017 3:49 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>
Cc: Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Ferguson, Selina (OST) <Selina.Ferguson@dot.gov>
Subject: RE: Oakland T6 Complaint

Dear Lily,

We have an approved version of the OAB letter. Please see the attached. If you have no objections, we can execute the letter and get the original to you for signature tomorrow. Thank you!

Yvette

-----Original Message-----
From: Dorka, Lilian [mailto:Dorka.Lilian@epa.gov]
Sent: Thursday, July 13, 2017 12:29 PM
To: Rivera, Yvette (OST) <yvette.rivera@dot.gov>; Temple, Kurt <Temple.Kurt@epa.gov>
Cc: Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>
Subject: RE: Oakland T6 Complaint

Hi Yvette, just following up on this. Thanks! Lily

-----Original Message-----
From: Rivera, Yvette (OST) [mailto:yvette.rivera@dot.gov]
Sent: Friday, July 7, 2017 2:51 PM

To: Temple, Kurt <Temple.Kurt@epa.gov>
Cc: Goerke, Ariadne <Goerke.Ariadne@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>
Subject: RE: Oakland T6 Complaint

Thank you Kurt. We will get right on it. Hoping that we can respond by Monday or Tuesday. Again, thank you. Have a nice weekend! Yvette

-----Original Message-----
From: Temple, Kurt [mailto:Temple.Kurt@epa.gov]
Sent: Friday, July 07, 2017 2:13 PM
To: Rivera, Yvette (OST) <yvette.rivera@dot.gov>
Cc: Goerke, Ariadne <Goerke.Ariadne@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Neal, Daria (CRT) <Daria.Neal@usdoj.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Caro-Lopez, Howard (OST) <howard.caro-lopez@dot.gov>
Subject: Oakland T6 Complaint

Hello Yvette. Thanks for the good conversation yesterday regarding the Oakland T6 matter. As we promised on the call, I have attached for DOT's review draft joint acceptance letters to complainant and recipients. In drafting these letters, we utilized the format that we cleared in the joint DOT/EPA Brandywine matter. Let us know if DOT has any edits, comments or concerns. We look forward to issuing these letters soon. Please give me a call if you need anything.

Sincerely,

Kurt T. Temple
Senior Advisor
External Civil Rights Compliance Office
EPA Office of General Counsel
1200 Pennsylvania Avenue, NW
Room 2524B
Washington, D.C. 20460
202-564-7299

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

ALAMEDA COUNTY
Pauline Russo Cutter
Scott Haggerty
Rebecca Kaplan
Nate Miley

CONTRA COSTA COUNTY
John Gioia
David Hudson
(Vice Chair)
Karen Mitchoff
Mark Ross

MARIN COUNTY
Katie Rice
(Secretary)

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David Canepa
Carole Groom
Doug Kim

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Margaret Abe-Koga
Cindy Chavez
Liz Kniss
(Chair)
Rod G. Sinks

SOLANO COUNTY
Pete Sanchez
James Spering

SONOMA COUNTY
Teresa Barrett
Shirlee Zane

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

Connect with the
Bay Area Air District:

November 3, 2017

Joan H. Story
President, Board of Port Commissioners
Port of Oakland
30 Water Street
Oakland, CA 94607

Subject: **Ordinance and Resolution to approve Lease with CenterPoint-Oakland Development I, LLC for a Transload and Distribution Facility on the Former Oakland Army Base**

Dear Ms. Story and Members of the Board of Port Commissioners (Board):

The Bay Area Air Quality Management District (Air District) has reviewed Agenda item 5.1 on your November 9, 2017 meeting and is requesting that the Board:

- Delay approval of any resolution or ordinance on this item until the Port of Oakland (Port) has developed and funded the emission reduction programs (in concert with the City of Oakland (City)) identified by the former Oakland Army Base (OAB) Environmental Impact Report (EIR) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP); and

- Developed criteria via a public process to determine when low emission equipment or strategies are "readily available" or "cost effective."

As currently drafted, Agenda item 5.1 seeks to authorize the Port of Oakland (Port) Executive Director to enter a ground lease with CenterPoint-Oakland Development I, LLC, (the Developer) for the design, construction, finance, operation, and maintenance of a transload and distribution facility (Project). The proposed Project seeks to build a 440,800-square foot facility with approximately 140 dock doors, and parking for 365 autos and 70 trailers for warehouse, storage, other maritime trade and logistics uses. The proposed location is approximately 27 acres at the former Oakland Army Base (OAB) land the Port has named the Seaport Logistics Complex.

As stated in the Board's Agenda Report, this and any project on the former OAB is required to comply with the OAB Environmental Impact Report (EIR) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP). As you may recall, the SCA/MMRP was adopted by the Oakland City Council (City) and the Port to mitigate the significant health and air quality impacts expected to occur in the West Oakland community and impacts to regional air quality resulting from the build out of the OAB. However, many the SCA/MMRPs require the City and the Port to develop emission reduction programs that have not been developed, such as:

- MM 4.4-3a: "The Port shall develop and implement a criteria pollutant reduction program aimed at reducing or off-setting Port-related emissions in West Oakland from its maritime and rail operations to less than significant levels..."

- MM 4.4-4 "The City and the Port shall jointly create, maintain and fund on a fair share basis, a truck diesel emission reduction program. The program shall be sufficiently funded to strive to reduce redevelopment related contributions to local West Oakland diesel emissions to less than significant levels ...."

- MM 4.4-5: "Major developers shall fund on a fair share basis BAAQMD – recommended feasible Transportation Control Measures (TCMs) for reducing vehicle emissions from commercial, institutional, and industrial operations, as well as all CAP [Clean Air Plan] TCMs the BAAQMD has identified as appropriate for local implementation ...."

- MM 4.4-6: "...the City and Port shall implement sustainable development policies and strategies related to new development design and construction..."

- MM 5.4-1: "The City and the Port shall encourage, lobby, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality..."

- MM GCC-1: "The project applicant shall retain a qualified air quality consultant to develop a Greenhouse Gas (GHG) Reduction Plan for City review and approval. The applicant shall implement the approved GHG Reduction Plan..."

- Some of the mitigation measures include language that would require emission reduction actions only if low emission equipment or strategies are "readily available" or "cost effective".

To date, neither the City nor the Port has developed or funded the emission reduction programs identified above or developed any criteria to determine when low emission equipment or strategies are "readily available" or "cost effective." The Air District recommends that the Port develop the emission reduction programs and guidance identified above in a forum that seeks public input prior to acting on this Project. The Air District believes that any resolution adopted by the Board relative to this project should include clear language and direction to staff and the proposed tenants/operators that ensures the maximum use of zero and near zero emission equipment at the time of building permit issuance, and requires upgrades into the future as fully zero emissions equipment options become available.

To assist the Board, City and Port in determining what is "readily available" or "cost effective," the Air District has attached its draft "BAAQMD Emissions Reductions Actions for the Port of Oakland/Former Oakland Army Base," (August 2017) document. The Air District is currently finalizing this document in consultation with both Port and City staff and expects some minor changes to it based on those discussions. However, the technology suggestions in this document

have been reviewed by the California Air Resources Board and represent what the Air District believes to be most protective of community health and air quality relative to equipment that is currently and reasonably available.

West Oakland remains the most disproportionately impacted community in the Bay Area due in part to its proximity to the Port. Since 2001, the Air District has invested over 80 million dollars of public funds to reduce diesel particulate matter (DPM) emissions from Port truck, maritime and rail operations and over $50 million to reduce emissions on adjacent highways. In 2018, the Air District projects another approximately $70 million dollars in incentive funds will be available for the purchase of zero and near zero emission equipment and technologies that could be used at the Port and OAB. The Air District stands ready to assist current and prospective tenants/operators at the Port and OAB in taking advantage of these funds.

However, these incentives alone cannot address the air quality related health issues in the West Oakland community. It is important that the Board play a leadership role in reducing the impacts of the Port's operations by directing its staff to honor the spirit and letter of the mitigation measures required in the SCA/MMRP. This includes specifying requirements for zero and near zero equipment and operations as part of new leases and ordinances.

Air District staff is available to assist the Board or Port staff with questions about these comments. If you have any questions, please contact Alison Kirk, Senior Planner, at (415) 749-5169 or akirk@baaqmd.gov.

Sincerely,

Damian Breen
Deputy Air Pollution Control Officer

Attachment: BAAQMD Emissions Reductions Actions for the Port of Oakland/Former Oakland Army Base – Draft Document (August 2017)

cc: BAAQMD Director Pauline Russo Cutter
BAAQMD Director Scott Haggerty
BAAQMD Director Rebecca Kaplan
BAAQMD Director Nate Miley
Cynthia Marvin, California Air Resources Board
Claudia Cappio, City of Oakland
Richard Grow, EPA
Matt Lakin, EPA
Ben Machol, EPA

November 8, 2017

Joan H. Story
President, Board of Port Commissioners
Port of Oakland
30 Water Street
Oakland, CA 94607

Subject: **Ordinance and Resolution to approve Lease with CenterPoint-Oakland Development I, LLC for a Transload and Distribution Facility on the Former Oakland Army Base**

Dear Ms. Story and Members of the Board of Port Commissioners,

These comments are submitted on behalf of the signatories below to request that the Board of Port Commissioners ("Board") delay approval of the lease with CenterPoint-Oakland Development I, LLC ("Developer") until the Board and Port of Oakland ("Port") ensure that the Developer will take all possible steps to minimize air pollution impacts and to be a good neighbor to surrounding communities.

The Board should delay action on this item until the Port has completed a public process on the environmental and public health impacts of this facility. The Port held a series of public meetings regarding this project, but those meetings focused on jobs. West Oakland Environmental Indicators Project requested that the Port include environmental issues in these meetings and Port staff told West Oakland Environmental Indicators Project that environmental issues would be addressed later. Yet, the environmental and public health impacts never were addressed and this proposal reflects that oversight. This dismissal of community requests to provide input on environmental concerns is part of a disturbing pattern highlighted in the April 4, 2017 Title VI complaint filed with the U.S. Department of Transportation and U.S. Environmental Protection Agency (see Attachment).

As the Bay Area Air Quality Management District ("District") noted in its November 3, 2017 letter to the Board, the proposal does not comply with many of the criteria in the Oakland Army

Base's Environmental Impact Report Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP). The Agenda Report for this item states that the Developer will comply with the SCA/MMRP, but the Port has not taken any action yet to fulfill the SCA/MMRP's requirements. We agree with the comments submitted by the District and urge the Board to heed the District's recommendations regarding the SCA/MMRP.

In addition, the Agenda Report does not include all of the mitigation requirements that were included in the City of Oakland's ("City's") agreement with Prologis for its lease at the former Oakland Army Base. For example, the Prologis agreement requires Prologis to limit idling to three minutes and to use "zero and near-zero emission equipment at the Project Site to the extent that it is readily available in the San Francisco Bay Area."[1] At the very least, the Port should require the Developer to meet the same requirements that Prologis has committed to achieve.

The Board should ensure that its ordinance and resolution, if adopted, clearly state that the Developer must utilize zero and near zero emission technology[2] everywhere possible. To achieve the directives in the SCA/MMRP, the Port also will need to fund emission reduction programs at the Port and in the communities the Port impacts. The Board should work with the District and the California Air Resources Board to facilitate the widespread adoption of zero and near zero emission technologies throughout the former Oakland Army Base and in impacted communities.

To reduce emissions and improve air quality in impacted communities, the Port must adopt a different approach to planning for construction and operation of facilities at the former Oakland Army Base. The Port proposes to continue its pattern of treating the construction and operation phases as two distinct entities, even though facility design can affect emissions associated with facility operation. The Port should require developers to construct and design facilities to maximize emission reduction potential and facilitate the use of zero and near zero emission technologies during the operation phase.

Using zero and near zero emission vehicles and equipment at the Oakland Army Base is critically important due to the impact the development will have on West Oakland and communities all along the freeways that serve the Port. West Oakland is a community of color that faces disproportionate environmental impacts, which are caused in part by pollution generated at or associated with the Port (see Attachment, pp. 9-21). Other communities along freeways serving the Port (such as the I-880 corridor) also experience disproportionate impacts due in part to the truck traffic moving through their communities to the Port. Approving this lease without a public process and without clear instructions to use zero and near zero emission technologies during construction and operation will lock in years of unnecessary, dangerous emissions from the use of combustion fuel technologies where zero and near zero emission alternatives are available.

The Port has an opportunity here to send a message to the community: including more stringent emission reduction requirements for the Developer would signal that the Port intends to start

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[1] Prologis Oakland Global Logistics Center. "Diesel Emissions Reduction and Air Quality Plan for Construction of CE-2: Southeast Gateway Parcel, CC-1: New Central Gateway Parcel," p. 7 (August 13, 2017).

[2] We define "near zero emission" technologies to include technologies that allow vehicles and equipment to operate fully zero-emissions for some period of time (such as hybrid electric vehicles).

making real changes that benefit the health and wellbeing of West Oakland residents. Allowing the lease to proceed as-is sends a far different message. We urge the Port to delay action on this item and to revise the ordinance and resolution so that they set clear and stringent emission reduction requirements for the Developer.

Thank you for the opportunity to comment.

Sincerely,

Adenike Adeyeye
Senior Research and Policy Analyst
Earthjustice

Margaret Gordon and Brian Beveridge
Directors
West Oakland Environmental Indicators Project

Luis Amezcua
Chair
Sierra Club, Northern Alameda County Group

Rev. Earl W. Koteen
Sunflower Alliance

Kevin D. Hamilton, RRT, CEO
Central California Asthma Collaborative

Frank Gallo
Ditching Dirty Diesel Collaborative

Jimmy O'Dea
Senior Vehicles Analyst
Union of Concerned Scientists

Bill Magavern
Policy Director
Coalition for Clean Air

Bradley Angel
Executive Director
Greenaction for Health and Environmental Justice

Joel Ervice
Associate Director
Regional Asthma Management and Prevention

Taylor Thomas
Research & Policy Analyst
East Yard Communities for Environmental Justice

Attachment: Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (April 4, 2017).

Cc: Ryan Fitzpatrick, U.S. Department of Transportation
Velveta Golightly-Howell, U.S Environmental Protection Agency (EPA)
Richard Grow, U.S. Environmental Protection Agency (EPA)
Yana Garcia, California Environmental Protection Agency

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ATTACHMENT

Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
(April 4, 2017)

By electronic and certified U.S .mail

April 4, 2017

Attn: Ryan Fitzpatrick
Lead Civil Rights Analyst, Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave., S.E.
Washington, D.C. 20590
ryan.fitzpatrick@dot.gov

Attn: Velveta Golightly-Howell
Director, Office of Civil Rights
United States Environmental Protection Agency
U.S. EPA Office of Civil Rights (Mail Code 1201A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
Title_VI_Complaints@epa.gov

Attn: Daria Neil
Deputy Chief, Federal Coordination and Compliance Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Daria.neal@usdoj.gov

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

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[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 . . . .").

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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).

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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).

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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).

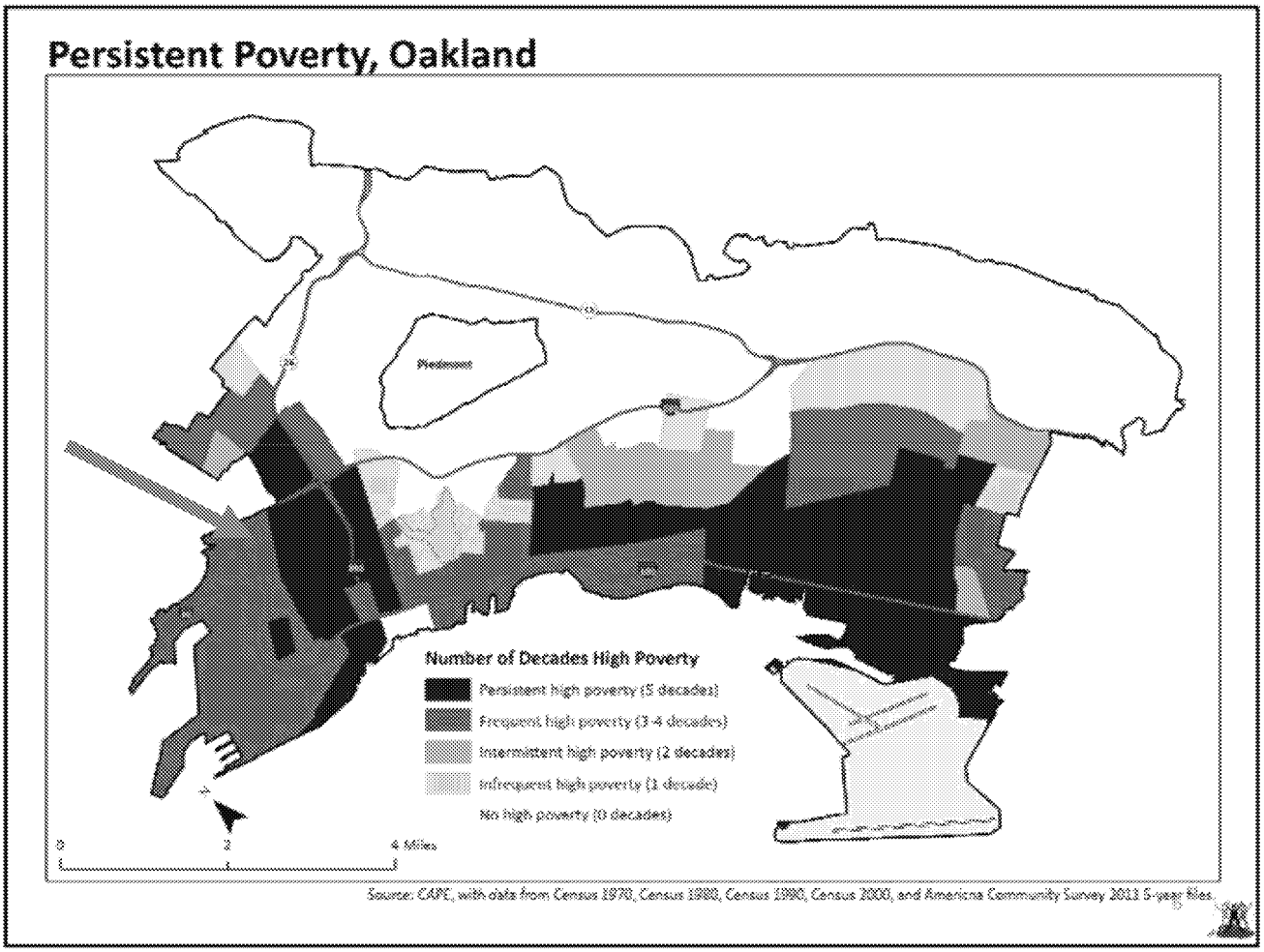

Figure 1 Map of areas of persistent poverty in Oakland (with arrow pointing to West Oakland).[24]

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]

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[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.

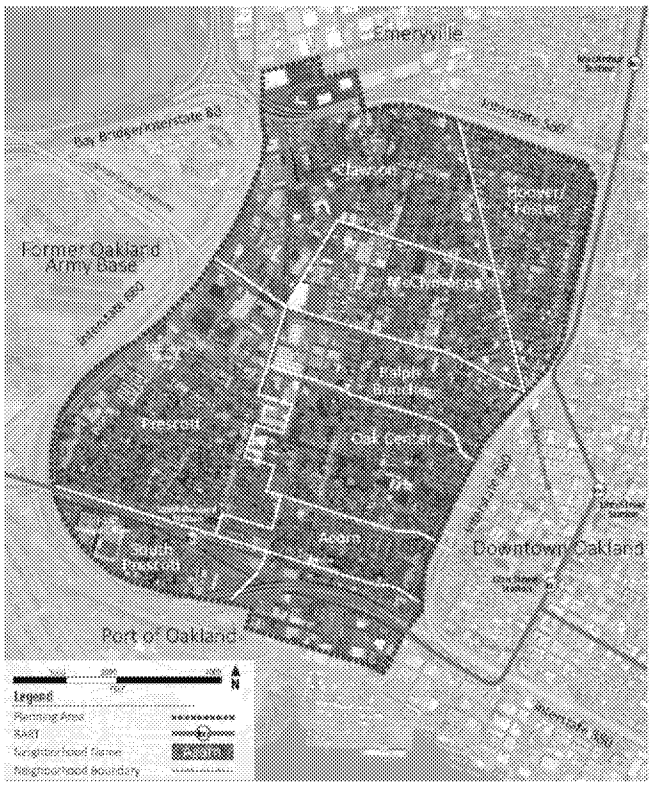

Figure 2 Map of the community of West Oakland.[27]

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.

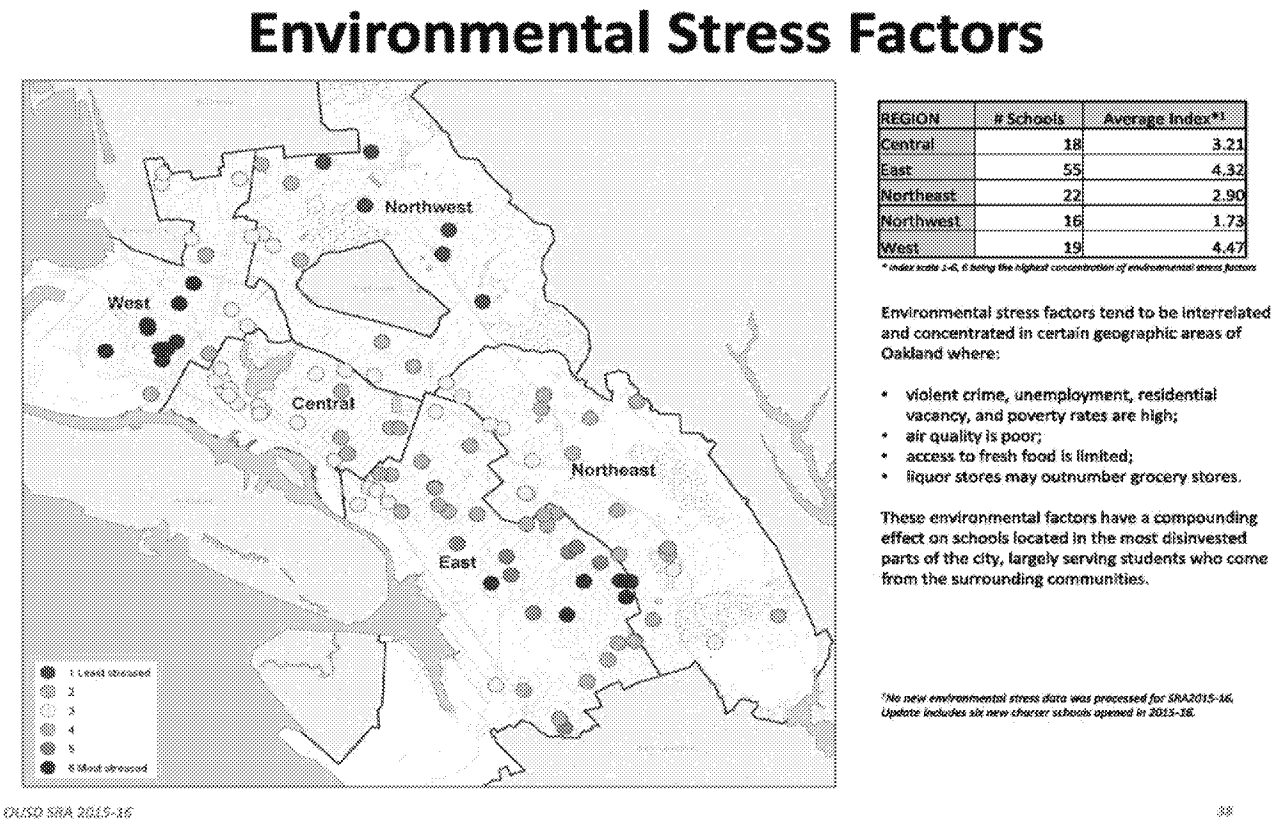

Figure 3 Environmental stress factors by school.

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).

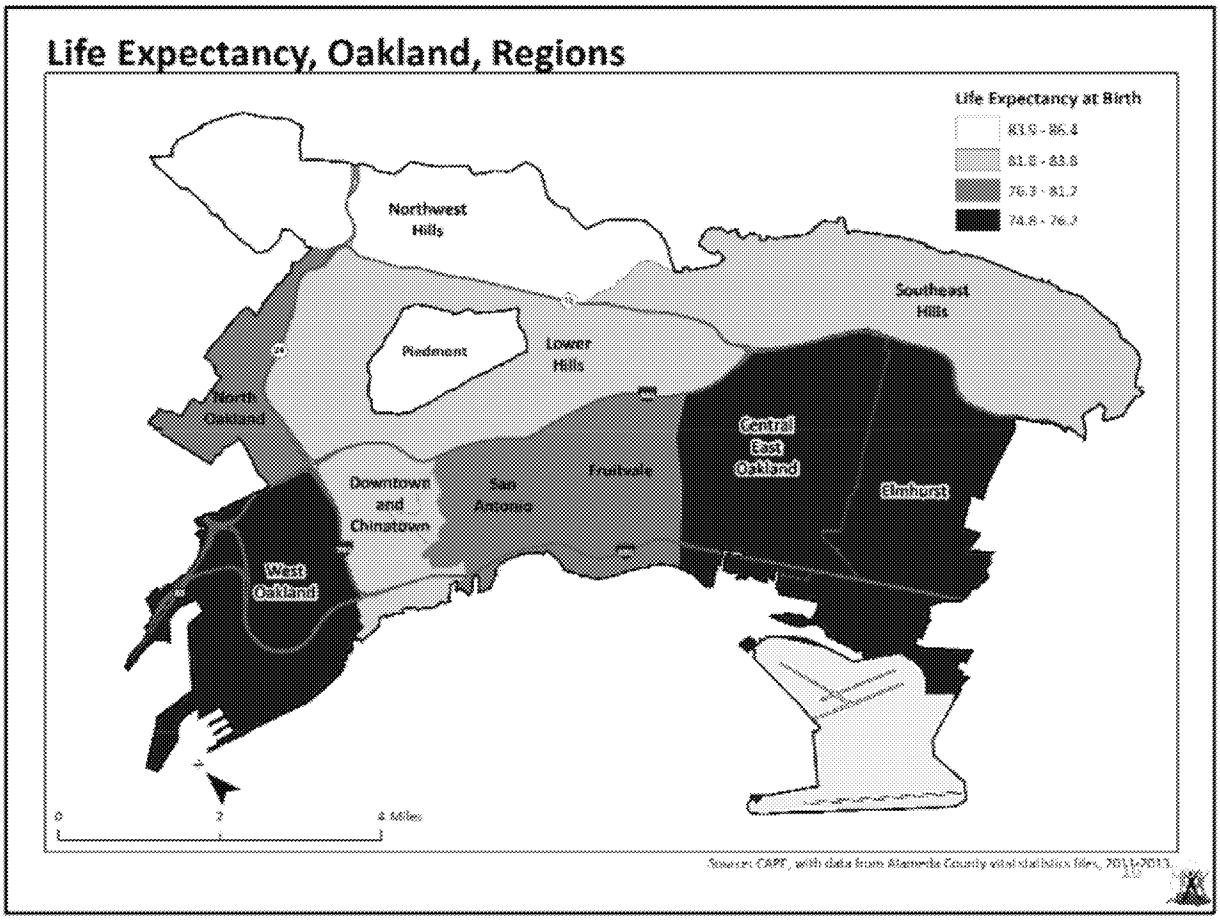

Figure 4 Life expectancies in Oakland's communities.[39]

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.

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[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]

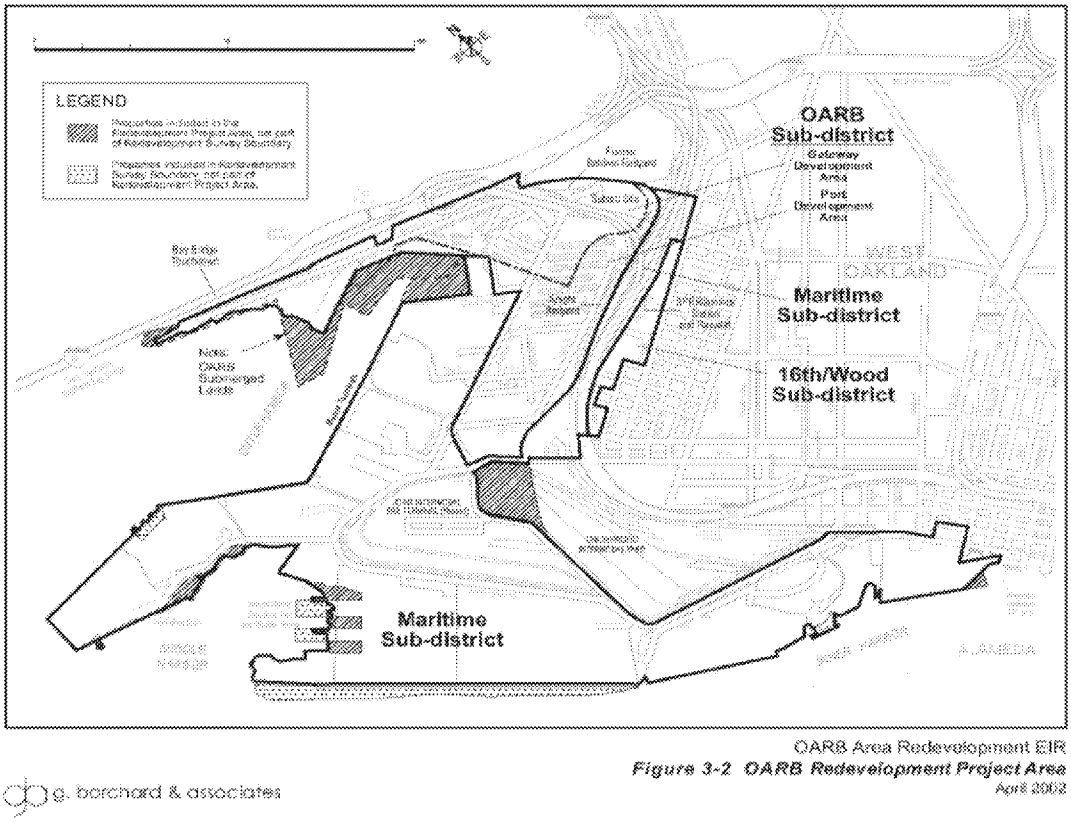

Figure 5 Oakland Army Base Redevelopment Area Sub-Districts, April 2002[52]

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

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[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]

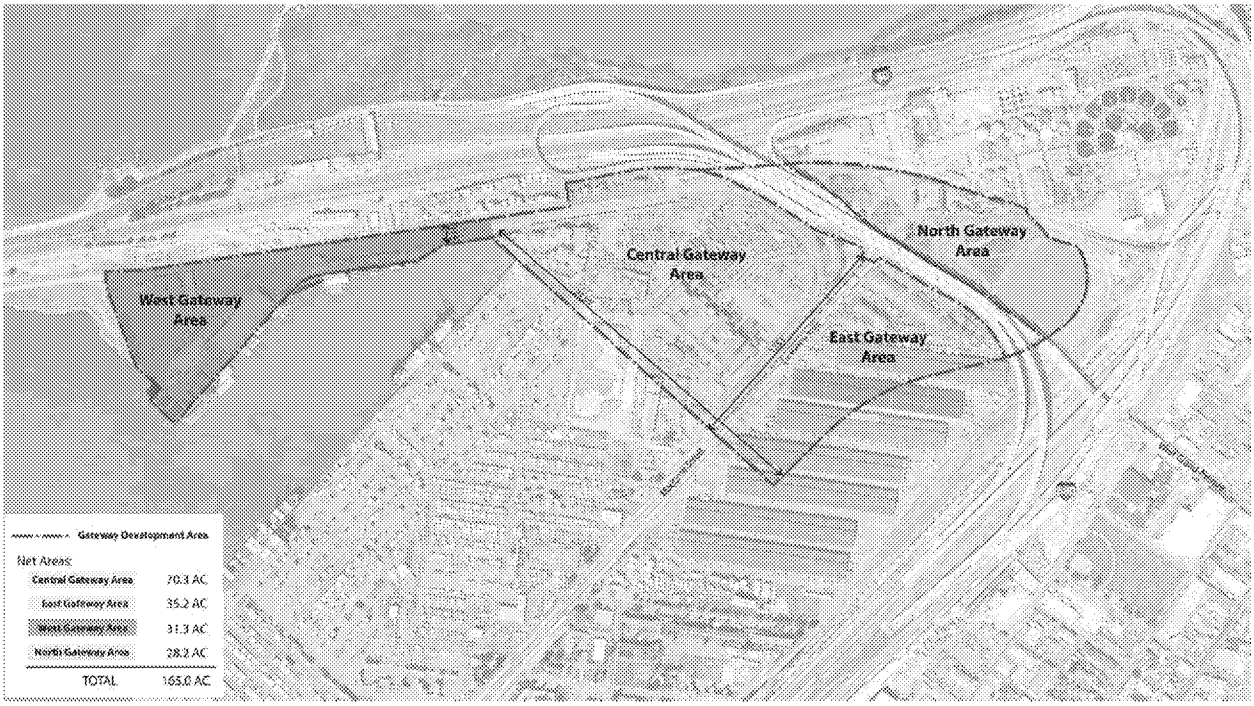

Figure 6 Gateway Development Area.[62]

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[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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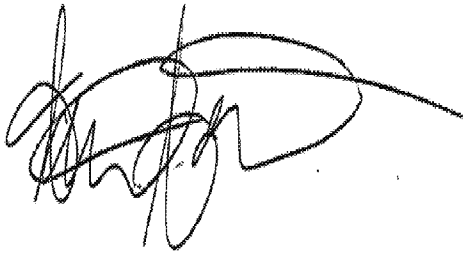
Complainant further requests that the City and Port be brought into compliance by: (a) requiring the City to withdraw its approvals of the Gateway construction management plans unless and until the City conducts a full review of the construction and long-term operation of all of the Gateway areas, and 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,

Yana Garcia
Paul Cort
Attorneys for West Oakland Environmental Indicators Project



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Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 8/17/2017 5:14:51 PM
To: McGowan, Patricia [PMcGowan@oaklandnet.com]
Subject: Further follow-up: Question on CTMP

Greetings Patricia

Following up on my query last week, below, yesterday our agency received correspondence from the Port including the following statement:

"The Port is currently engaged with the City in the planning stages of developing a joint truck management plan, focused on West Oakland, the Port, and the OAB ("Truck Management Plan"). The Truck Management Plan will be developed over the next year, in a process that will involve meaningful communication and input from the West Oakland community and other interested stakeholders. The Port and the City are conducting outreach to WOEIP and numerous other West Oakland community groups to participate in the Truck Management Plan planning process."

We are not only an "interested stakeholder" in the upcoming process but were active participants in the 2007-2009 CTMP effort. Please include me to the extent you are able in outreach and discussions of this upcoming effort. In addition, I would still appreciate some sort of catch-up discussion per my earlier note.

Thanks again

Richard Grow
US EPA
Region 9
(415) 947-4104

From: Grow, Richard
Sent: Wednesday, August 09, 2017 12:16 PM
To: 'McGowan, Patricia' <PMcGowan@oaklandnet.com>
Subject: Question on CTMP

Patricia

I'm hearing that you are starting up a comprehensive truck management plan initiative. Could you let me know if my understanding is correct and, if so, how can I bet get informed on this effort ?

Thanks

Richard Grow
US EPA
Region 9
(415) 947-4104

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 8/17/2017 5:07:55 PM
To: McGowan, Patricia [PMcGowan@oaklandnet.com]
Subject: FW: Agenda and Information for OAB Stakeholder meeting August 23, 2017
Attachments: Agenda Aug 23 2017 Stakeholder Meeting.pdf; Construction AQ Plan v2 08 03 17.pdf; Response to Comments on Admin Draft Const AQ Plan SE and Central GW.pdf

Patricia – could you clarify which of the attachments is the "memo which summarizes some of the key components of this Plan" mentioned in your note below ?

Thanks

Richard

From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, August 16, 2017 3:52 PM

Personal Address / Ex. 6

Subject: Agenda and Information for OAB Stakeholder meeting August 23, 2017

Hello OAB Stakeholders,

Attached please find the agenda for the Stakeholder meeting next week. I have also attached the AQ plan which was distributed for public review on August 4, 2017 (attached herein just for convenience since it's the same one you received via e-mail on August 4) and a memo which summarizes some of the key components of this Plan. Some of you have e-mailed with questions about the Plan and I apologize for my delayed or lack of response; I was out on vacation. I hope this e-mail and the attachments will respond to your questions.

I'd would also like to provide some context about the draft air quality plan which was distributed for public review on August 4, 2017.

This is the third air quality plan that we have reviewed. The first was in 2013 and it was for the construction of the new roads, utilities and general infrastructure including upper Maritime Road, Burma Road, the road out to the future East Bay Regional Park (Gateway Park) etc. The second was for the construction of the first Prologis building on the Northeast Gateway site. And now this is the third one, and it will be used to guide the construction of the remaining two Prologis sites, called the Southeast Gateway and the New Central Gateway. There is a site plan on page 2 of the Plan showing the location of these sites.

Each time the plans have started with the City's list of conditions related to improving air quality during construction and the list of recommendations from the BAAQMD in the CEQA Guidelines. Then the applicant prepared a plan based on these lists of specific actions and additional air quality measures which the applicant proposed. At that point, the plans were released for public review, per the MM PO-1, and comments were received from yourselves: the agencies, the WOEIP and other stakeholders. The City and the applicant then worked on the plans again, sometimes with meetings with the agencies, e-mails, discussions, etc. And then another version, or versions, of the plan were submitted for the City to consider.

The Plans were enhanced by adding more measures to reduce emissions from construction equipment and reduce air quality impacts during construction. The comments of the agencies and the stakeholders were considered, studied and evaluated, and revised Plans were ultimately approved by the City Administrator.

Now we have the third such Plan to reduce emissions and air quality impacts during the construction of remaining two Prologis sites. The applicant submitted the Plan to the City in March 2017. Knowing that the agencies and stakeholders have already done a lot of work giving comments on the past two such Plans, the City undertook more staff work on this Plan before we started the official public review per MM PO-1. Staff worked on an administrative draft Plan with the applicant, and then had a staff-to-staff working session on the administrative draft in May. Discussions and comments from that meeting were subsequently considered and studied by the applicant and City staff. And now a Plan has been submitted which is ready for the official public review period, as outlined in MM PO-1.

So as to facilitate your review of this Plan, I have attached a table which shows the comments/recommendations resulting from the staff-to-staff review, and how the Plan has incorporated the recommendations, or a response as to why it is difficult or infeasible to do so. Hopefully this will make your review of the Plan easier.

We will discuss this Plan at next week's Quarterly Stakeholder meeting (August 23, 2017). Prologis will describe the Plan, how it has been enhanced based on past input, and we can discuss its specifics. We hope this will be a good working session.

I have attached the Plan to this e-mail, for your ease. It is the same Plan you received as an attachment to the Notice of Availability of this Plan, sent via e-mail of August 4, 2017. I have also attached a table which might help your review of the Plan. Along with the agenda, attached herein, this is all we have to distribute prior to the meeting. The report on air quality monitors is available at http://ngem.com/OAB_AQM/.

I hope this description helps and I hope you will be able to come to the Stakeholder meeting on Aug. 23.

Patricia

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

OAB Stakeholder Meeting

Wednesday Aug. 23, 2017 11am – 1pm
Oakland City Hall, Hearing Room 4
1 Frank H. Ogawa Plaza, Oakland CA 94612

Agenda

A. Report on air quality monitors: first two quarters of 2017

B. Update by Prologis on their projects

   a. Update on construction of NE Gateway building: Shell completion, Aug. 2017. Tenant(s) not yet finalized. AQ plans for operations not yet ready to review.

   b. Update on compliance with the approved AQ Plan for Construction of NE Gateway.

   c. Description of what's planned for the Southeast and New Central Gateway sites.

C. Overview of the process for AQ planning

   a. Our goal is to make the stakeholder meetings informative and productive; to have effective discussions and thereby develop plans and programs which result in reducing the air quality impacts related to the construction and operation of buildings at the City's portion of the OAB.

   b. Implementation of Mitigation Measure PO-1

   c. We have a draft plan to work on, so let's do that.

D. Diesel Reduction and AQ Plan for Construction of the Southeast and New Central Gateway sites

   a. Prologis will describe the draft Plan, summarizing its key components and how the draft Plan considered and/or responded to comments received on the previous such Plans, and on the administrative draft of this Plan.

E. Information that the truck management plan public engagement will kick off in September, 2017 with a public meeting. Time and place to be announced.

To: Staff of the Air Quality Agencies and Stakeholders

From: Patricia McGowan, City of Oakland Environmental Coordinator for the OAB

Date: August 15, 2017

Subject: Comments from City staff and Public Agency staff regarding the Administrative Draft Construction AQ Plan for CE-2 (SE Gateway) and CC-1 (New Central Gateway)

On May 9, 2017 a meeting was held with staff of the City of Oakland and staff of the BAAQMD, CARB, EPA and Alameda Co. Public Health Department to review the administrative draft of the Construction Air Quality Plan for the SE Gateway and New Central Gateway sites, dated May 1, 2017. The meeting was held to review and discuss the administrative draft of the Plan with the intention of doing more staff work on this Plan prior to the official 17-day public review period outlined in the SCA/MMRP. Our intention was, and is, to work together at a staff level on an administrative draft so that the Plan can be as thorough as possible before the official public review of the Plan.

I forwarded the comments/discussion/recommendations from that meeting to Prologis who considered the comments and incorporated many of them into their Plan. The comments and the revisions made to their Plan, dated August 3, 2017 are summarized in the table below.

I hope this will help with your review of the Plan.

Section number from the administrative draft Plan (dated May 1, 2017)	**Comment/Recommendation from the May 9th staff working meeting**	**Revision made and included in Plan or explanation provided by applicant** (the Plan is dated August 3, 2017)
3.1.h & i	Reduce the allowable idling time to less than 5 minutes?	Idling time will be reduced from 5 minutes (CARB standard) to 3 minutes.
3.1.u	Why is the on-site access road not 100'?	50 feet is stated in the CA Storm water Association Best Management Practices. Fifty feet can accommodate one semi-truck or two concrete pumping trucks. Fifty feet, in combination with 3.2 c and d regarding clean wheels and street sweeping will address the intention of soil and mud not being tracked offsite.
3.3a	Ensure enforcement of the Tier 3 and 4 requirements. Restrict off-road diesel equipment to Tier 4.	The bid documents will include the air quality plan (once it is approved) and will thus specify that all subcontractors must use only tier 3 or 4 equipment. Prologis is thereby targeting contractors who have this type of equipment. Plan will specify: if the subcontractor has the tier 4 equipment in their fleet, then it is the tier 4 equipment that must be used on this

002892 2020-10-29

Section number from the administrative draft Plan (dated May 1, 2017)	**Comment/Recommendation from the May 9th staff working meeting**	**Revision made and included in Plan or explanation provided by applicant** (the Plan is dated August 3, 2017)
		construction site. Additionally, if the contractor needs to use rental equipment, the contractor shall contact three equipment rental companies in the SF BayArea. If tier 4 rental equipment is not available, tier 3 can be used. Additionally, the Plan specifies that the two pieces of equipment that will be used for the most construction hours must be tier 4. (With this, even if tier 3 equipment is on the site, the machines being used for the most number of construction hours will be tier 4.)
3.3e	No diesel generators on the job site	Prologis stated that they must have the ability to use generators in cases such as if PG& E has not yet provided power to the site upon arrival of the construction trailer. They stated that the use of diesel generators is very minimal and are used only when required. (3.3f)
3.3d	Regarding use of electric tools, tighten up what "to the extent feasible means".	Revised text: All scissor lifts and small tools will be electric. Regarding boom lifts, Prologis stated that boom lifts don't exist in electric equipment at the size needed for these construction sites. (3.3e)
3.3f and 3.3g	Did the City enforce this?	A maintenance log is kept and it is available upon request. This was added to the Plan. (3.3g)
General	a. The admin. draft Plan regulates off-road equipment but does not address on-road diesel trucks service the construction site. b. Construction trucks coming to the site (On-Road diesel trucks): ARB staff would like these to be 2010 engine year or newer, whereas the ARB regulation for On-Road diesel trucks is 2007 engine year or newer.	The Plan doesn't yet include this, but Section 3.3j could state that: All contractors will be bound by contract to comply with the CARB regulation for On-Road diesel trucks and the requirements of the Periodic Smoke Inspection Program (PSIP). The trucks delivering construction materials and construction equipment to the site(s) are all independent truckers who are not hired by the general contractor so Prologis states that such a requirement imposed by them on the general contractor/sub contractors would be unenforceable and unrealistic. Such trucks must be registered with ARB and therefore are required to follow all ARB regulations.

Section number from the administrative draft Plan (dated May 1, 2017)	**Comment/Recommendation from the May 9th staff working meeting**	**Revision made and included in Plan or explanation provided by applicant** (the Plan is dated August 3, 2017)
	c. Look at 3.7d. In addition to the off-road equipment, do you keep a log of the trucks coming to the site? 3.7d implies all vehicles, on and off road, coming to the site. What are you doing on this so far? Is it working?	Prologis will reply.
3.3c	Bio-diesel fuel; add a new point below 3.3c regarding encouraging the use of bio-diesel fuel.	Prologis found out from the general contractor that the use of bio diesel fuel in equipment designed to use diesel fuel voids the manufacturer's warranty. Based on voiding the warranty, Prologis does not feel it is realistic to require the contractors or owners of the construction equipment to take that risk. 3.3d encourages the use of equipment that was designed to use alternative fuels.
General	Complaint log	There is a complaint log and for the building currently under construction (CE-1). To date, no complaints have been received.

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/16/2018 8:07:28 PM
To: gnudd@baaqmd.gov; hhilken@baaqmd.gov
Subject: Port to EIP re cochairs mtg: MAQIP engagement criteria

Greg & Henry

FYI re exchange between EIP and Port below. Any info on this mornings "co-chairs" meeting would be appreciated. We are speaking with CONCUR/Port tomorrow morning and plan to emphasize need for IWG and revisit of 2009 evaluation, IF the task force is top be reconvened. Still tracking 2016 recommendations following up on 2009 evaluation, same consultants both times, convinced there are some substantive recommendations that deserve attention.

Richard Grow
US EPA, R9
(415) 947-4104

From: Richard Sinkoff [rsinkoff@portoakland.com]
Sent: Tuesday, January 16, 2018 11:53 AM
To: Brian Beveridge; Scott McCreary; Chris Lytle
Cc: Margaret Gordon; Grow, Richard; David Vintze; Lee, Anna, Public Health, CAPE; Amy Tharpe; Laura Arreola
Subject: RE: MAQIP engagement criteria

Good morning, Brian,
Thank you for your e-mail. I am sorry that WOEIP elected to not join the conversation this morning; however, we do hear your concerns.
The Port is keenly interested in WOEIP's engagement and I trust that we can find common ground.
I will reach out to you by phone this afternoon. We are concurrently reviewing the engagement criteria that WOEIP presented to the Port last week.

Are you available this afternoon for a chat?

Best,

Richard

From: Brian Beveridge [ma Personal Address / Ex. 6
Sent: Monday, January 15, 2018 7:16 PM
To: Richard Sinkoff <rsinkoff@portoakland.com>; Scott McCreary <scott@concurinc.net>; Chris Lytle <clytle@portoakland.com>
Cc: Margaret Gordon Personal Address / Ex. 6 Richard Grow <grow.richard@epa.gov>; David Vintze <DVintze@baaqmd.gov>; Lee, Anna, Public Health, CAPE <Anna.Lee@acgov.org>
Subject: MAQIP engagement criteria

Hello Richard and Scott
Unfortunately I will not be attending the interview co-chairs meeting on Tuesday, Jan 16. At our meeting on Monday, Jan 8, I presented a set of engagement criteria and requested that the Port address the issues listed. Perhaps a week was not enough time, but it makes little sense for us as representatives of the community to enter into yet another unilateral planning process with the Port.

Our attendance without a reply to our concerns and expectations would imply that we are satisfied with the process that has been initiated by the Port. Adding the stakeholders after the fact is unacceptable. The Port now wants to rush to judgement on many issues critical to the health of our West Oakland neighbors, all for the sake of meeting a last minute budget deadline. This work could have been undertaken months ago.

This delay, the self-imposed urgency, speaks volumes about the Port's real commitment to true action in the MAQIP Update. It appears that the purpose of this exercise is to get public money while making no real financial or policy commitment by the Port. This is all to familiar.

If the Port administration wishes to meet and discuss real community engagement, we are willing, but this process strikes us as being for appearance sake only and that is not in our interest.

Sincerely, Brian Beveridge

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 11/2/2017 6:42:31 PM
To: Zimpfer, Amy [Zimpfer.Amy@epa.gov]
Subject: RE: Port of Oakland press release: City, Port of Oakland work with neighbors to get trucks on track

Deliberative Process / Ex. 5

From: Zimpfer, Amy
Sent: Thursday, November 02, 2017 10:52 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: Fwd: Port of Oakland press release: City, Port of Oakland work with neighbors to get trucks on track

What do you know about this?

Amy Zimpfer, Associate Director
USEPA, Region 9, Air Division
zimpfer.amy@epa.gov
+1 415.947.4146

Sent from my iPhone

Begin forwarded message:

> **From:** "Port of Oakland" <portofoakland@public.govdelivery.com>
> **Date:** November 2, 2017 at 8:03:40 AM PDT
> **To:** zimpfer.amy@epa.gov
> **Subject: Port of Oakland press release: City, Port of Oakland work with neighbors to get trucks on track**
> **Reply-To:** portofoakland@public.govdelivery.com

PORT OF OAKLAND

90 YEARS OF PUBLIC SERVICE
FEBRUARY 12, 1927–FEBRUARY 12, 2017

PRESS RELEASE

FOR IMMEDIATE RELEASE

City, Port of Oakland work with neighbors to get trucks on track

New plan due in 2018 would address trucking in West Oakland

Oakland, Calif. – Nov. 2, 2017: City and Port of Oakland officials are meeting with neighbors to hear concerns about big rig traffic on streets in West Oakland. The agencies say they anticipate a new West Oakland Truck Management Plan by the fall of 2018 that will address trucking problems in the area. The goal: steer heavy truck traffic away from West Oakland residences bordering the Port.

"This will be a plan that relies on community input to address truck circulation and parking," said Patricia McGowan, Senior Planner for the City of Oakland Planning and Building Department. "We want trucks to be less disruptive by controlling where they drive and park."

Officials spoke last month at the first of five community workshops in West Oakland to be conducted by the City and Port. About 100 people attended to provide their views on diesel-powered semis hauling cargo containers near their homes and businesses. Among the concerns:

- Safety;
- Lack of truck route signs;
- Diesel exhaust; and
- Big rigs parked overnight in residential neighborhoods.

About 3,000 trucks daily transport containers in Oakland, said Richard Sinkoff, the Port's Environmental Programs and Planning Director. Most of that traffic sticks to Port roads or nearby freeways, he said. But truckers in search of fuel, food or repairs, sometimes detour through nearby West Oakland.

The City designated truck routes around the area in 2005, said Ms. McGowan. But not every driver stays on track, she pointed out. The new plan will specify where trucks can drive and park. It will also strengthen enforcement of truck restrictions.

The City and Port are conducting workshops to find out what else needs to be in the plan. "That's why we are holding the public meetings and encouraging public input," said Ms. McGowan. "We want the community to come together with the City and the Port to develop a plan that addresses their concerns."

The City and Port said they are already taking steps to steer freight-haulers away from residential neighborhoods. Truck service centers are planned at the Port and at an adjacent City development so that drivers won't have to venture into West Oakland for fuel, food and other services. Overnight truck parking spaces are being added, too.

About the Port of Oakland

The Port of Oakland oversees the Oakland seaport, Oakland International Airport, and 20 miles of waterfront including Jack London Square. Together with its business partners, the Port supports more than 73,000 jobs in the region and nearly 827,000 jobs across the United States. Connect with the Port of Oakland and Oakland International Airport through Facebook, or with the Port on Twitter, YouTube, and at www.portofoakland.com.

Media Contacts:
Mike Zampa
Communications Director
Port of Oakland

(510) 627-1565
mzampa@portoakland.com

Marilyn Sandifur
Port Spokesperson
Port of Oakland
(510) 627-1193
msandifur@portoakland.com

###

PORT OF OAKLAND

Questions? Contact Us

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This email was sent to zimpfer.amy@epa.gov, on behalf of Port of Oakland · 530 Water Street · Oakland, CA 94607 · 510-627-1100

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/7/2017 5:26:26 PM
To: vmt_3@msn.com
Subject: Fw: Cit science at ground zero: Env. Defense Fund explanation/discussion of air quality data for Oakland
Attachments: EDF AQ press release final.pdf; EDF AQ cover letter to Mayor Schaaf.pdf; Untitled Attachment

Vernice - I saw OEJ was poking around on citizen science in port communities. The exchange below described recent doings Ms. Margaret's community. Richard

---

From: Grow, Richard
Sent: Friday, July 7, 2017 10:20 AM
To: Buzzelle, Stanley
Cc: Reyes, Deldi
Subject: Cit science at ground zero: Env. Defense Fund explanation/discussion of air quality data for Oakland

Deliberative Process / Ex. 5

Richard

From: Grow, Richard
Sent: Saturday, July 1, 2017 1:08 PM
To: Reyes, Deldi; BANDROWSKI, MIKE; Vallano, Dena; Davidson, Ken
Subject: Fw: Env. Defense Fund explanation/discussion of air quality data for Oakland

Deldi, Mike and a few others

The Oakland City Planning department is hosting a presentation by EDF on the West Oakland monitoring study on Monday 7/10 11-12 at City Hall. Not exactly a public event but WOEIP has asked me to attend and I'm sure it would be fine if 2-3 others from our office wanted to joint. Given the players, the discussion as to the implications of the study may be interesting. Clips and correspondence attached and linked. Pls let me know if you plan to attend. Thx

Richard

Where Oakland City Hall, 3rd floor ConfRoom - Building Bridges

map

Calendar Patricia McGowan

Source Env. Defense Fund explanation/discussion of air quality data for Oakland

Description It is being rescheduled for Monday July 10, 11am at Oakland City Hall, Building Bridges Conference room, third floor (same floor as the Mayor's office). Fern U. from the Environmental Defense Fund will explain the air quality data that was collected for West Oakland and downtown Oakland. The attached outlook item contains the links to the data for your use and reference before the meeting. Thank you and I hope to see you can attend. Patricia McGowan City of Oakland 510-238-3588

From: Margaret Gordon **Personal Address / Ex. 6**
Sent: Friday, June 30, 2017 12:22 PM
To: Grow, Richard
Subject: Fwd: Env. Defense Fund explanation/discussion of air quality data for Oakland

OK Richard,

Here are some early press coverage so far, FYI:

https://www.google.com/amp/s/amp.cnn.com/money/2017/06/05/technology/google-street-view-edf-air-quality-oakland/index.html

http://www.wired.co.uk/article/air-pollution-maps-carbon-emissions

---

Air pollution map reveals pollution in London, UK and ...

www.wired.co.uk

Causes of air pollution is highlighted on hyper-local pollution maps, interactive maps by the Tomorrow project and the Air Quality Index

---

https://www.wired.com/2017/06/race-pollution-sensing-tech-oakland/

And a feature on Google blog (Google has been a partner on this project):
https://blog.google/products/maps/lets-clear-air-mapping-our-environment-our-health/

Ms.M

--

Ms. Margaret Gordon/Co-Director
West Oakland Environmental Indicators Project
349 Mandela Parkway
Oakland, CA 94607
Personal Address / Ex. 6 rect line
www.woeip.org

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 11/14/2017 11:12:57 PM
To: Reyes, Deldi [Reyes.Deldi@epa.gov]
Subject: Thursday talk with ECRCO re W.O.: Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9
Attachments: City and Port Joint Proposed Informal Resolution Agreement.pdf; City and Port DRAFT Informal Resolution Agreement REDLINE to EPA DOT Draft.pdf; CLEAN Port Draft Informal Resolution Agreement.docx

Deldi – just saw that Kurt's invite to meet/talk Thursday (8:30) didn't go to you. Alexis says she'll join for the first half hour so we can meet on 19. Into the soup.

Richard

From: Temple, Kurt
Sent: Monday, November 13, 2017 9:10 AM
To: Rhines, Dale <rhines.dale@epa.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>
Subject: FW: Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9

Hello. Following up on the email I just sent to DOT. Would it be possible for the EPA team to meet and discuss this Thursday? Please let me know if that will or will not work.

Thanks,

Kurt

From: Dorka, Lilian
Sent: Sunday, November 12, 2017 4:15 PM
To: Temple, Kurt <Temple.Kurt@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Yvette Rivera <yvette.rivera@dot.gov>; ryan.fitzpatrick@dot.gov
Subject: Fwd: Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9

Sent from my iPhone

Begin forwarded message:

> **From:** "Michele Heffes" <mheffes@portoakland.com>
> **To:** "charles.james@dot.gov" <charles.james@dot.gov>, "Dorka, Lilian" <Dorka.Lilian@epa.gov>
> **Cc:** "Parker, Barbara" <BParker@oaklandcityattorney.org>, "Bee, Maria" <MBee@oaklandcityattorney.org>, "Cappio, Claudia (CCappio@oaklandnet.com)" <CCappio@oaklandnet.com>, "Danny Wan" <dwan@portoakland.com>, "Michele Heffes" <mheffes@portoakland.com>, "Chris Lytle" <clytle@portoakland.com>, "Michele Heffes" <mheffes@portoakland.com>, "Smith, Jamie" <JSmith@OaklandCityAttorney.org>, "Laurice Henry-Ross" <lhenry@portoakland.com>
> **Subject: Title VI : DOT#2017-0092 and EPA File Nos. 13R-17-R9; 14R-17-R9**

Dear Ms. Dorka and Mr. James:

Attached please find a November 10, 2017, letter (including the 2 referenced attachments) from Oakland City Attorney, Barbara J. Parker, and Port Attorney, Danny Wan, concerning the above-referenced matter. Hard copies will be sent via First Class Mail. Please let me know if you have any questions.

Michele

Michele Heffes
Assistant Port Attorney
Port Attorney's Office
530 Water Street
Oakland, CA 94607
Phone: (510) 627-1348
mheffes@portoakland.com

ATTORNEY-CLIENT PRIVILEGED

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Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/16/2018 8:01:59 PM
To: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: EIP-Port exchange: MAQIP engagement criteria

Deliberative Process / Ex. 5

From: Richard Sinkoff [rsinkoff@portoakland.com]
Sent: Tuesday, January 16, 2018 11:53 AM
To: Brian Beveridge; Scott McCreary; Chris Lytle
Cc: Margaret Gordon; Grow, Richard; David Vintze; Lee, Anna, Public Health, CAPE; Amy Tharpe; Laura Arreola
Subject: RE: MAQIP engagement criteria

Good morning, Brian,
Thank you for your e-mail. I am sorry that WOEIP elected to not join the conversation this morning; however, we do hear your concerns.
The Port is keenly interested in WOEIP's engagement and I trust that we can find common ground.
I will reach out to you by phone this afternoon. We are concurrently reviewing the engagement criteria that WOEIP presented to the Port last week.

Are you available this afternoon for a chat?

Best,

Richard

From: Brian Beveridge [mailto: **Personal Address / Ex. 6**
Sent: Monday, January 15, 2018 7:16 PM
To: Richard Sinkoff <rsinkoff@portoakland.com>; Scott McCreary <scott@concurinc.net>; Chris Lytle <clytle@portoakland.com>
Cc: Margaret Gordon **Personal Address / Ex. 6** Richard Grow <grow.richard@epa.gov>; David Vintze <DVintze@baaqmd.gov>; Lee, Anna, Public Health, CAPE <Anna.Lee@acgov.org>
Subject: MAQIP engagement criteria

Hello Richard and Scott
Unfortunately I will not be attending the interview co-chairs meeting on Tuesday, Jan 16. At our meeting on Monday, Jan 8, I presented a set of engagement criteria and requested that the Port address the issues listed. Perhaps a week was not enough time, but it makes little sense for us as representatives of the community to enter into yet another unilateral planning process with the Port.

Our attendance without a reply to our concerns and expectations would imply that we are satisfied with the process that has been initiated by the Port. Adding the stakeholders after the fact is unacceptable. The Port now wants to rush to judgement on many issues critical to the health of our West Oakland neighbors, all for the sake of meeting a last minute budget deadline. This work could have been undertaken months ago.

This delay, the self-imposed urgency, speaks volumes about the Port's real commitment to true action in the MAQIP Update. It appears that the purpose of this exercise is to get public money while making no real financial or policy commitment by the Port. This is all to familiar.

If the Port administration wishes to meet and discuss real community engagement, we are willing, but this process strikes us as being for appearance sake only and that is not in our interest.

Sincerely, Brian Beveridge

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/16/2018 6:44:05 PM
To: Yura, Elizabeth@ARB [eyura@arb.ca.gov]; Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]; Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]
Subject: RE: RSVP: Availability for interagency call about MAQIP

Hi Elizabeth, welcome back. I think this will be held off on for now pending our own (EPA) call tomorrow with CONCUR in which we plan to raise the IWG, Viveka Chen evaluation and other issues, and also to see what becomes of today's planned "co-chairs" meeting which Brian informed the Port last night WOEIP would not be attending due to the Port's not responding to the WOEIP criteria presented to Sinkoff et al a week ago yesterday. Hopefully if the TF is to proceed, the Port will see that the proper sequencing of things will provide adequate time for the IWG to regroup.

Richard

From: Yura, Elizabeth@ARB [eyura@arb.ca.gov]
Sent: Tuesday, January 16, 2018 10:22 AM
To: Lee, Anna, Public Health, OOD; Grow, Richard; Marvin, Cynthia@ARB
Subject: RE: RSVP: Availability for interagency call about MAQIP

Hi all, I'm back from DC and finally have access to my email again (CARB server migration late last week totally cut off my access! Errrrr).

I can do a call today around 3:15 (I have a quick meeting at 3pm I need to attend), or tomorrow at 9am. Let me know if either of those work!

Elizabeth Yura
Chief, Freight Activity Branch
California Air Resources Board
Direct: (916) 322-8277
Branch Line: (916) 323-4327
Elizabeth.Yura@arb.ca.gov

-----Original Message-----
From: Lee, Anna, Public Health, OOD [mailto:Anna.Lee@acgov.org]
Sent: Friday, January 12, 2018 8:51 PM
To: Grow, Richard <Grow.Richard@epa.gov>; Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>
Subject: RE: RSVP: Availability for interagency call about MAQIP

Thanks Richard. CONCUR's response to the rushed timeline is that Richard Sinkoff is pushing for a process (3 meetings over the next 3 months) to get advice before he submits for some grant applications and that the scope to be around reviewing the strategies to get to the last ~10% of emissions reduction to achieve the 85% by 2020. They also said that they hadn't seen the Viveka report until a couple days ago and were surprised that they weren't interviewed for it. But they have it and will forward it. I told them I don't get why they need to convene the whole MAQIP structure and process right now. So much has changed (updated health thresholds, new air monitoring studies) and we're so close to 2020 that they're better off committing to a new stronger goal, coordinating with other planning processes like AB 617 process. I also brought up that given there's a lot of mistrust from the past process, that the Port's going to have to really show how they're going to be transparent and accountable to the community for them to stay at the table. That's going to be hard when things are moving so quickly.

Didn't hear that Jean retired! She was the MAQIP rep, right? Too bad we're losing that institutional memory.

Anna Lee
Local Policy Coordinator
Alameda County Public Health Department
1000 Broadway, Suite 500
Oakland, CA 94607
anna.lee@acgov.org | Phone: (510) 267-8019 _____
From: Grow, Richard [Grow.Richard@epa.gov]
Sent: Friday, January 12, 2018 7:33 AM
To: Lee, Anna, Public Health, OOD; Marvin, Cynthia@ARB; Yura, Elizabeth@ARB
Subject: RE: RSVP: Availability for interagency call about MAQIP

Anna - Thanks, still juggling dates. Some questions we plan to explore in our "interview" with CONCUR; no way is this just us being "surveyed":

- What's the rush ?
- if "reconvene" (their project description), EIP again as co-chair ?

- co-chairs involved in (1) defining project, (2) setting schedule, (3) setting agenda ?
- when/where will there be open discussion of 2009 evaluation ? (we don't want this just one on one, needs open discussion)
- Can we see 2016 report by Viveka/Anuja ? (Scott mentioned it in an email to EIP) ?
- Status of response to EIP criteria (provided to Port/CONCUR on 1/8) ?
- We see a role for IWG; has that been considered, provided for ? Is ther time for us to regroup the IWG ? if not, why not ?
- etc.

Overall the questions go to how deep, serious or meaningful is this upcoming exercise ? If it is truly substantive, why not take time, design and do it right ? If not, why bother with a TF ?

Meeting with BAAQMD this aft on AB617, maybe learn more about their thoughts on MAQIP (Greg Nudd, replacing Jean who retired, designated by Jack B as their rep on TF.)

Richard

From: Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]
Sent: Thursday, January 11, 2018 8:58 PM
To: Marvin, Cynthia@ARB; Grow, Richard; Yura, Elizabeth@ARB
Subject: RE: RSVP: Availability for interagency call about MAQIP

Hi everyone,

Happy New Year! I can talk Tuesday, 3-4pm and Wednesday 9-10 or 11-12. There's a chance I can talk Tuesday before 11am, but I'm still waiting to hear back about another meetings, so I want to hold that time for now. By the way, Dr. Davis and I are talking to Concur tomorrow at 3pm. I haven't received an invitation for 1/26 either.

Thanks
Anna

Anna Lee
Local Policy Coordinator
Alameda County Public Health Department
1000 Broadway, Suite 500
Oakland, CA 94607
anna.lee@acgov.org | Phone: (510) 267-8019

From: Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]
Sent: Thursday, January 11, 2018 5:00 PM
To: Grow, Richard; Yura, Elizabeth@ARB; Lee, Anna, Public Health, OOD
Subject: RE: RSVP: Availability for interagency call about MAQIP

I am totally booked during your times, but Liz may have a bit more flexibility. She's in DC and may need more time than usual to respond.
Cyn

PS, Hi Anna, happy new year!

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Thursday, January 11, 2018 3:29 PM
To: Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>; 'Lee, Anna, Public Health, CAPE' <Anna.Lee@acgov.org>
Subject: RSVP: Availability for interagency call about MAQIP

Cynthia, Elizabeth and Anna

We have just responded to the Port/CONCUR invite to join this round of the MAQIP task force, but also told them we are talking with the agencies who made up the IWG on the previous MAQIP effort and may need time to have those discussions, which may impede their planned first (of three) meetings set for January 26 (for which we have not seen an invitation). I've heard back from Jack B that he agrees there should be an IWG again this time and it should have some discussion before the MAQIP TF is convened. He also identified Greg Nudd as the main rep on the TF, though Jack intends to act as one of the co-chairs of the TF, as BAAQMD (and EIP) did last time.

This note is to see whether you are available for a first rather informal conversation next Tuesday or Wednesday at any of the times listed below. For now we see the IWG as including only the environmental/health agencies (ie not the City or Port) meaning CARB, BAAQMD, ACPHD and EPA. Attaching EIP conditions as of Monday when presented to Port and the current CONCUR project description.

Times:

Tuesday 1/16: 10-12, 1-2, 3-4
Wednesday 1/17: 9-10, 11-12

If none of these work we may have to consider Thursday morning, but sooner would be good.

Thanks

Richard
Personal Matters / Ex. 6

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:23:00 PM
To: Maier, Brent [Maier.Brent@epa.gov]; Nazmi, Niloufar [Nazmi.Niloufar@epa.gov]
CC: Adams, Elizabeth [Adams.Elizabeth@epa.gov]; Lakin, Matt [Lakin.Matthew@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: Desk statement: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - RECIPIENTS - 7-18-2017.pdf; REACTIVE DESK STATEMENT - Acceptance for Investigation - Oakland City and Port complaint 7-18-17.docx

Importance: High

Please forward the desk statement to whomever is appropriate within our office if they don't already have it. Thx

Richard

Personal Matters / Ex. 6

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 4:07 PM
To: Grantham, Nancy
Cc: Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin; Albores, Richard
Subject: FW: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Hi Nancy,

Wanted to let you know that today we issued the attached Letter of Acceptance, accepted this complaint for investigation. The complaint was filed with EPA's ECRCO as well as DOT's Departmental Office of Civil Rights and we have issued a joint letter. We anticipate that this acceptance for investigation might generate some press. In anticipation of this, we have prepared the attached Reactive Desk Statement for use in responding to press.

Thanks very much for your help and please let me know if you have any questions.

Lily

(PS: we have shared the Reactive Desk Statement with DOT-DOCR which they will use as well I responding to press.)

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 6:52 PM
To: 'officeofthemayor@oaklandnet.com' <officeofthemayor@oaklandnet.com>; 'colbruno@portcommissioner.com' <colbruno@portcommissioner.com>
Cc: Rivera, Yvette (OST) <yvette.rivera@dot.gov>; 'Charles.james@dot.gov' <Charles.james@dot.gov>; Jang, Deeana (OST) <deeana.jang@dot.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; O'Lone, Mary <olone.mary@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Keeler,

Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Harrison, Brenda <Harrison.Brenda@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Importance: High

Dear Mayor Schaaf and Mr. Colbruno:

I am writing on behalf of the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), to notify you that, per the attached Letter of Acceptance, the agencies have accepted for investigation the above-referenced civil rights complaint. The attached Letter of Acceptance has also been mailed to you via certified mail. Please let us know if you have any questions.

Sincerely,

Lilian S. Dorka

Lilian Sotolongo Dorka, Esq.
Director, External Civil Rights Compliance Office
EPA, Office of General Counsel
202-564-9649
WJC-N Room 2450

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

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

July 18, 2017

The Honorable Libby Schaaf
Mayor, City of Oakland
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Michael Colbruno
President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, CA 94607

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

Dear Mayor Schaaf and Mr. Colbruno:

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

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

have determined that the complaint meets the jurisdictional requirements of both Agencies, and therefore the complaint will be jointly investigated.

Accordingly, the investigation will focus on:

1. Whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the Oakland Army Base subjects the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

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

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

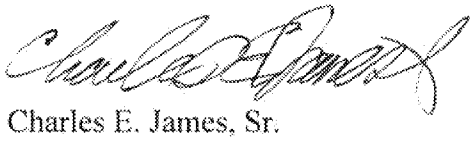
This does not foreclose resolution of matters raised in the complaint through informal resolution, including alternative dispute resolution (ADR). Both DOT's and EPA's nondiscrimination regulations provide that DOCR and ECRCO will attempt to resolve complaints informally whenever possible. 49 C.F.R.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

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights

protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with DOCR and ECRCO.

Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's DOCR, or Ericka Farrell, Case Manager in EPA's ECRCO, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Farrell can be reached at (202) 564-0717, or farrell.ericka@epa.gov.

Sincerely,



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

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:14:22 PM
To: Kaplan, Rebecca [RKaplan@oaklandnet.com]
CC: Sheng Thao [sthao@oaklandnet.com]
Subject: Fw: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - COMPLAINANTS - 7-18-2017.pdf

Importance: High

Letter to complainants

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 3:58 PM
To: ygarcia@earthjustice.org; pcort@earthjustice.org; Aadeyeye@earthjustice.org
Cc: Rivera, Yvette (OST); Charles.james@dot.gov; Jang, Deeana (OST); Fitzpatrick, Ryan (OST); Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin
Subject: RE: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

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

I am writing on behalf of the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), to notify you that, per the attached Letter of Acceptance, the agencies have accepted for investigation the above-referenced civil rights complaint. The attached Letter of Acceptance has also been mailed to you via certified mail. Please let us know if you have any questions.

Sincerely,

Lilian S. Dorka

Lilian Sotolongo Dorka, Esq.
Director, External Civil Rights Compliance Office
EPA, Office of General Counsel
202-564-9649
WJC-N Room 2450

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

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

July 18, 2017

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

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

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

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

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

Accordingly, the investigation will focus on:

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

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

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

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

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

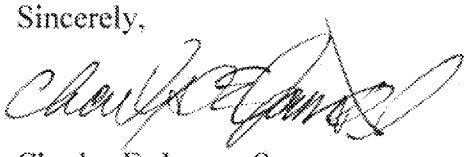
No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual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

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

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

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

Sincerely,



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

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

002916 2020-10-29

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:13:40 PM
To: Kaplan, Rebecca [RKaplan@oaklandnet.com]
CC: Sheng Thao [sthao@oaklandnet.com]
Subject: Fw: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - RECIPIENTS - 7-18-2017.pdf

Importance: High

Rebecca

Separate letter to complainants to follow.

Richard

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 3:52 PM
To: officeofthemayor@oaklandnet.com; colbruno@portcommissioner.com
Cc: Rivera, Yvette (OST); Charles.james@dot.gov; Jang, Deeana (OST); Fitzpatrick, Ryan (OST); Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin
Subject: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Dear Mayor Schaaf and Mr. Colbruno:

I am writing on behalf of the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), to notify you that, per the attached Letter of Acceptance, the agencies have accepted for investigation the above-referenced civil rights complaint. The attached Letter of Acceptance has also been mailed to you via certified mail. Please let us know if you have any questions.

Sincerely,

Lilian S. Dorka

Lilian Sotolongo Dorka, Esq.
Director, External Civil Rights Compliance Office
EPA, Office of General Counsel
202-564-9649
WJC-N Room 2450

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

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

July 18, 2017

The Honorable Libby Schaaf
Mayor, City of Oakland
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Michael Colbruno
President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, CA 94607

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

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have determined that the complaint meets the jurisdictional requirements of both Agencies, and therefore the complaint will be jointly investigated.

Accordingly, the investigation will focus on:

1. Whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the Oakland Army Base subjects the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

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Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's DOCR, or Ericka Farrell, Case Manager in EPA's ECRCO, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Farrell can be reached at (202) 564-0717, or farrell.ericka@epa.gov.

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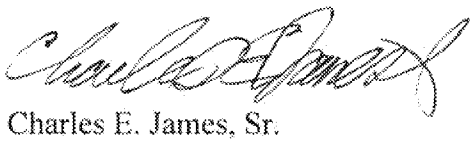

Charles E. James, Sr.
Director
Office of the Secretary of Transportation
Departmental Office of Civil Rights
U.S. Department of Transportation

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/16/2018 4:56:32 AM
To: Brian Beveridge Personal Address / Ex. 6
Subject: RE: Networking: MAQIP engagement criteria

Hi. Don't need you to carry the load on IWG, just thought it might give you one more question to pose to those rushing along in case there is an attempt to cast EIP as the problem holding things up. It's up to the IWG to defend itself and I'm guessing we will. With the T6 complaint still unresolved I feel it is important that our agency not participate in any empty exercises. Thanks

From: Brian Beveridge Personal Address / Ex. 6
Sent: Monday, January 15, 2018 8:49 PM
To: Grow, Richard
Subject: Re: Networking: MAQIP engagement criteria

Hey
Anna was on this email, but I will include ARB in he future. The "response" issue is about how they are willing to suggest change, which I don't really expect to hear much proactively. But, Chris Lytle may be desparate enough about his budget, and the appearance of equity, to actually come to the table.
We'll see what happens next.

The IAW is a good thing. I didn't know we needed to be the ones to make it happen. Will take it under advisement and see what we can do.
Thanks, Brian

On Jan 15, 2018 8:26 PM, "Grow, Richard" <Grow.Richard@epa.gov<mailto:Grow.Richard@epa.gov>> wrote:
Brian

Thanks for sharing this. In order to keep the agencies informed of your views pls also be copying Greg Nudd (replaced Jean R.) and Cynthia and Elizabeth at ARB, Anna at County Health. I forarded your note below to all but Anna, didn't have her email address with.

I believe the agencies will be insisting on a reconvening of the IWG prior to any reconvening of the task force, though no one has flatly stated that at this point (our "interview" is Weds morning and that's our current pla based on discussions with the other agencies). In the meantime I think it's fair for you to ask CONCUR/Port "what about the IWG ?" etc.

I've also had some back and forth with Viveka and Anuja and feel strongly we need an open discussion of what their 2016 report and recommendations were, whether their recommendations are being implemented, and if not why not.

Finally, to state the obvious but sometimes lost amidst the verbiage, what we need to hear from the Port vis a vis these evaluations and recommendations is not simply their "response" but more specifically, what CHANGES are being made.

Be well....

Richard G.

From: Brian Beveridge Personal Address / Ex. 6 om<mailto Personal Address / Ex. 6
Sent: Monday, January 15, 2018 7:16 PM
To: rsinkoff@portoakland.com<mailto:rsinkoff@portoakland.com>; Scott McCreary; Chris Lytle
Cc: Margaret Gordon; Grow, Richard; David Vintze; Lee, Anna, Public Health, CAPE
Subject: MAQIP engagement criteria

Hello Richard and Scott
Unfortunately I will not be attending the interview co-chairs meeting on Tuesday, Jan 16. At our meeting on Monday, Jan 8, I presented a set of engagement criteria and requested that the Port address the issues listed. Perhaps a week was not enough time, but it makes little sense for us as representatives of the community to enter into yet another unilateral planning process with the Port.

Our attendance without a reply to our concerns and expectations would imply that we are satisfied with the process that has been initiated by the Port. Adding the stakeholders after the fact is unacceptable. The Port now wants to rush to judgement on many issues critical to the health of our West Oakland neighbors, all for the sake of meeting a last minute budget deadline. This work could have been undertaken months ago.

This delay, the self-imposed urgency, speaks volumes about the Port's real commitment to true action in the MAQIP Update. It appears that the purpose of this exercise is to get public money while making no real financial or policy commitment by the Port. This is all to familiar.

If the Port administration wishes to meet and discuss real community engagement, we are willing, but this process strikes us as being for appearance sake only and that is not in our interest.

Sincerely, Brian Beveridge

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:12:02 PM
To: lschaaf@oaklandnet.com
Subject: Fw: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - RECIPIENTS - 7-18-2017.pdf

Importance: High

Mayor Schaaf - Sending this to you at this address in case the one used by HQ ("officeofthemayor...") doesn't reach you. Be well.

Richard Grow
US EPA
Region 9
(415) 947-4104

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 3:52 PM
To: officeofthemayor@oaklandnet.com; colbruno@portcommissioner.com
Cc: Rivera, Yvette (OST); Charles.james@dot.gov; Jang, Deeana (OST); Fitzpatrick, Ryan (OST); Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin
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202-564-9649
WJC-N Room 2450

U.S. Department of Transportation
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July 18, 2017

The Honorable Libby Schaaf
Mayor, City of Oakland
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Michael Colbruno
President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, CA 94607

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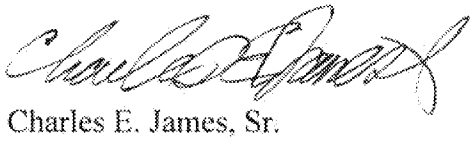

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Director
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Departmental Office of Civil Rights
U.S. Department of Transportation

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cc:

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Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
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Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:07:46 PM
To: Adams, Elizabeth [Adams.Elizabeth@epa.gov]; Lakin, Matt [Lakin.Matthew@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; LUEHE, DOUGLAS [luehe.douglas@epa.gov]; Miller, Amy [Miller.Amy@epa.gov]
CC: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Reyes, Deldi [Reyes.Deldi@epa.gov]; Israels, Ken [Israels.Ken@epa.gov]
Subject: Ltr to complainants: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - COMPLAINANTS - 7-18-2017.pdf

Importance: High

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 3:58 PM
To: ygarcia@earthjustice.org; pcort@earthjustice.org; Aadeyeye@earthjustice.org
Cc: Rivera, Yvette (OST); Charles.james@dot.gov; Jang, Deeana (OST); Fitzpatrick, Ryan (OST); Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin
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July 18, 2017

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

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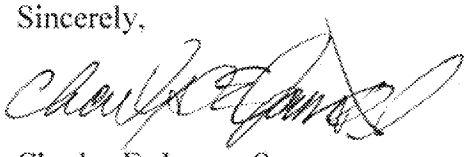

Charles E. James, Sr.
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Departmental Office of Civil Rights
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Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

002930 2020-10-29

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To: Personal Address / Ex. 6
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Brian

Thanks for sharing this. In order to keep the agencies informed of your views pls also be copying Greg Nudd (replaced Jean R.) and Cynthia and Elizabeth at ARB, Anna at County Health. I forarded your note below to all but Anna, didn't have her email address with.

I believe the agencies will be insisting on a reconvening of the IWG prior to any reconvening of the task force, though no one has flatly stated that at this point (our "interview" is Weds morning and that's our current pla based on discussions with the other agencies). In the meantime I think it's fair for you to ask CONCUR/Port "what about the IWG ?" etc.

I've also had some back and forth with Viveka and Anuja and feel strongly we need an open discussion of what their 2016 report and recommendations were, whether their recommendations are being implemented, and if not why not.

Finally, to state the obvious but sometimes lost amidst the verbiage, what we need to hear from the Port vis a vis these evaluations and recommendations is not simply their "response" but more specifically, what CHANGES are being made.

Be well....

Richard G.

From: Brian Beveridge Personal Address / Ex. 6
Sent: Monday, January 15, 2018 7:16 PM
To: rsinkoff@portoakland.com; Scott McCreary; Chris Lytle
Cc: Margaret Gordon; Grow, Richard; David Vintze; Lee, Anna, Public Health, CAPE
Subject: MAQIP engagement criteria

Hello Richard and Scott
Unfortunately I will not be attending the interview co-chairs meeting on Tuesday, Jan 16. At our meeting on Monday, Jan 8, I presented a set of engagement criteria and requested that the Port address the issues listed. Perhaps a week was not enough time, but it makes little sense for us as representatives of the community to enter into yet another unilateral planning process with the Port.

Our attendance without a reply to our concerns and expectations would imply that we are satisfied with the process that has been initiated by the Port. Adding the stakeholders after the fact is unacceptable. The Port now wants to rush to judgement on many issues critical to the health of our West Oakland neighbors, all for the sake of meeting a last minute budget deadline. This work could have been undertaken months ago.

This delay, the self-imposed urgency, speaks volumes about the Port's real commitment to true action in the MAQIP Update. It appears that the purpose of this exercise is to get public money while making no real financial or policy commitment by the Port. This is all to familiar.

If the Port administration wishes to meet and discuss real community engagement, we are willing, but this process strikes us as being for appearance sake only and that is not in our interest.

Sincerely, Brian Beveridge

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/16/2018 4:18:07 AM
To: gnudd@baaqmd.gov; hhilken@baaqmd.gov; cynthia.marvin@arb.ca.gov; elizabeth.yura@arb.ca.gov
Subject: EIP not attending co-chairs mtg: MAQIP engagement criteria

FYI below re EIP position. Our own (EPA) interview with CONCUR is this Wednesday morning and our current plan is to insist, if there is to be a reconvening of the task force, first we need time for the IWG to regroup. We also feel topic #1 needs to be the Port's response and changes following the 2009 evaluation report. I have also confirmed that a subsequent 2016 report by the same consultants provided further recommendations that do not appear to have been accepted by the Port. Whether or not this is accurate, there needs to be discussion of the 2016 recommendations.

Richard Grow

From: Brian Beveridge Personal Address / Ex. 6
Sent: Monday, January 15, 2018 7:16 PM
To: rsinkoff@portoakland.com; Scott McCreary; Chris Lytle
Cc: Margaret Gordon; Grow, Richard; David Vintze; Lee, Anna, Public Health, CAPE
Subject: MAQIP engagement criteria

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Sincerely, Brian Beveridge

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/16/2018 12:07:45 AM
To: Viveka Chen [viveka@igc.org]; Anuja Mendirat Personal Address / Ex. 6
Subject: RE: Question on Port work and reconvening MAQIP
Attachments: MAQIP Update Proj Description Working Draft Dec15.pdf; Engagement Criteria EIP Jan2018.docx

Viveka and Anuja

This is all very helpful. If I hadn't been hearing from Ms. Margaret and Brian neither my agency nor I'd guess any of the others would have heard anything about the reconvening until the staff told the Port Commission about it at the Dec15 meeting, and then again nothing until the Port contacted our agency by email a couple Fridays ago (January 5), asking to have their contractor (CONCUR) interview us in prep for a reconvened task force on January 26. I'm attaching the project description CONCUR distributed with their request There had been occasional noises about reconvening over the years and each time WOEIP and I agreed that the starting point for any thing would be the 2009 evaluation.

Meanwhile Ms. Margaret and Brian had put off their own interview, finally agreeing to one last Monday (Jan8), at which they presented the attached "criteria" for their involvement. And this past week after a quick round robin check in with BAAQMD, CARB and the County, the agencies have pretty much agreed that our own starting point will be, if there is to be a reconvening, first a reconvening of our own interagency workgroup, and then a discussion, as a group, of the 2009 evaluation, meaning not only the Port's "response" to the issues raised in it, but specifically what will be different. Since Scott mentioned your 2016 (?) report and recommendations, we're pressing to do likewise with that. The more general issue is understood rather bluntly as one of either do this right and meaningfully or please don't waste our time. My own sense is that a main reason there has been a rush to wrap up a truck plan and MAQIP update is the EPA and DOT's acceptance of a formal Title VI (Civil Rights Act) complaint filed against the Port by EIP (with EarthJustice) last April, the resolution of which could impose specific performance criteria, both substantive and procedural, on both the City and Port. For now attempts to reach a negotiated settlement have not reached agreement, the energy being devoted on that front being far exceeded by the flurry of activity we see on, for instance, the MAQIP and truck plan.

This may provide some context for the activity or lack thereof which you have observed. I'm still a fan of the Title VI process, or at least it's potential, since it goes to the real issue of discriminatory impacts and what can be done about them, and there's a fair amount of guidance and precedence to inform how to get to real resolution. Since April we have had a joint federal team including HQ offices of EPA, DOT and DOJ, with our office as "technical lead", dealing with the complaint. Of course there remains the fact that we feds ultimately report to the President, but for now the shared interest on all sides for professing some belief that resolution of the complaint is progressing has kept the negotiations, such as they are, uninterfered with. I'd be glad to talk anytime if there is interest.

Richard

From: Viveka Chen [viveka@igc.org]
Sent: Monday, January 15, 2018 2:27 PM
To: Anuja Mendiratta
Cc: Grow, Richard
Subject: Re: Question on Port work and reconvening MAQIP

Hi Anuja (and happy new year!)

Sorry to hear that they repeated a pattern that has happened in past efforts to revive community engagement.

Viveka

On Jan 15, 2018, at 2:19 PM, Anuja Mendiratta <anujamendiratta@yahoo.com<mailto:anujamendiratta@yahoo.com>> wrote:

Dear Richard and Viveka,

Viveka, thank you for sharing the context and outcomes of the process we engaged with the Port's Social Responsibility Division (SRD) in below.

Richard, Viveka's account pretty much covers what transpired. I was retrained beyond the scooping process and production of our recommendations report (post January 2016) to assist the SRD with the implantation of our recommendations, which included transparency about the process, outcomes and commitments by the Port and a report back session with those who participated in the scoping process. Unfortunately, to the best of my knowledge, despite my advocacy and persistence on this matter, SRD/the Port did not move forward with the implementation and communication next steps that Viveka and I recommended and which they retained me to provide support on. To be honest, I do not know or understand exactly what happened or why this process has seemed to stall out.

happy to discuss further as helpful.
best,
Anuja

--
Anuja Mendiratta, MES
Philanthropic + Nonprofit Consulting

~ Please consider the environment and human well-being before printing this e-mail ~

On Jan 5, 2018, at 12:47 PM, Viveka Chen <viveka@igc.org<mailto:viveka@igc.org>> wrote:

Hi Richard

Nice to hear from you. Appreciate a little news about what is happening with the Port.

Sorry to be slow in responding. I am still on winter break and spending time with my in-laws in Puerto Rico.

I had a look back at the 2009 evaluation report to remind myself of the flow of my work with the Port. The contract work left the Port with the evaluation and also a scenario for how to implement the recommendations which included launching a Maritime Stakeholder Group. As Scott describes, there was no implementation follow-up of note by the the Port.

In 2014 Margaret reached out to me to be the consultant working with Amy Tharpe on stakeholder outreach to revitalize the Port's approach to Community Stakeholder Engagement (CSE) especially given the opportunity of some receptivity on the part of the new Director Chris Lytle. I did not have sufficient confidence in any new stakeholder outreach work resulting in outcomes to lead this work, but Anuja Mendiratta was willing to lead it and I played a supporting role to provide historical context/memory, share some of the outreach work, and strategize with Anuja on recommendations. As consultants we produced an updated report given to Amy Tharpe and a recommendation that there be transparent communication with stakeholders regarding what the Port would do to revitalize its CSE (to report back on what the Port did with this most recent wave of Port-solicited stakeholder input). We as consultants were not in a position to distribute our January 2016 final report externally as it was produced for the Port internally. Anuja might have a better sense of what actually happened with that work and whether it was ever shared externally (if Amy and Laura in Social Engagement informed Anuja of that). Laura over at SE might be able to give you a sense of what happened with that work. Our consultant recommendations did advise the Port to create a CSE plan with accountabilities and budget and to have that plan formally approved by the Board of Commissioners and shared internally and externally with an emphasis of the ED setting an expectation of accountability to the plan by Port Directors. It might also be useful to share that our stakeholder outreach found that there was NOT a common call for a single broad stakeholder forum (which people thought might be too broad as to be able to accomplish much), but rather a more common theme was interest in more topic specific groupings to work on moving practical solutions. There were 4 topic areas of interest that emerged (shared below). It sounds like from Scott that the Port has convened one of these, a "Port Jobs & Workforce Development Stakeholder Working Group."

I hope this is useful Richard.

1. Jobs and Workforce Development: As a multiple generation regional employer, how can the Port help shape an agenda for community benefits and the cultivation of quality jobs?

2. Environment, Air Quality and Community Groups: Environmental and community concerns continue to be of paramount focus for regional stakeholders.

3. Economic Impact Stakeholders: As a local, regional and state level economic driver, the Port could provide leadership by developing an ongoing forum with its economic impact stakeholders.

4. Operations, Logistics and Security: As the Port strive to be competitive, it could benefit from focus on operations, technology, logistics and security concerns relevant to goods movement in and out of the Port and the Airport.

Sincerely,
Viveka

On Dec 27, 2017, at 6:27 PM, Grow, Richard <Grow.Richard@epa.gov<mailto:Grow.Richard@epa.gov>> wrote:

Viveka

Greetings, it's been a while. As the Port heads into convening a sort of follow on to the MAQIP, perhaps coincidentally related to being subject to a Civil Rights Act Title VI complaint, many of us have questions about whether the Port has truly dealt with the many critiques captured in your 2009 evaluation, which many of us are also rereading. Ms. Margaret asked Scott at Concur about this, to which he replied per below. I hope you and I can talk soon, but would also be curious whether the contract work referred to resulted in any sort of a product and, if so, whether it would or should be available to stakeholders such as Ms. Margaret, myself and others. I'd also be glad to provide background on how the Title VI issues are being dealt with.

Question: How Viveka's Chen 2009 evaluation is being inserted to the process and agenda.

Scott's response: In the years immediately following Viveka Chen's 2009 evaluation, due to challenging financial circumstances, the specific recommendation to convene a port maritime stakeholder group was not implemented. Since that time, the Port has undertaken several different efforts and has used a variety of formats to foster community engagement. The Port also entered into a second contract in 2016 with Viveka Chen and Anuja Mendiratta to gain the benefit of their expertise and insight, and has implemented several advisory groups and fora in response to these recommendations. One of those is the newly formed "Port Jobs & Workforce Development Stakeholder Working Group" to support the monitoring of employer performance at the Seaport Logistics Complex. Going forward, the Port stands ready to hear other advice and suggestions on public involvement.

I hope you are well

Richard
office: (415) 947-4104
cell Personal Address / Ex. 6

WEST OAKLAND ENVIRONMENTAL INDICATORS PROJECT

To: Richard Sinkoff, Port of Oakland
Scott McCreary, Concur

Jan. 08, 2018

Criteria for Community Participation in the 2018 Port of Oakland update of the Maritime Air Quality Improvement Plan

- The process is open and public. All stakeholder contributions are gathered, aggregated by the facilitators, and published as public documents, accompanied by the Port's responses.
- At least one member of WOEIP and one other informed community leader sits as Co-Chair of the Task Force. Among the duties of the co-chairs are approval of stakeholders, plan scope, agendas, notes, outcomes and sign-off approval of the final plan.
- The facilitators lead a public review of the Viveka Chen study of the original MAQIP process, and the subsequent report, and the Port addresses the issues raised by the original participants.
- Regulatory agencies participate in the Task Force, including, USEPA, USDOT, CARB, BAAQMD, ACPHD.
- Agency and WOEIP recommendations for effective planning documents are acknowledged and incorporated into the plan update. Incorporation requires documented consideration, adoption and implementation of best available technologies, considering measures adopted at other ports and goods movement communities, and implementation of innovative technologies supported by public funding, clearly measurable outcomes, and defined future actions through and Action Plan with clear implementation and continuing assessment of progress.
- Funding support for resident participation. Including child care and language translation services if needed by participants. Community resident content experts should be paid for their consultation comparable to other staff and consultants to the project via direct stipends or vendor contracts.

CONCUR
NEGOTIATING EFFECTIVE ENVIRONMENTAL AGREEMENTS

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scott@concurinc.net
www.concurinc.com

Project Description – Dec 15 Working Draft

Port of Oakland Maritime Air Quality Improvement Plan Update-Task Force

The Port plans to reconvene the Maritime Air Quality Task Force (Task Force) for its 2018 MAQIP Update. This will follow up on the Task Force work in 2007 and the November 2013 Progress Report Meeting. The Task Force will work closely with the Port of Oakland's staff and technical consultants to review the Ports' strategies, compliance success and progress to date, and to make recommendations on forward-looking strategies towards fulfillment of the 2020 MAQIP goals and beyond in light of the current regulatory setting.

The Task Force will be re-convened by the Environmental Programs & Planning Department of the Port of Oakland. Task Force meetings will be open to the public and will provide a structure for observers to submit comments. Meetings will be agenda-driven and the primary deliberations will be among the Task Force members. Facilitation will be provided by CONCUR Inc., a neutral non-partisan environmental mediation firm based in the East Bay.

Charge of the Task Force

The Task Force will be asked to develop recommendations to the Port Board of Commissioners on the project-level commitments to be made by the Port towards its 2020 energy goals. Like other steps in the MAQIP process, this is consistent with the approach of a consultative planning process. Comments and advice voiced by the Task Force will be documented and provided to the Board of Port Commissioners.

The Task Force will provide a forum to:

- Build shared knowledge of Port Maritime emissions and changes to the regional air quality setting since 2015;
- Inform participants on progress, strategies, compliance success and new technologies to support MAQIP Diesel Particulate Matter (DPM) and criteria air pollutants goals;
- Identify emissions reduction measures which are commercially available, feasible and cost effective;
- Discuss technology options, partnerships and grant funding opportunities and considerations in support of Year 2020 goals and beyond (i.e., to year 2030);

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- Provide input to the Port on criteria and elements of the proposed Advanced Technology Program ("ATP") to promote State of California Year 2030 GHG reduction goals;

- Discuss and build support for recommended measures for consideration by the Board of Port Commissioners in early Summer 2018.

Impetus for the MAQIP Update Task Force

The MAQIP states that the Port will reconvene the MAQIP Task Force or a successor group "in about ten years, about two years before the 2020 planning horizon, for another review of progress, strategies, compliance success and new technologies." (11.3, p. 114)

Consistent with this guidance, the Port is reconvening the MAQIP Task Force to provide feedback on the Port's project-level commitments to identify emissions reduction measures and foster advanced technology to further DPM and GHG emissions reductions. The focus of stakeholder involvement at this stage is at the Master Plan level, to ensure that the design of specific programs is consistent with the planning guidance of the MAQIP.

Task Force Membership and Structure

The Task Force will meet in two or three half-day meetings in January - April 2018. Following the first meeting, it will be determined whether one or two additional meetings are needed. Meeting deliberations will be recorded in key outcomes memoranda and recommendations will be forwarded by Port staff to the Board of Port Commissioners.

Task Force membership will be the original MAQIP Task Force membership, and will include appropriate successors to the original members and any additional stakeholders as applicable. Members will represent: customers (maritime tenants and other maritime related businesses), government (regulatory, policymakers and interagency) and community (residential, environmental advocacy, local business and other special interest groups), and any additional stakeholders as applicable. The groups should represent a comprehensive stakeholder forum where the Port can effectively inform its community and engage with its multiple stakeholders on Port Maritime projects.

Criteria for Task Force Member Selection

The Task Force will be structured to include balanced representation of public agency, labor, business, neighborhood, and conservation interests.

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Individual members of the Task Force will be recruited based on these attributes:

- Currently working in the Port of Oakland's Maritime Operations area or residing or working in West Oakland (defined geographically as the "3-freeway area" bounded by 880, 980 and 580). Individuals from non-profits, government agencies, businesses, churches, and private organizations that conduct their work in West Oakland but are not based in West Oakland will also be considered.
- Able to bring first-hand knowledge and perspective to bear on Port of Oakland Maritime Air Quality Planning.
- Able to consider local air quality near the Port of Oakland Maritime operations in the context of the broader regulatory framework and goods movement system.
- Willing to express fundamental interests (as opposed to fixed positions) and to clearly convey the interests of one or more stakeholder groups.
- Capable of working collaboratively, seeking to integrate the interests of a broad range of constituencies.
- Committed to completing all aspects of the charge of the Task Force
- Able to meet at mutually convenient times.

The MAQIP Update will be composed to achieve a diversity of stakeholder perspectives, expertise and direct experience related to the Port's maritime emissions.

Background

In March 2008, the Port of Oakland committed to achieving an 85% reduction in seaport-related diesel health risk by 2020 from a 2005 baseline. To support this goal, the Port developed the MAQIP through a comprehensive public stakeholder participation process led by Port staff with the assistance of CONCUR, Inc. a Berkeley-based consultancy skilled in facilitating complex environmental agreements and plans. The original MAQIP Task Force of 35 stakeholders represented community members, Port tenants, environmental advocacy groups, air quality and health agencies, and maritime-related businesses. The MAQIP planning process was consultative in nature. The MAQIP represents a twelve-year emissions reduction framework (from Year 2009 through the Year 2020) focused on improving public health in West Oakland.

A key tool to track implementation of the MAQIP is the seaport emissions inventory. As a baseline, the Port prepared a comprehensive inventory of pollutant emissions from Port-related ships, harbor craft, cargo-handling equipment, trucks and locomotives in 2005. As new emissions control technologies are introduced in response to regulations and other initiatives taken by the Port, Port business

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partners, or other groups, the Port has tracked the resulting emissions reductions with respect to the MAQIP goals through quantitative updates to the baseline emissions inventory.

In 2013, the Port convened a MAQIP Progress Report Meeting to fulfill its commitment to report out on MAQIP implementation progress and to compare the results to the 2012 interim goals and to review likely progress toward the 2020 goals. In this meeting, we reported that we were meeting our air quality commitment, implementing projects, and making better-than-expected progress in achieving the MAQIP goals set in 2009. Key improvements were implemented via the Comprehensive Truck Management Program (CTMP), terminal improvements to create greater efficiency, and the Shore Power Program.

The 2015 Emissions Inventory Update indicated that the Port was on track to meet the clean air commitment the Port made in 2008. Total seaport Diesel Particulate Matter (DPM) emissions are down by -76% with cargo-handling equipment down by -82%, ocean going vessel emissions down by -75% and drayage truck emissions down by -98%. This progress is significant; however, there remains important work ahead to achieve the -85% goal.

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 1/13/2018 5:32:16 AM
To: Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]; Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]; Yura, Elizabeth@ARB [eyura@arb.ca.gov]
Subject: Next: RSVP: Availability for interagency call about MAQIP

Anna - Thanks for the update. We had a good talk with BAAQMD managers this aft at their offices, where we were meeting on something else (AB617), and they confirmed what Jack had written me, after which we got into more detail. I'm not sure how this will be expressed but basically we're going to insist on the IWG having time to meet and talk before any regrouping of the task force. Out of those discussions we may have our own conditions for participating, at a minimum (my guess) being a full discussion of Viveka's report (s) and what's being done differently to address those problems. But the underlying issue, again, not sure how this will be framed, is that a rushed cursory process is not worth the TF's time, and if they want a more meaningful process that is worth our time, they need to go about it differently. We (EPA) have agreed to a CONCUR discussion Wednesday morning and plan to go into it with our own questions, but our one minimum condition (for now) is to insist on having time for the iWG to regroup before any reconvening. For a number of reasons, among them the unresolved civil rights complaint hanging over the City and Port, we need to not participate in anything resembling a sham process.

It would be helpful if you could confirm, even informally, whether the County would be willing to participate in an IWG if it meets, and also whether you feel the County would be supportive of a position of insisting that the IWG have time to meet before any reconvening of the task force. Any thoughts or suggestions welcome.

Thanks

Richard

From: Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]
Sent: Friday, January 12, 2018 8:51 PM
To: Grow, Richard; Marvin, Cynthia@ARB; Yura, Elizabeth@ARB
Subject: RE: RSVP: Availability for interagency call about MAQIP

Thanks Richard. CONCUR's response to the rushed timeline is that Richard Sinkoff is pushing for a process (3 meetings over the next 3 months) to get advice before he submits for some grant applications and that the scope to be around reviewing the strategies to get to the last ~10% of emissions reduction to achieve the 85% by 2020. They also said that they hadn't seen the Viveka report until a couple days ago and were surprised that they weren't interviewed for it. But they have it and will forward it. I told them I don't get why they need to convene the whole MAQIP structure and process right now. So much has changed (updated health thresholds, new air monitoring studies) and we're so close to 2020 that they're better off committing to a new stronger goal, coordinating with other planning processes like AB 617 process. I also brought up that given there's a lot of mistrust from the past process, that the Port's going to have to really show how they're going to be transparent and accountable to the community for them to stay at the table. That's going to be hard when things are moving so quickly.

Didn't hear that Jean retired! She was the MAQIP rep, right? Too bad we're losing that institutional memory.

Anna Lee
Local Policy Coordinator
Alameda County Public Health Department
1000 Broadway, Suite 500
Oakland, CA 94607
anna.lee@acgov.org | Phone: (510) 267-8019

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: Friday, January 12, 2018 7:33 AM
To: Lee, Anna, Public Health, OOD; Marvin, Cynthia@ARB; Yura, Elizabeth@ARB
Subject: RE: RSVP: Availability for interagency call about MAQIP

Anna - Thanks, still juggling dates. Some questions we plan to explore in our "interview" with CONCUR; no way is this just us being "surveyed":

- What's the rush ?
- if "reconvene" (their project description), EIP again as co-chair ?
- co-chairs involved in (1) defining project, (2) setting schedule, (3) setting agenda ?
- when/where will there be open discussion of 2009 evaluation ? (we don't want this just one on one, needs open discussion)
- Can we see 2016 report by Viveka/Anuja ? (Scott mentioned it in an email to EIP) ?
- Status of response to EIP criteria (provided to Port/CONCUR on 1/8) ?

- We see a role for IWG; has that been considered, provided for ? Is ther time for us to regroup the IWG ? if not, why not ?
- etc.

Overall the questions go to how deep, serious or meaningful is this upcoming exercise ? If it is truly substantive, why not take time, design and do it right ? If not, why bother with a TF ?

Meeting with BAAQMD this aft on AB617, maybe learn more about their thoughts on MAQIP (Greg Nudd, replacing Jean who retired, designated by Jack B as their rep on TF.)

Richard

From: Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]
Sent: Thursday, January 11, 2018 8:58 PM
To: Marvin, Cynthia@ARB; Grow, Richard; Yura, Elizabeth@ARB
Subject: RE: RSVP: Availability for interagency call about MAQIP

Hi everyone,

Happy New Year! I can talk Tuesday, 3-4pm and Wednesday 9-10 or 11-12. There's a chance I can talk Tuesday before 11am, but I'm still waiting to hear back about another meetings, so I want to hold that time for now. By the way, Dr. Davis and I are talking to Concur tomorrow at 3pm. I haven't received an invitation for 1/26 either.

Thanks
Anna

Anna Lee
Local Policy Coordinator
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From: Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]
Sent: Thursday, January 11, 2018 5:00 PM
To: Grow, Richard; Yura, Elizabeth@ARB; Lee, Anna, Public Health, OOD
Subject: RE: RSVP: Availability for interagency call about MAQIP

I am totally booked during your times, but Liz may have a bit more flexibility. She's in DC and may need more time than usual to respond.
Cyn

PS, Hi Anna, happy new year!

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Thursday, January 11, 2018 3:29 PM
To: Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>; 'Lee, Anna, Public Health, CAPE' <Anna.Lee@acgov.org>
Subject: RSVP: Availability for interagency call about MAQIP

Cynthia, Elizabeth and Anna

We have just responded to the Port/CONCUR invite to join this round of the MAQIP task force, but also told them we are talking with the agencies who made up the IWG on the previous MAQIP effort and may need time to have those discussions, which may impede their planned first (of three) meetings set for January 26 (for which we have not seen an invitation). I've heard back from Jack B that he agrees there should be an IWG again this time and it should have some discussion before the MAQIP TF is convened. He also identified Greg Nudd as the main rep on the TF, though Jack intends to act as one of the co-chairs of the TF, as BAAQMD (and EIP) did last time.

This note is to see whether you are available for a first rather informal conversation next Tuesday or Wednesday at any of the times listed below. For now we see the IWG as including only the environmental/health agencies (ie not the City or Port) meaning CARB, BAAQMD, ACPHD and EPA. Attaching EIP conditions as of Monday when presented to Port and the current CONCUR project description.

Times:

Tuesday 1/16: 10-12, 1-2, 3-4
Wednesday 1/17: 9-10, 11-12

If none of these work we may have to consider Thursday morning, but sooner would be good.

Thanks
Richard

Personal Matters / Ex. 6

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/24/2018 8:48:02 PM
To: Machol, Ben [Machol.Ben@epa.gov]; McDaniel, Penelope [MCDANIEL.PENELOPE@EPA.GOV]; Donez, Francisco [Donez.Francisco@epa.gov]
Subject: W.O. update

Ben, Penny and Francisco

Just wanted to let you know there is a lot going on on the West Oakland Port/City front, but on the other hand nothing brewing that needs your immediate attention, but on the third hand wanted to let you know I am available to provide an update anytime.

Richard

Message

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Sent: 1/24/2018 5:56:56 PM
To: Donez, Francisco [Donez.Francisco@epa.gov]
CC: Reyes, Deldi [Reyes.Deldi@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Machol, Ben [Machol.Ben@epa.gov]; Buzzelle, Stanley [Buzzelle.Stanley@epa.gov]
Subject: RE: COAL: Port developers sue Calif. city over ban on shipments

Deliberative Process / Ex. 5

From: Donez, Francisco
Sent: Wednesday, January 24, 2018 9:46 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Reyes, Deldi <Reyes.Deldi@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Machol, Ben <Machol.Ben@epa.gov>; Buzzelle, Stanley <Buzzelle.Stanley@epa.gov>
Subject: FW: COAL: Port developers sue Calif. city over ban on shipments

Richard and all – FYI, in case you hadn't seen this yet.

From: MIKULIN, JOHN
Sent: Friday, January 19, 2018 3:50 PM
To: Donez, Francisco <Donez.Francisco@epa.gov>; McDaniel, Penelope <MCDANIEL.PENELOPE@EPA.GOV>
Subject: FW: COAL: Port developers sue Calif. city over ban on shipments

FYI

From: mikulin.john [mailto:email_this@eenews.net]
Sent: Friday, January 19, 2018 3:21 PM
To: MIKULIN, JOHN <MIKULIN.JOHN@EPA.GOV>; jmikulin@gmail.com
Subject: From Greenwire -- COAL: Port developers sue Calif. city over ban on shipments

This Greenwire story was sent to you by: mikulin.john@epa.gov

Personal message: https://www.eenews.net/greenwire/2018/01/19/stories/1060071419

GREENWIRE
AN E&E NEWS PUBLICATION

COAL

Port developers sue Calif. city over ban on shipments

Published: Friday, January 19, 2018

A lawsuit is targeting Oakland over a health study that led the California city to ban coal shipments out of a proposed port on the San Francisco Bay.

Bowie Resource Partners LLC, a Utah coal company that wants to ship coal through the proposed deepwater terminal, is financing the federal lawsuit brought by port developers.

The suit charges that the city's study is error-filled and relies on irrelevant research. For example, studies considered by the city looked at dust emissions from subbituminous coal from the Powder River Basin in Wyoming and Montana; however, Utah coal is bituminous.

The powdery Wyoming coal has higher emission rates, according to testimony from one of the coal company's experts.

Developers also testified that city officials underestimated port processes to limit emissions.

The suit was filed by Phil Tagami, a Northern California development tycoon, claiming his $250 million terminal was illegally blocked. Bowie had been contracted to build the loading terminal. Bowie also owns Utah's three most prolific coal mines.

The company is reimbursing Tagami for legal fees.

U.S. District Judge Vince Chhabria will consider whether the city used "substantial evidence" to determine coal's danger to workers and residents.

The city is expected to testify on coal's public health dangers, as well as the developers' efforts to hide and downplay coal's role in the terminal.

The terminal has sparked significant local opposition (Brian Maffly, ***Salt Lake Tribune***, Jan. 18). **— NB**

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Oakland Seaport Facilities

Siting or expanding seaport facilities, in, or near, communities already highly impacted by diesel pollution, carries a responsibility to build and operate a state-of-the-art facility with emissions as close to zero as technologically possible. Future port projects should include emerging zero emission technology for the trucks, locomotives, ship, tug boats, transport refrigeration units and support equipment that may serve, or operate, at ports. The City of Oakland (City) and Port of Oakland (Port) should take advantage of the planned construction and operational expansion to introduce changes that will lay the foundation for this technology and reduce regional emissions, minimize criteria pollutants and toxic air contaminants as well as the localized health risk from the Port's current and future operations. All projects should require the use of the cleanest technologies, support and encourage the development and demonstration of advanced technologies, with the ultimate goal of requiring the use of zero and near-zero emission technologies as soon as they are available. This requirement for the cleanest equipment is consistent with the City and the Port commitments made in the 2010 document, *A Bold Vision: Redeveloping the Former Oakland Army Base* ("*A Bold Vision*") and the 2009 *Maritime Air Quality Improvement Plan* (MAQIP).

The following actions need to be taken to ensure that Port operations or construction activities do not increase cumulative air quality impacts now or in the future.

1. <u>Port-Wide Actions</u>

   1.1. Require that all tenants and onsite construction contractors comply with and monitor compliance with all applicable air quality regulations for heavy duty-diesel trucks, including the Air Resources Board's (ARB) Tractor-Trailer Greenhouse Gas Reduction Regulation, Period Smoke Inspection Program, Off-Road Regulation, and Statewide Truck and Bus Regulation. To document compliance, require that fleets provide ARB Certificates of Compliance for the equipment regulations and copies of annual smoke test results.

   1.2. Incorporate contractual language into tenant lease agreements to ensure that tenants comply with all applicable air quality regulations, are using the cleanest technologies for their equipment (in both construction and operations) and understand their responsibilities of building and maintaining a green facility as well as compliance with diesel regulations.

   1.3. Require that the cleanest possible construction practices and equipment are utilized. This should include eliminating idling of diesel powered equipment, requiring the use of zero and near-zero emission equipment and tools to the greatest extent feasible, and providing the necessary infrastructure, like electric hookups, to support that equipment.

   1.4. Implement and plan accordingly for the necessary infrastructure to support zero emission and near-zero emission technology vehicles and equipment at

the Port. This includes physical, energy, and fueling infrastructure for construction equipment, on-site vehicles, and equipment, and medium-heavy and heavy-heavy duty trucks. ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm.

At a minimum, both the Port and City should adopt targets for electric raceway circuit installation as part of initial facility construction. This will ensure sufficient electrical power is available for EV charging at sites under development and minimizes future costs to install infrastructure for zero and near zero emissions vehicles.

1.5. Develop a Sustainable Leasing Program whereby the Port and City shall work with tenants to develop and implement a policy incentive-based sustainable leasing program to attract the cleanest ships, ships that utilize shore power, zero and near-zero technologies, and otherwise incorporate technological and operational practices that reduce freight related emissions.

1.6. Require tenants to use cleaner technologies over time as they become available and feasible. This can be accomplished by requiring tenants to develop an annual Technology Review Program to identify any new emissions-reduction technologies that may reduce emissions at the Port, including the feasibility of zero and near-zero emissions technologies for heavy-duty trucks, yard equipment, tugs, vessels, and bulk handling equipment. If the technology review demonstrates the new technology will be effective in reducing emissions and the Port or City determines that installation or use of the technology is feasible, the tenant shall implement such technology within 12 months of the Port or City's determination (see Appendix A for examples of possible Technology Review Program projects).

1.7. Ensure existing and future tenants are compliant now and in the future with ARB's Transport Refrigeration Regulation. If not already implemented, incorporate operating practices that eliminate the amount of time that a transport refrigeration system powered by a fossil-fueled internal combustion engine can operate utilizing the combustion system at the Port. Furthermore, plan and design cold storage facilities that incorporate zero emission all-electric plug-in transport refrigeration systems, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration sufficient to meet Port growth.

1.8. Require the use of cargo handling equipment (CHE), including yard trucks, handlers, gantry cranes, fork lifts, that is the cleanest available technology (LPG/LNG, renewable diesel, electric, hydrogen, electric hybrid) and use zero and near- zero emission technology for equipment that is commercially

available now and in the future, as more zero-emission equipment becomes commercially available, as committed to in *A Bold Vision*. ARB's Technology Assessment: Mobile Cargo Handling Equipment, provides information on current and projected development of CHE, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/che_tech_report.pdf. Additionally, tenants should be required to demonstrate how their yard lay out maximizes their ability to use zero emissions equipment such as electric rail mounted gantry cranes.

1.9. Require the use of commercial harbor craft (CHC) technologies that exceed the Tier 2 or 3 requirements of CARB's CHC Regulation. There are some zero and near- zero emissions technology for equipment that is commercially available now, and additional projects are underway demonstrating the capability of CHC to achieve emission lower than Tier 4 marine and off-road emission standards. Some of these solutions may require retrofit with aftermarket emission control devices. ARB's Technology Assessment: Commercial Harbor Craft, provides information on current and projected development of CHC, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/draft_chc_technology_assessment.pdf.

1.10. Require that all medium-heavy and heavy-heavy duty on-road and yard trucks, including any alternative fuel vehicles, meet or exceed the 2010 emission standards. Support the deployment of zero and near-zero technologies including utilizing zero emission (such as battery electric or fuel cell electric) forklifts, electrified rail mounted gantry cranes, and battery electric and hybrid electric medium-duty trucks to the fullest extent feasible. At a minimum, all forklifts should be required to meet a zero emission standard. As it becomes available, require that medium-heavy and heavy-heavy duty trucks traveling within 100 miles of the site use zero and near-zero technology and require that yard trucks with similar duty cycles (less than hundred miles daily) convert to zero and near-zero technology. ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm.

1.11. During all construction activities, require that off-road construction equipment meet Tier 4 engine standards, if not available, require equipment that meets Tier 3 engine standards. Tenants shall keep a list of available equipment and submit to the Port or City upon request.

1.12. Require that all on-site service vehicles, light-duty vehicles and equipment (operational and during construction activities), and property maintenance

equipment use zero emission technology and, if zero-emission technology is unavailable, that all vehicles and equipment meet the cleanest applicable emission standard.

1.13. Require that all projects include a robust traffic plan that moves truck traffic away from residents reducing truck traffic in neighborhoods, reduces and enforces truck speeds to reduce exposure to noise and increase safety, and discourages new development near truck routes. Coordinate and consult with the West Oakland community on site-wide truck traffic circulation.

1.14. Properly integrate truck parking, terminal parking, security systems, electronic gates systems, and other freight transport infrastructure to maximize achievable efficiencies.

1.15. Require future project design plans include operational support to demonstrate and deploy zero and near-zero emission freight equipment.

1.16. Require ships that enter the Port area pay emissions-based berthing fees or other user fees. The fees shall be used to reduce emissions and exposure in West Oakland.

1.17. Require that ocean-going vessels comply with fuel requirements for both the California Ocean-Going Vessel Regulation and the North American Emission Control Area Requirements.

1.18. Provide support (logistical and financial) for demonstration projects to encourage the use of alternative and/or advanced technologies. ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source and port equipment technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm.

1.19. Utilize concepts to enhance community engagement as outlined in the U.S. Environmental Protection Agency Draft Environmental Justice Primer for Ports, "The Good Neighbor Guide to Building Partnerships and Social Equity released in July 2016. This document provides a road map to assess current community engagement and outlines strategies to assist the City and the Port to enhance neighboring community relationships. The document can be found at https://www.epa.gov/ports-initiative/draft-environmental-justice-primer-ports

1.20. Utilize grant funding from Federal, State and local programs to reduce air pollution emissions and health risk from diesel exhaust. Incorporate a collaborative process between tenants and the Port and/or the City to apply for funding to support zero-emission freight related diesel equipment technologies.

1.21. Require that all recycling facilities and metal melting facilities that include re-

melting furnaces for the melting of alloys, within the Port, the OAB project area, and within 1,000 feet of the West Oakland community meet the best available control technology (BACT) standards as defined by the BAAQMD.

2. Former OAB – Both City of Oakland and Port Owned Areas

Below are measures that will help the City and Port meet the requirements of the Oakland Army Base 2013 Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCA/MM). *Note:* the City and Port must reduce emissions at the OAB property *beyond* what is required by CARB regulations to meet the requirements of the SCA/MM. These measures also are consistent with measures in the *Maritime Air Quality Improvement Plan* (MAQIP), A Bold Vision, the City of Oakland's Standard Condition of Approval, and air quality mitigation measures in the Environmental Impact Report for 2013 *Plan Bay Area*. When measures are adapted from specific sources, these sources are noted in parenthesis.

The City and Port shall implement all measures listed under Item 1 Port-Wide Activities as applicable, and in addition shall implement the following measures:

2.1. All trucks shall be prohibited from idling more than two minutes when loading and unloading, staging or when not in active use for extended periods of time. Exemptions from the two-minute idling rule would be allowed when required for safety or when equipment is in use. (Plan Bay Area)

2.2. An appointment/ITS system shall be implemented that minimizes truck idling and queuing for the movement of containers.

2.3. Prior to implementation of zero-emission harbor craft described in Item 1.9 above:

2.3.1. Prior to 2023, all CHC accessing the new OAB port facilities will meet USEPA Tier 4 standards (or cleaner) for both propulsion and auxiliary engines, or or zero emissions technologies such as: batteries, shorepower, or hydrogen fuel cell.

2.3.2. NOx emissions can be controlled with selective catalytic reduction systems. For example, implement emission reduction control measures to replace tugboat engines with low NOx technology (for example, through the expansion of the existing cargo handling equipment re-powering and retrofitting program, part of the Berths 55-58 Project air quality mitigation program).

2.4. All the mobile cargo handling equipment will be electric equipment. (MAQIP) The Air District suggest this be broadened to allow for other zero emissions fuels

(Hydrogen) and for near zero emissions equipment in the event that full zero emissions equipment in not commercially available.

2.5. Buildings shall meet LEED Platinum certification standards. All buildings shall provide sources of energy. Solar, wind, mechanical, tidal or solar generated hydrogen systems will be investigated to determine their feasibility.

2.6. The developer shall be required to plant trees and/or vegetation throughout the OAB. Trees that are best suited to trapping PM shall be planted, including one or more of the following: Pine (Pinus nigra var. maritima), Cypress (X Cupressocyparis leylandii), Hybrid popular (Populus deltoids X trichocarpa), and Redwoods (Sequoia sempervirens). (Plan Bay Area)

2.8. All existing land uses serving sensitive receptors within 1,000 feet of the Project boundaries shall be equipped with HEPA air filtration systems rated MERV 13 or better. The Port and City will establish a fund and contribute on a fair share basis to the cost of installing and maintaining the MERV 13 systems and provide educational materials to owners and occupants explaining how to maximize the benefits of these systems.

2.9. Consistent with SCA/MM 4.4-5, when redevelopment activity generates more than 20,000 square feet of employment-generating land uses, or generates 100 or more local jobs, the City, Port and developers will fund on a fair share basis Transportation Control Measures (TCMs) for reducing vehicle emissions from commercial, institutional, and industrial operations. See SCA/MM 4.4-5 for a full list of TCMS and include the following:

2.10. Commute Benefits Program

2.10.1 To design and implement a Commute Benefits Program, the City, Port, and private developers need to form a committee and assign a representative to the committee. Committee representatives will include two West Oakland community members, an employee representative, and a representative from the Port and from the City. (Note that all employers with 50 or more full-time employees in the Bay Area are subject to the Bay Area Commuter Benefits Program [BAAQMD regulation 14, Rule 1]. For more information, please see https://commuterbenefits.511.org)

2.10.2 Design and locate buildings to facilitate transit access, e.g., locate building entrances near transit stops, and eliminate building setbacks. Construct transit facilities such as bus turnouts/bus bulbs, benches, shelters, and improving transit bus service to the area. Provide on-site services, such as cafeterias, banks, dry cleaners, and convenience market so that employees can walk to these services. Include bicycle and pedestrian facilities in the design.

2.10.3 Transit, Bicycle and Pedestrian Access: Include sidewalks, multi-use paths and bike lanes in the project design. Provide secure, weather-protected bicycle parking for employees, Provide showers and lockers for employees bicycling or walking to work. Provide safe, direct access for bicyclists to adjacent bicycle routes. Provide direct, safe, attractive pedestrian access from project to transit stops and adjacent development.

2.10.4 Mange Travel Demand and Provide Transit Service: Encourage OAB tenants to use carpools, vanpools, and public transit by providing incentives. Provide a shuttle to and from the West Oakland BART station. Establish mid-day shuttle service for worksite to food service establishments/commercial areas. Provide preferential parking for carpool and vanpool vehicles. Implement parking fees for single occupancy vehicle commuters.

2.11. New Stationary Sources

2.11.1 On the OAB property, new stationary sources that are added as part of the project must reduce emissions beyond what is required by CARB and BAAQMD, whenever possible. For example, the cleanest available stand-by diesel generators and portable generators will be required. The City and Port shall fund this on a fair share basis.

3. Former OAB -City of Oakland Owned Areas

West Gateway Bulk Terminal (Marine Terminal and Rail Expansion)

3.1. Implement all applicable site-wide actions based on specific operations in this subject area.

3.2. Specify the public review release date and expected content for each of the remaining Subject Plans for this project, subject to Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans). It is expected that the remaining Subject Plans will be released in a timeframe that will allow for meaningful public review and response by the City of Oakland, or project developer, prior to when they are scheduled according to the approved SCA/MM. The list of Subject Plans can be found on page 46 in SCA/MM at http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak042281.pdf

3.3. Require that berths providing shore power now or in the future, can accommodate changes to vessel sizes and various berthing configurations. The ARB At-Berth Regulation currently requires 80% compliance of ocean going vessels by 2020. Vessel operations should meet 100 percent shore power compliance rate for all vessels or incorporate other technologies, such as emissions capture and control systems, to maximize emission reductions from

all vessels in advance of the regulation. ARB's Sustainable Freight: Pathways to Zero and Near-Zero Emissions Discussion Document has identified the development and proposal of amendments to the At-Berth that could expand the regulation to include smaller fleets and/or additional vessel types to the current At Berth Regulation. Additionally, hybrid technologies have shown success at achieving emission reductions in certain tugs based on duty, engine size, and location and should be incorporated into operations, where possible.

Accelerate the turnover of line-haul locomotives servicing the Port to Tier 4 line-haul, ARB proposed Tier 5, or Zero emissions locomotives as expeditiously as possible, with the goal of 95 percent of operations to be performed at a minimum Tier 4 standard by 2023In addition establish standards that require:

3.4.1. All diesel switch engines to have 15-minute idling limit devices installed and operational; and to use emulsified fuels or other equivalently clean alternative diesel fuel.

3.4.2. No non-essential idling. Class 1 helper locomotives will be turned off while on OAB properties. If, for safety reasons, helper locomotives need to be on then they will meet similar control requirements as line haul locomotives.

3.4. The Port, Union Pacific (UP) Railway, and/or BNSF Railway should commit to providing co-funding, facility access, and operational support for the development and demonstration of interstate line-haul locomotive technology with zero-emission capability. This would include, but is not limited to, a hybrid-electric locomotive with all electric capability. ARB's Technology Assessment: Freight Locomotives, provides information on current and projected development of freight locomotives, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/freight_locomotives_tech_report.pdf

3.5. Incorporate conditions into lease agreements with BNSF and/or UP to ensure that switch locomotives meet a minimum Tier 4 emissions level by 2023.

3.6. Phase in the replacement of diesel powered switcher locomotives with electric rail car movers, within the Port or City owned rail properties.

Prologis East and Central Gateway (Ambient Transload/Warehouse/Truck Services)

3.7. Implement all applicable site-wide actions based on specific operations in this subject area.

North Gateway (Recycling and Rail Right Of Way Expansion)

3.8. Implement all applicable site-wide actions based on specific operations in this subject area.

4. Former OAB Port of Oakland Owned Areas

Central Gateway (Ambient Transload/Warehouse/Rail Yard /Port Logistics/Warfs)

4.1. Implement all applicable site-wide actions based on specific operations in this subject area.

4.2. Specify the public review release date and expected content for each of the remaining Subject Plans for this project, subject to Mitigation Measure PO-1 (Stakeholder Review of Air Quality and Trucking Plans). It is expected that the remaining Subject Plans will be released in a timeframe that will allow for meaningful public review and response by the City of Oakland, or project developer, prior to when they are scheduled per the SCA/MM. The list of Subject Plans can be found on page 46 in SCA/MM at http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak042281.pdf.

5. Port of Oakland (Non-Former OAB Areas)

Cool Ports Oakland, LLC (Temperature Controlled Transload/Warehouse/Rail Expansion)

5.1. Implement all applicable site-wide actions based on specific operations in this subject area.

5.2. Ensure existing and future tenants are compliant now and in the future with ARB's Transport Refrigeration Regulation. Incorporate operating practices that eliminate the amount of time that a transport refrigeration system powered by a fossil-fueled internal combustion engine can operate utilizing the combustion system while at the Port. Require the use of zero emission all-electric plug-in transport refrigeration systems and ensure the design plan includes the necessary infrastructure. ARB's Technology Assessment: Transport Refrigerators, provides information on the current and projected development for transport refrigerators, including current and anticipated costs at widespread deployment. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/tru_07292015.pdf.

5.3. Accelerate the turnover of line-haul locomotives servicing the Port to Tier 4, ARB proposed Tier 5, or Zero emissions locomotives as expeditiously as possible, with the goal of 95 percent of operations to be performed at a minimum Tier 4 standard by 2023 Furthermore, the Port, Union Pacific (UP) Railway, and/or BNSF Railway should commit to providing co-funding, facility access, and operational support for the development and demonstration of

interstate line-haul locomotive technology with zero-emission capability. This would include, but is not limited to, a hybrid-electric locomotive with all electric capability. ARB's Technology Assessment: Freight Locomotives, provides information on current and projected development of freight locomotives, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/freight_locomotives_tech_report.pdf.

5.4. Incorporate conditions into lease agreements with BNSF and/or UP to ensure that switch locomotives meet a minimum Tier 4 emissions level by 2023..

5.5. Phase in the replacement of diesel powered switcher locomotives with electric rail car movers, within the Port or City owned rail properties.

5.6. Plan and design for the necessary infrastructure to ensure 100 percent, plug-in equipped, to accommodate future growth volumes of TRU's or expansion of this area.

5.7. Implement a policy that limits the amount of time that a transport refrigeration system powered by a fossil-fueled internal combustion engine can operate utilizing the combustion system while on Site.

5.8. Encourage the use of zero emission all-electric plug-in refrigeration systems, hydrogen fuel cell and cryogenic transport refrigeration systems.

5.9.

Port Terminal/Maritime Operations (Inner, Middle, Outer Harbors, and Seventh Street)

5.10. Implement all applicable site-wide actions based on specific operations in this subject area.

5.11. Accelerate the turnover of line-haul locomotives servicing the Port to Tier 4, ARB proposed Tier 5, or Zero emissions locomotives as expeditiously as possible, with the goal of 95 percent of operations to be performed at a minimum Tier 4 standard by 2023 Furthermore, the Port, Union Pacific (UP) Railway, and/or BNSF Railway should commit to providing co-funding, facility access, and operational support for the development and demonstration of interstate line-haul locomotive technology with zero-emission capability. This would include, but is not limited to, a hybrid-electric locomotive with all electric capability. ARB's Technology Assessment: Freight Locomotives, provides information on current and projected development of freight locomotives, including current and anticipated costs at widespread development. This assessment can be found at https://www.arb.ca.gov/msprog/tech/techreport/freight_locomotives_tech_repor

t.pdf.

Incorporate conditions into lease agreements with BNSF and/or UP to ensure that switch locomotives meet a minimum Tier 4 emissions level by 2023.

5.12. Phase in the replacement of diesel powered switcher locomotives with electric rail car movers, within the Port or City owned rail properties.

5.13. Require that berths providing shore power now or in the future, can accommodate changes to vessel sizes and various berthing configurations. The ARB At-Berth Regulation currently requires 80% compliance of ocean going vessels by 2020. Vessel operations should meet 100 percent shore power compliance rate for all vessels or incorporate other technologies, such as emissions capture and control systems, to maximize emission reductions from all vessels in advance of the regulation. ARB's Sustainable Freight: Pathways to Zero and Near-Zero Emissions Discussion Document has identified the development and proposal of amendments to the At-Berth that could expand the regulation to include smaller fleets and/or additional vessel types to the current At Berth Regulation. Additionally, hybrid technologies have shown success at achieving emission reductions in certain tugs based on duty, engine size, and location and should be incorporated into operations, where possible.

Appendix A

Technology Review Program

Development of a Technology Review Program is consistent with the requirements of Mitigation Measures in the Oakland Army Base 2013 Standard Conditions of Approval and Mitigation Monitoring and Reporting (SCA/MM) Program. Below are recommended Technology Review Programs that can be implemented to reach the goals of the SCA/MM.

In consultation with regional agencies and stakeholders, the City and Port shall implement Technology Review Programs, such as:

- The City and Port should administer a minimum of a one year demonstration project, prior to 2020, of zero and near-zero emission truck technology. This demonstration project shall be conducted in cooperation with regional and state agencies and stakeholders.

- Research and funds shall be used to identify and test hybrid diesel electric locomotives and conduct a demonstration of locomotive DOC or DPF retrofits.

- Feasibility studies of electrification of freight/passenger rail from Port intermodal yards to the Bay Area Air Quality Management District's boundaries conducted in conjunction with the Metropolitan Transportation

Commission, Capital Corridor JPA, Union Pacific, and Burlington Northern Santa Fe railroads.

- Investigation of renewable energy generation via mechanical systems that utilize truck weight to generate electricity.

- Study of a "virtual container yard" system that integrates truck movements with container moves to minimize emissions and maximize efficient use of trucking fleets.

Example TAP Studies

As a possible framework for the Technology Review Program, consider the work of the San Pedro Ports Technology Advancement Program (TAP). TAP is a joint program of the Ports of Long Beach and Los Angeles through the Ports' joint Clean Air Action Plan (CAAP) adopted in 2006. The CAAP guides the Ports in their commitment to reduce the health risks and air emissions associated with port-related operations, while allowing port development and growth to continue. The CAAP focuses on near-term strategies, targeting significant reductions in diesel PM, nitrogen oxides (NOx), and sulfur oxides (SOx). The following is a selected list of demonstration projects completed through the TAP program:

- Balqon E-30 Electric Terminal Tractor Development and Demonstration Project

This vehicle was built as a demonstration vehicle and designed specifically for drayage operations. The prototype E-30 all-electric terminal tractor successfully completed cargo terminal tests in 2008.

Following the completion of cargo terminal tests during 2008, the Los Angeles Harbor Commission approved the purchase of 20 electric trucks from the manufacturer as part of the "Green Terminal" program. The Green Terminal program will also include the production of five on-road electric trucks.

This demonstration project was followed with a project to evaluate and demonstrate a lithium-ion battery as a technological upgrade to the lead-acid battery pack used in the previous TAP demonstration. The advanced technology lithium-ion batteries were anticipated to provide more than double the vehicle range, without adding additional weight. A one-day demonstration of the Nautilus E30 confirmed a range of over 150 miles on a single charge with unloaded conditions at 80% depth of discharge. However, this project was never completed.

- Capacity Plug-In Hybrid Electric Terminal Tractor (2010)

The TAP program conducted a three-week trial of a diesel-electric plug-in hybrid terminal tractor that uses a small diesel generator and a large lead-acid battery pack to provide power for vehicle operation. While this demonstration showed a 44

percent reduction in NOx emissions and a 56 percent reduction in PM emissions, compared to 2009 diesel yard tractors, the demonstration utilized a Tier 4-interim generator drive engine, and therefore does not meet CARB's Cargo Handling Equipment regulation of Tier 4 engines.

- Hybrid Yard Tractor Development & Demonstration (2010)

This TAP study investigated the feasibility and commercial viability of using advanced technology drive systems in cargo handling equipment. The three hybrid yard hostlers underwent six months of operation and in-use testing and could perform all the tasks required of yard hostlers in real-world port operations, and were well accepted by drivers and maintenance staff. Fuel economy and emissions benefits were evaluated, but a difference discovered in the mechanical specifications of the vehicles limited comparability. Based on all the evaluations and analyses conducted, the hybrid system is estimated to provide a 12 percent to 18 percent improvement in fuel economy. Further development of the hybrid system is underway to improve fuel economy and emissions reductions. A follow-up study was conducted entitled "Hybrid Yard Tractor Development and Demonstration – Beta Test".

- Alternative Petroleum Technologies (APT) Emulsified Biodiesel Fuel Demonstration (2011)

To demonstrate the viability and effectiveness of the emulsified biodiesel fuel in cargo handling equipment, APT performed a two-phased demonstration that consisted of an evaluation of the emulsified fuel with and without a diesel oxidation catalyst (DOC) in a laboratory setting and a real-time demonstration of the fuel in yard equipment at a port terminal.

The demonstration successfully proved that APT's emulsified B-20 blend mitigated an increase in NOx emissions, while also providing additional reductions in PM when coupled with a verified diesel emissions control system. This provides port drayage operators an alternative fuel selection for their existing fleet of container yard equipment.

As of April 2014, APT planned to pursue CARB verification of the emulsified biodiesel fuel for sale to existing cargo handling equipment fleet operations in the State.

- Liquefied Natural Gas Yard Tractor Demonstration (2007)

This Project was designed to develop, test and design a business case for LNG yard tractors. Phase 1 focused on development of LNG yard tractor specifications, procurement, and installation of temporary LNG refueling. Phase 2 included operation of the LNG yard tractors at a marine terminal for a period of eight months. Phase 3 of the project was the development of a business case assessment to

determine the cost effectiveness and return on investment of using LNG equipment as opposed to diesel.

During emissions testing, the LNG yard tractor produced lower PM emissions than on-road diesel engine equipped with a diesel oxidation catalyst and closed crankcase ventilation system. However, NOx emissions from the LNG yard tractor were approximately 21 percent higher than NOx emissions from this same on-road diesel engine configuration.

- ACTI Advanced Maritime Emission Control System (AMECS) Project (2008)

ACTI developed the AMECS as an alternative pollution control method for ocean-going vessels that are not configured to use shore power, also known as "cold ironing", while at berth. The goal was to demonstrate pollution reduction efficiencies equal to cold ironing for nitrogen oxides (NOx), sulfur oxides (SOx), and particulate matter (PM). The AMECS was demonstrated at Metropolitan Stevedore/Port of Long Beach on multiple vessels with varying exhaust stack configurations. During the demonstration period, two full-scale emission reduction efficiency tests were conducted, the results of which were independently verified by two testing laboratories. During emissions testing, NOx and PM emissions were reduced by 99 percent and 95.5 percent, respectively. In addition, sulfur oxides (SOx) were reduced by 99 percent, and volatile organic compound (VOC) emissions were reduced by greater than 97 percent. Further demonstration of this technology is necessary to determine how it functions in day-to-day operations, including evaluation of costs, durability, integration into operations.

- APL Singapore Slide Valve & Water-In-Fuel (WiFE) Emulsion Demonstration Program (2009)

Two emission control technologies were demonstrated - the use of slide valves in the vessel's main engines, and water-emulsified bunker fuel using an innovative onboard water in fuel emulsifier. The primary objectives of the demonstration projects were to a) evaluate the particulate matter (PM) emission reduction effectiveness of retrofitting OGV main engines with an improved injector design known as a slide valve; and b) demonstrate demand-based onboard water in fuel emulsification system and measure the NOx reduction effectiveness of varying the water content.

Project test conditions resulted in an evaluation that indicated the benefits of slide valves appear to be limited. Testing of the WiFE system aboard the APL Singapore showed water concentrations as high as 48 percent were successfully demonstrated, yielding NOx reductions on the order of 30 percent. A further study was completed in 2012.

- Bluefield Holdings Krystallon Ocean Going Vessel Scrubber (2013)

The primary focus of this project was to demonstrate the reduction of emissions of sulfur oxides (SOx) from an Ocean Going Vessel using an exhaust gas cleaning device to meet the International Maritime Organization (IMO) fuel sulfur limits in Emission Control Areas (ECA) and further to reduce particulate matter (PM), and volatile organic compound (VOC) emissions. This project demonstrated the potential for PM and SOx reductions that can be achieved through OGV retrofit using commercially available scrubbing technology. Additional research is needed further evaluate the potential for OGV engine emission reductions from scrubbers on main engines to comply with IMO ECA regulations.

- Foss Maritime Green Assist™ Hybrid Tugboat (2010)

Foss Maritime developed this diesel electric hybrid tugboat and named it the *Carolyn Dorothy*. The *Carolyn Dorothy* became a full working member of the Foss Maritime tug fleet on March 1, 2009. Since this time, the hybrid tug demonstrated performance comparable to a conventional Dolphin Class tugboat. The hybrid tugboat achieved emission reductions that exceed original targets (to reduce both NOx and PM by approximately 44 percent) when compared with the Dolphin tugs currently operating in the San Pedro Bay. The *Carolyn Dorothy* reduced PM, NOx and CO2 emissions by 73 percent, 51 percent and 27 percent, respectively. Based on this evaluation, there is evidence that this technology reduces fuel consumption by approximately 20 to 30 percent.

- OGV Slide Valve Low-Load Emissions Evaluation (2013)

This project is a follow up to the 2008 demonstration of a slide-type fuel values, and sought to test a new type of OGV main engine fuel valve (SV C36) designed to improve combustion properties by eliminating sac volume (i.e., fuel drips) at the valve nozzle. The elimination of the sac volume results in lower fuel oil consumption. In addition, slide valve nozzles incorporate an optimized spray pattern designed to improve the combustion process - this is intended to reduce overall emissions, including hydrocarbon, NOx and particulate matter. The visible smoke level is also greatly reduced because of the improved combustion. Among other findings, results showed that SV C26 nozzles did emit less diesel particulate matter (DPM) at low loads compared to the two conventional fuel valve configurations. At low loads, SV emits up to 50 percent less DPM than conventional C3 and C11 fuel valves and up to 65 percent less DPM for cylinder-lubrication-corrected particulate-emission results. Overall, SV C26 nozzles emit over 90 percent less total hydrocarbons compared to the two conventional fuel valve configurations.

California Energy Commission Projects

In addition to the emissions reduction studies that are being undertaken as part of the TAP, the California Energy Commission (Energy Commission) released a Grant Solicitation for “Sustainable Freight Transportation Projects” under the Alternative and Renewable Fuel and Vehicle Technology Program (ARFVTP). This grant

solicitation funded projects that demonstrate medium- and/or heavy-duty advanced vehicle technologies at California seaports. The three projects selected as part of this solicitation propose to demonstrate:

- 9 zero emissions rubber tired gantry cranes
- 15 battery electric yard tractor's
- 7 natural gas hybrid electric trucks
- 3 zero emissions top handlers
- 20 near zero natural gas trucks

Results of these demonstrations should inform the Technology Review Program established as part of the Oakland Army Base 2013 SCA/MM Program.

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 9/27/2017 8:15:03 PM
To: Brian Beveridge [Personal Address / Ex. 6]
CC: Margaret Gordon [Personal Address / Ex. 6] pcort@earthjustice.org
Subject: Following up: Customs station: FYSA, T6

Brian and Ms. Margaret

While our office is following up on this with DHS and CPB, I suspect it would be unfortunate to let the comment period close (October 12 ?) without you registering your concerns. And if your concerns go beyond those for which comment is asked directly in the notice, such as comments on the process or criteria, etc, I don't see a downside I that.

And on the Title VI front, I hope you have not lost track of the comment by Lilian Dorka on the August 17 call that you were welcome to submit additional information, specific suggestions and such at any time. Sooner is better, you can always submit more information later.

Richard

From: Brian Beveridge [mailto: Personal Address / Ex. 6]
Sent: Thursday, September 21, 2017 11:05 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Margaret Gordon [Personal Address / Ex. 6]
Subject: Re: Customs station: FYSA--West Oakland CES

I don't get it. The application period ends on 9/11, and the public notice went out on the 12th? I wanted to apply with some warehouse partners. How will they get this service back on the port without more discussion? Something wrong with this picture. And we did not get any emails from Customs.
Brian

On Sep 21, 2017 9:59 AM, "Grow, Richard" <Grow.Richard@epa.gov> wrote:

> Ms. Margaret and Brian
>
> Hope you are in the loop on this. I haven't read then notice (69 pp) yet.
>
> Richard
>
> **From:** DOIRON, LYNN [mailto:lynn.doiron@cbp.dhs.gov]
> **Sent:** Thursday, September 21, 2017 8:50 AM
> **To:** Grow, Richard <Grow.Richard@epa.gov>; Hass, Jennifer <jennifer.hass@hq.dhs.gov>
> **Subject:** FYSA--West Oakland CES

Good morning!

CBP is now in the process of selecting a CES. We have reached out to WOEIP to let them know (via email) and the hard copy is en route via certified mail. The official notice is attached.

Please let me know if you have any questions.

Lynn Doiron

Environmental Services Section Chief

Technical Resources Branch

FOF PMO

U.S. Customs and Border Protection

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 9/27/2017 7:14:06 PM
To: Israels, Ken [Israels.Ken@epa.gov]
Subject: FW: 2017-09-26 Meeting sign-in sheet - City of Oakland, Port of Oakland, U.S. DOT, and U.S. EPA
Attachments: 2017-09-26 Meeting City of Oakland, Port of Oakland, DOT, and EPA sign-in sheet.pdf

From: Keeler, Katsumi
Sent: Wednesday, September 27, 2017 11:37 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; McGhee, Debra <mcghee.debra@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Daryl.Hart@dot.gov; eric.shen@dot.gov; rachel.kizito-ramos@dot.gov; yvette.rivera@dot.gov; charles.james@dot.gov; ryan.fitzpatrick@dot.gov; erva.cockfield@dot.gov; mbee@oaklandcityattorney.org; ccappio@oaklandnet.com; dwan@portoakland.com; mheffes@portoakland.com; bparker@oaklandcityattorney.org; atorrence@jenner.com; Minoli, Kevin <Minoli.Kevin@epa.gov>; Keeler, Katsumi <Keeler.Katsumi@epa.gov>
Subject: 2017-09-26 Meeting sign-in sheet - City of Oakland, Port of Oakland, U.S. DOT, and U.S. EPA

Attached is the sign-in sheet for the City of Oakland/Port of Oakland/U.S. DOT/U.S. EPA meeting on 9/26/17.
Attended, but not listed on the sign-in sheet:

Kevin Minoli	minoli.kevin@epa.gov
Alexis Strauss	strauss.alexis@epa.gov
Desean Garnett	garnett.desean@epa.gov
Richard Grow	grow.richard@epa.gov

2017-09-26
Meeting City of O...

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/3/2017 8:54:50 PM
To: Reyes, Deldi [Reyes.Deldi@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Vallano, Dena [Vallano.Dena@epa.gov]; Davidson, Ken [Davidson.Ken@epa.gov]
Subject: Re: Env. Defense Fund explanation/discussion of air quality data for Oakland

Sure, I'll follow up. What I didn't mention is that Pat McGowan who is hosting the event is the City's Planning lead for the OAB since last fall, so the discussion of implications should be interesting.

From: Reyes, Deldi
Sent: Monday, July 3, 2017 11:48 AM
To: Grow, Richard; BANDROWSKI, MIKE; Vallano, Dena; Davidson, Ken
Subject: RE: Env. Defense Fund explanation/discussion of air quality data for Oakland

Ah, belay that—I'm in the office all day on Monday with commitments.
Thanks, though for letting us know, Richard.

A while back you'd circulated the press release. I suggested just recently it would be a good brownbag topic and Dena agreed it would be of interest.
Could be good, assuming Margaret has time / interest to invite her to share her views on citizen science with us . . .

From: Grow, Richard
Sent: Saturday, July 01, 2017 1:09 PM
To: Reyes, Deldi <Reyes.Deldi@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Vallano, Dena <Vallano.Dena@epa.gov>; Davidson, Ken <Davidson.Ken@epa.gov>
Subject: Fw: Env. Defense Fund explanation/discussion of air quality data for Oakland

Deldi, Mike and a few others

The Oakland City Planning department is hosting a presentation by EDF on the West Oakland monitoring study on Monday 7/10 11-12 at City Hall. Not exactly a public event but WOEIP has asked me to attend and I'm sure it would be fine if 2-3 others from our office wanted to joint. Given the players, the discussion as to the implications of the study may be interesting. Clips and correspondence attached and linked. Pls let me know if you plan to attend. Thx

Richard

Where Oakland City Hall, 3rd floor ConfRoom - Building Bridges
map

Calendar Patricia McGowan

Source Env. Defense Fund explanation/discussion of air quality data for Oakland

Description It is being rescheduled for Monday July 10, 11am at Oakland City Hall, Building Bridges Conference room, third floor (same floor as the Mayor's office). Fern U. from the Environmental Defense Fund will explain the air quality data that was collected for West Oakland and downtown Oakland. The attached outlook item contains the links to the data for your use and reference before the meeting. Thank you and I hope to see you can attend. Patricia McGowan City of Oakland 510-238-3588

From: Margaret Gordo **Personal Address / Ex. 6**
Sent: Friday, June 30, 2017 12:22 PM
To: Grow, Richard
Subject: Fwd: Env. Defense Fund explanation/discussion of air quality data for Oakland

OK Richard,

Here are some early press coverage so far, FYI:
https://www.google.com/amp/s/amp.cnn.com/money/2017/06/05/technology/google-street-view-edf-air-quality-oakland/index.html
http://www.wired.co.uk/article/air-pollution-maps-carbon-emissions

Air pollution map reveals pollution in London, UK and ...

www.wired.co.uk

Causes of air pollution is highlighted on hyper-local pollution maps, interactive maps by the Tomorrow project and the Air Quality Index

https://www.wired.com/2017/06/race-pollution-sensing-tech-oakland/

And a feature on Google blog (Google has been a partner on this project):
https://blog.google/products/maps/lets-clear-air-mapping-our-environment-our-health/

Ms.M

--
Ms. Margaret Gordon/Co-Director
West Oakland Environmental Indicators Project
349 Mandela Parkway
Oakland, CA 94607
Personal Address / Ex. 6
www.woeip.org

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/3/2017 8:44:47 PM
To: Connors, Rachel@ARB [Rachel.Connors@arb.ca.gov]; Olp, Kevin@EPA [Kevin.Olp@calepa.ca.gov]
Subject: Re: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Sure, anytime that day between 11 and 3 would be best, but I can make other times work if need be. Thanks

Richard

From: Connors, Rachel@ARB <Rachel.Connors@arb.ca.gov>
Sent: Monday, July 3, 2017 1:12 PM
To: Grow, Richard; Olp, Kevin@EPA
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hi Richard,

I am following up to schedule an informal meeting with Kevin and I, to discuss the issues you mentioned in the email below. Are you still available Friday 7/7? Is there any particular time that works for you? Thanks!

Rachel Connors
Air Resources Engineer
Fuels Enforcement Section
Phone: (916) 229-0513
rachel.connors@arb.ca.gov

California Environmental Protection Agency
Air Resources Board

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Wednesday, June 28, 2017 1:27 PM
To: Olp, Kevin@EPA
Cc: Reyes, Deldi; Connors, Rachel@ARB; Eady, Veronica@ARB
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hi Kevin – This Friday is kind of jammed (busy in West Oakland) but I'm free next Weds 7/5 (any time other than 11-12), Thursday 7/6 (other than 10-11, 2-3) or Friday 7/7 anytime. Looking forward to talking, pls let me know if any of these times work. Tomorrow 6/29 also good any time other than 10-11.

Richard

From: Olp, Kevin@EPA [mailto:Kevin.Olp@calepa.ca.gov]
Sent: Wednesday, June 28, 2017 10:53 AM
To: Grow, Richard <Grow.Richard@epa.gov>

Cc: Reyes, Deldi <Reyes.Deldi@epa.gov>; Connors, Rachel@ARB <Rachel.Connors@arb.ca.gov>; Eady, Veronica@ARB <Veronica.Eady@arb.ca.gov>
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Thanks for sharing Richard! I'd very much love to get your feedback on the larger issues here and I'll invite my colleagues Rachel and Veronica to join as well. Do you have time on Friday to chat, or is next week better for you? In advance of our conversation just wanted to say thanks for your help!

Kevin

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Wednesday, June 28, 2017 10:19 AM
To: Olp, Kevin@EPA <Kevin.Olp@calepa.ca.gov>
Cc: Reyes, Deldi <Reyes.Deldi@epa.gov>
Subject: FYI: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Kevin – this just came in.

Richard Grow
US EPA
Region 9
(415) 947-4104

From: Aloha Galimba [mailto:agalimba@baaqmd.gov]
Sent: Wednesday, June 28, 2017 8:48 AM
To: abockelman@mtc.ca.gov; Grow, Richard <Grow.Richard@epa.gov>; cynthia.marvin@arb.ca.gov; Karen Schkolnick <kschkolnick@baaqmd.gov>; muntu.davis@acgov.org; anna.lee@acgov.org
Cc: Sheng Thao <sthao@oaklandnet.com>
Subject: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hello,

The Bay Area Air Quality Management District is inviting you – or a representative from your organization - to attend a working meeting on solutions for reducing emissions and health impacts in the West Oakland Community from current operations at the Port of Oakland and future operations at the former Oakland Army Base.

This meeting will be hosted by Oakland Council Member at Large, Rebecca Kaplan, at the Alameda County Transportation Commission, which is located at 11th and Broadway in Downtown Oakland on **Friday July 14, 2017 between 12 pm – 2 pm**.

The goal of this meeting is to devise a workplan that harnesses and coordinates the resources of the participating entities.

Please confirm your participation with me with a CC to Ms. Kaplan' assistant Sheng Thao at Sthao@oaklandnet.com. If you have any questions or concerns, please feel free to reach out to me directly.

Thank you and have a great rest of the day!

Regards,

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782 | Personal Address / Ex. 6
agalimba@baaqmd.gov | www.baaqmd.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 11:06:43 PM
To: LUEHE, DOUGLAS [luehe.douglas@epa.gov]; Adams, Elizabeth [Adams.Elizabeth@epa.gov]; Lakin, Matt [Lakin.Matthew@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Miller, Amy [Miller.Amy@epa.gov]
CC: Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Reyes, Deldi [Reyes.Deldi@epa.gov]; Israels, Ken [Israels.Ken@epa.gov]
Subject: Ltr to City/Port: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)
Attachments: Final Letter of Acceptance for Investigation - Oakland City and Port - RECIPIENTS - 7-18-2017.pdf

Importance: High

From: Dorka, Lilian
Sent: Tuesday, July 18, 2017 3:52 PM
To: officeofthemayor@oaklandnet.com; colbruno@portcommissioner.com
Cc: Rivera, Yvette (OST); Charles.james@dot.gov; Jang, Deeana (OST); Fitzpatrick, Ryan (OST); Jordan, Deborah; Strauss, Alexis; Packard, Elise; Redden, Kenneth; Johnson, Johahna; O'Lone, Mary; Temple, Kurt; Farrell, Ericka; Keeler, Katsumi; Grow, Richard; Garnett, Desean; Harrison, Brenda; Minoli, Kevin
Subject: ACCEPTANCE FOR INVESTIGATION OF: DOT Complaint # 2017-0093, EPA File No.: 13R-17-R9 (City of Oakland) and 14R-17-R9 (Port of Oakland and Board of Port Commissioners)

Dear Mayor Schaaf and Mr. Colbruno:

I am writing on behalf of the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), to notify you that, per the attached Letter of Acceptance, the agencies have accepted for investigation the above-referenced civil rights complaint. The attached Letter of Acceptance has also been mailed to you via certified mail. Please let us know if you have any questions.

Sincerely,

Lilian S. Dorka

Lilian Sotolongo Dorka, Esq.
Director, External Civil Rights Compliance Office
EPA, Office of General Counsel
202-564-9649
WJC-N Room 2450

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

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

July 18, 2017

The Honorable Libby Schaaf
Mayor, City of Oakland
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Michael Colbruno
President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, CA 94607

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

Dear Mayor Schaaf and Mr. Colbruno:

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

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

have determined that the complaint meets the jurisdictional requirements of both Agencies, and therefore the complaint will be jointly investigated.

Accordingly, the investigation will focus on:

1. Whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the Oakland Army Base subjects the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

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

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

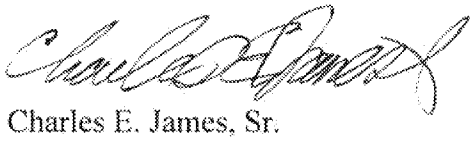
This does not foreclose resolution of matters raised in the complaint through informal resolution, including alternative dispute resolution (ADR). Both DOT's and EPA's nondiscrimination regulations provide that DOCR and ECRCO will attempt to resolve complaints informally whenever possible. 49 C.F.R.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

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights

protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with DOCR and ECRCO.

Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's DOCR, or Ericka Farrell, Case Manager in EPA's ECRCO, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Farrell can be reached at (202) 564-0717, or farrell.ericka@epa.gov.

Sincerely,



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

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

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 9

Kenneth Redden
Acting Assistant General Counsel
Civil Rights and Finance Law Office

Lauren Brand
Associate Administrator
Office of Intermodal System Development
Maritime Administration

Daryl Hart
Director
Office of Civil Rights
Maritime Administration

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/25/2017 3:42:23 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: Ph #s: Bay Area travel schedule

Personal Matters / Ex. 6

Office: (415) 947-4104

From: Fitzpatrick, Ryan (OST) [mailto:ryan.fitzpatrick@dot.gov]
Sent: Tuesday, April 25, 2017 8:33 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Bay Area travel schedule

Shoot me a call, let's chat about this real quick. I don't have your number handy

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst
Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
W78-312
(202) 366-1979

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Tuesday, April 25, 2017 11:31 AM
To: Fitzpatrick, Ryan (OST)
Subject: Bay Area travel schedule

Ryan

I'm hoping you have time to meet while you are out here to meet with the Port, which I am assuming is still set for some time next week. I wanted to also let you know that the first of three meetings called by the City to meet with CARB and BAAQMD (and which I will join) is set for May 9 from 11-12:30. If you see any utility in arranging your schedule to allow participation in that meeting, I'd think that could be accommodated. While the City has scheduled three meetings (May 9, 18 and 30) my sense is that ARB and BAAQMD are committing only to the first at this point, in lieu of determining whether the discussions are in fact meaningful.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/25/2017 3:31:26 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: Bay Area travel schedule

Ryan

I'm hoping you have time to meet while you are out here to meet with the Port, which I am assuming is still set for some time next week. I wanted to also let you know that the first of three meetings called by the City to meet with CARB and BAAQMD (and which I will join) is set for May 9 from 11-12:30. If you see any utility in arranging your schedule to allow participation in that meeting, I'd think that could be accommodated. While the City has scheduled three meetings (May 9, 18 and 30) my sense is that ARB and BAAQMD are committing only to the first at this point, in lieu of determining whether the discussions are in fact meaningful.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/25/2017 3:24:23 PM
To: Alison Kirk [AKirk@baaqmd.gov]; David Vintze [DVintze@baaqmd.gov]; Yura, Elizabeth@ARB [eyura@arb.ca.gov]; Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]; Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]; Margaret Gordon [margaret.woeip@gmail.com]; Brian Beveridge [brian.woeip@gmail.com]
Subject: Title VI complaint acknowledgement

All

Letters acknowledging receipt of the complaint went out on April 7 (from EPA) and April 13 (DOT), at least to Earthjustice, which had filed the complaint. My understanding is that the recipients, ie the City and Port, whose activities are the subject of the complaint, would also have been notified. The next step at both federal agencies is a "jurisdictional" review, which leads to a decision of whether or not to formally accept the complaint for investigation.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 10/20/2017 1:45:22 PM
To: Machol, Ben [Machol.Ben@epa.gov]
CC: McDaniel, Penelope [MCDANIEL.PENELOPE@EPA.GOV]; Israels, Ken [Israels.Ken@epa.gov]
Subject: City/Port position: Emissions Reductions Actions Guidance for the Port and Oakland Army Base
Attachments: DOC101917.pdf

Ben (Penny and Ken)

Deliberative Process / Ex. 5

Richard

From: Damian Breen <dbreen@baaqmd.gov>
Sent: Thursday, October 19, 2017 10:43 AM
To: rsinkoff@portoakland.com; CCappio@oaklandnet.com; MDNichols@oaklandnet.com; Tess Lengyel; adao@alamedactc.org; abockelman@mtc.ca.gov; Matt Maloney; Jack Broadbent; Aloha de Guzman; cynthia.marvin@arb.ca.gov; elizabeth.yura@arb.ca.gov; Grow, Richard; Matthew Davis; Lee, Anna, Public Health, OOD; Carolyn Clevenger; Henry Hilken; Sheng Thao ; Rebecca Kaplan ; Catherine Mukai; Ranyee Chiang; Machol, Ben; Israels, Ken; Woo, Winnie; David Vintze; Alison Kirk; Karen Schkolnick; McGowan, Patricia
Subject: RE: Emissions Reductions Actions Guidance for the Port and Oakland Army Base

Please find attached the City of Oakland Memo referenced below in Mr. Sinkoff's email.

Damian Breen

Deputy Air Pollution Control Officer
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Tel: (415) 749-5041

From: Richard Sinkoff [mailto:rsinkoff@portoakland.com]
Sent: Wednesday, October 18, 2017 5:15 PM
To: Damian Breen <dbreen@baaqmd.gov>; CCappio@oaklandnet.com; MDNichols@oaklandnet.com; Tess Lengyel <tlengyel@alamedactc.org>; adao@alamedactc.org; abockelman@mtc.ca.gov; Matt Maloney <mmaloney@mtc.ca.gov>; Jack Broadbent <jack@baaqmd.gov>; Aloha de Guzman <adeguzman@baaqmd.gov>; cynthia.marvin@arb.ca.gov; elizabeth.yura@arb.ca.gov; Grow, Richard <Grow.richard@epa.gov>; Matthew Davis <mdavis@portoakland.com>; Lee, Anna, Public Health, OOD <anna.lee@acgov.org>; Carolyn Clevenger <cclevenger@alamedactc.org>; Henry Hilken <HHilken@baaqmd.gov>; Sheng Thao <sthao@oaklandnet.com>; Rebecca Kaplan <kaplanforoakland@gmail.com>; Catherine Mukai <cmukai@portoakland.com>; Ranyee Chiang <rchiang@baaqmd.gov>; machol.ben@epa.gov; Israels, Ken <Israels.Ken@epa.gov>; Woo, Winnie <WWoo@oaklandnet.com>; David Vintze <DVintze@baaqmd.gov>; Alison Kirk <AKirk@baaqmd.gov>; Karen Schkolnick <kschkolnick@baaqmd.gov>; McGowan, Patricia <PMcGowan@oaklandnet.com>
Subject: RE: Emissions Reductions Actions Guidance for the Port and Oakland Army Base

Dear Damian,

Thank you for the opportunity to review and respond to the "BAAQMD Emissions Reductions Actions for the Port of Oakland/Former Oakland Army Base" (August 2017) and the emissions control strategies that BAAQMD has presented at different meetings and in different forms (i.e., July 14, 2017, "Proposal to Further Reduce Emissions at the Port of Oakland and Former Oakland Army Base" presentation by Jack P. Broadbent, Executive Officer/APCO; July 14, 2017, "BAAQMD – Emissions Reductions 'Strawman' Revised, etc.) (collectively, the "BAAQMD Proposals"). As an initial matter, the Port of Oakland (the "Port") has similar questions as the City of Oakland regarding the intended implementation and legal status of the BAAQMD Proposals. The Port reiterates and incorporates by reference the questions, concerns and comments identified by the City of Oakland in its October 18, 2017 memo to you.

The Port shares BAAQMD's goals of reducing emissions associated with the Oakland Army Base ("OAB") redevelopment project. The Port would like to work with the BAAQMD to identify the proposed emission reduction actions set forth in the BAAQMD Proposals that will have the greatest positive impact and will be both economically and technologically feasible. Given the Port's continued focus on public health in West Oakland, the Port's emissions reduction efforts will continue to emphasize reductions in diesel particulate matter ("DPM"), but the Port will also evaluate other emissions reductions, including actions to reduce greenhouse gas ("GHG") emissions.

In order to identify which source categories to target with additional emissions reductions efforts, the Port has modeled emissions projections for 2020 and 2030. Concurrently, we are also modeling CO2e for source categories within the context of the State's 2030 GHG emissions reduction targets. Based upon our projections, we have identified a "first tier" of source categories and emissions reductions activities that would have the largest impact on reducing emissions of DPM, GHGs, and criteria air pollutants at the Port. These are listed first then described in greater detail, below.

1. Harbor Craft ("HC")
2. Cargo Handling Equipment ("CHE")
3. Vessel retrofits for Ocean-Going Vessels ("OGV")
4. Vessel Speed Reduction ("VSR") for OGVs
5. Alternative emissions control systems for OGVs
6. Shore-Power Vaults and Cable Reels
7. Electrical System Upgrades and Improvements

Harbor Craft (HC)

- Emissions reductions for HC would benefit the entire Bay Area, as the local tug fleet serves many area ports and terminals. As such, actions for HC depend on coordination between the tug owners (only one of whom is a Port of Oakland tenant), port and terminal authorities, and the BAAQMD.

- In coordination with the BAAQMD, Port staff propose to conduct outreach to HC owners and operators regarding the engines in their fleet and their ideas for successful retrofits and replacement. We propose to also contact Chevron Richmond for information regarding its purchase of a Tier 4 tug for use in the Bay Area. The goal of the outreach is to identify tugs with the greatest potential for emissions reductions through retrofits or replacement, and use the emissions reduction potential to identify appropriate grant funding.

Cargo Handling Equipment (CHE)

- One terminal operator at the Port would like to immediately apply for grant funding for up to 13 hybrid Rubber Tired Gantry ("RTG") cranes. The hybrid RTG cranes can reduce diesel use by up to 80% and rely on a modular design so that the diesel range extenders can eventually be replaced with rechargeable batteries.

- Port staff propose to work with the BAAQMD to identify specific funding opportunities based on the emissions reduction potential and prepare grant applications for repowering 13 RTGs at the interested terminal.

Vessel retrofits for Ocean-Going Vessels (OGVs)

- To increase the use of shore power at the Port, more vessel retrofits are required so that ships have the on-board hardware and systems needed to plug in. While some liner services calling at the Port have 100% shore power-capable vessels, some lines include vessels with no hardware or systems to plug in.

- Port staff propose to work with the BAAQMD to identify specific funding opportunities based on the emissions reduction potential of a typical vessel and identify candidate vessels.

Vessel Speed Reduction for Ocean-Going Vessels (VSR)

- A VSR program has benefits beyond air quality improvements, such as protection of marine mammals, especially the larger whale species (i.e., reducing the potential for mortality to whales feeding or resting in shipping lanes, etc.). By increasing efficiency, a VSR can also reduce GHG emissions from OGVs. Port staff propose to share information regarding actual vessel speeds, which the Port has been collecting for recent months from the Marine Exchange, with the BAAQMD. Port staff seeks more information from the BAAQMD on the format and use of the BAAQMD's VSR incentive program. This information sharing could result in development of guidelines for a permanent Bay Area VSR incentives program.

Alternative emissions control systems for Ocean Going Vessels

- Recognizing that not all vessels that call at the Port are equipped to utilize shore power, the Port is interested in barge-mounted emissions control systems. Port staff know of three companies currently offering these services. Port staff propose to work with the BAAQMD to identify specific funding opportunities based on the emissions reduction potential of this technology and the requirements of the candidate vendors.

Shore-Power Vaults and Cable Reels

- Cable reel extenders are an option to increase the use of shore power, as are additional shore power vaults. Port staff propose to work with the BAAQMD to identify specific funding opportunities for cable reel extenders. Based on conversations with terminal operators, Port staff may also seek funding opportunities for additional shore power vaults.

Electrical System Upgrades and Improvements

- We are encouraged that the BAAQMD Proposals include the potential for funding support for electric system upgrades. As we previously discussed, improvements to the electrical system are foundational for the transformation of ports goods movement to a zero- and near-zero emissions platform. As a first step, Port staff propose to work with the BAAQMD to identify specific funding opportunities to build a solar canopy structure with potential battery storage at Harbor Facilities. The battery storage will provide resiliency for Harbor Facilities and other Seaport facilities. Longer-term plans for Port infrastructure as described in the Port's June 2016 Maritime Electric Strategic Assessment, which we have shared with you, are also candidates for funding. Port staff may also seek funding opportunities to study infrastructure capacity needs within each of the Port's terminals to support future electrification.

We look forward to discussing these options with you and to working together on establishing a "first tier" of successful programs and projects. Let's begin the discussion of these proposals at ACTC on October 20.

Sincerely,

Richard

Richard Sinkoff
Director of Environmental Programs and Planning
Port of Oakland
510-627-1182
rsinkoff@portoakland.com

From: Damian Breen [mailto:dbreen@baaqmd.gov]
Sent: Tuesday, October 17, 2017 4:43 PM
To: CCappio@oaklandnet.com; MDNichols@oaklandnet.com; Tess Lengyel <tlengyel@alamedactc.org>; adao@alamedactc.org; abockelman@mtc.ca.gov; Matt Maloney <mmaloney@mtc.ca.gov>; Jack Broadbent <jack@baaqmd.gov>; Aloha de Guzman <adeguzman@baaqmd.gov>; cynthia.marvin@arb.ca.gov; elizabeth.yura@arb.ca.gov; Grow, Richard <Grow.richard@epa.gov>; Matthew Davis <mdavis@portoakland.com>; Lee, Anna, Public Health, OOD <anna.lee@acgov.org>; Carolyn Clevenger <cclevenger@alamedactc.org>; Richard Sinkoff <rsinkoff@portoakland.com>; Henry Hilken <HHilken@baaqmd.gov>; Sheng Thao <sthao@oaklandnet.com>; Rebecca Kaplan <kaplanforoakland@gmail.com>; Catherine Mukai <cmukai@portoakland.com>; Ranyee Chiang <rchiang@baaqmd.gov>; machol.ben@epa.gov; Israels, Ken <Israels.Ken@epa.gov>; Woo, Winnie <WWoo@oaklandnet.com>; David Vintze <DVintze@baaqmd.gov>; Alison Kirk <AKirk@baaqmd.gov>; Karen Schkolnick <kschkolnick@baaqmd.gov>; McGowan, Patricia <PMcGowan@oaklandnet.com>
Subject: Emissions Reductions Actions Guidance for the Port and Oakland Army Base

Dear Colleagues,

On October 3, 2017, the Bay Area Air Quality Management District (Air District) hosted a conference call to discuss its "Emissions Reductions Actions" document for current and future operations at the Port of Oakland (Port) and former

Oakland Army Base (OAB). At that meeting the City of Oakland (City) staff, had expressed concerns regarding a number of the recommendations in the document. Two specific concerns surrounded the Air District's recommendations on:

- Emission standards for trucks that should be used at the Port and OAB, and
- HEPA filtration for sensitive receptors located around the Port and OAB operational area.

At the meeting, the Air District had requested that City staff provide specific suggestions regarding alterations to the language contained in the guidance document, at which point a follow-up meeting could be scheduled to discuss these concerns. To date, no response has been received. Separately, the Port stated that it also wished to provide input on the guidance document and the Air District's technology assessment spreadsheet (see attached). Again, this feedback is yet to be received.

In light of the fact that our group will be assembled on Friday, the Air District is suggesting that all written comments on both the attached spreadsheet and guidance document be submitted to all group members prior to that meeting. Any written comments can then be the subject of our discussion.

For example:

In response to the concerns expressed by City staff at the first meeting, the Air District is proposing to amend the actions document to as follows:

HEPA Filtration:

2.8. ~~All~~ Existing land uses serving sensitive receptors within 1,000 feet of the Project boundaries shall be eligible to receive incentive funds to retrofit or install central air systems with HEPA air filtration systems rated MERV 13 or better. The Port and City will establish a fund and contribute on a fair share basis to the cost of installing and maintaining the MERV 13 systems and provide educational materials to owners and occupants explaining how to maximize the benefits of these systems. Institutional sites with existing central air systems that serve sensitive groups, such as schools, day cares, health care facilities and nursing homes, shall be the priority for HEPA air filtration installations.

On-road/Drayage Trucks:

1.10. Require all future tenants at the OAB meet a set of best practices for on and off road trucks and equipment, or require the payment of an OAB air quality offset fee for any emissions in excess of those that would have occurred through the implementation of the current list of best practices. Any emission offset funds will be used as incentives to retrofit existing buildings per measure 2.8 or fund other emission reduction programs benefiting the West Oakland Community. The following is the current list of best practices for the OAB:

a. *All yard trucks are zero-emissions.*
b. *All forklifts are zero-emissions.*
c. *All medium-heavy and heavy-heavy duty on-road trucks, including any alternative or hybrid fuel vehicles, meet or exceed the 2010 emission standards.*
d. *Use of new zero and near-zero technologies (such as battery electric or fuel cell electric) for all types of equipment in use at the site, including zero emission electrified rail mounted gantry cranes, and battery electric and hybrid electric medium-duty trucks as feasible.*
e. *As it becomes available, participation in the deployment of zero and near-zero medium-heavy and heavy-heavy duty trucks traveling within 100 miles of the site.*

The City and Port will establish an Oakland Army Base Mitigation Fund Incentive Program (the "Mitigation Fund") consistent with the LDDA/CEQA mitigation measures 4.4-3, 4.4-4 and 5.4-1. When tenants are unable to meet the current list of best practices listed above, the City and Port will require the tenants pay into the Mitigation Fund based on the current cost of reducing one ton of diesel particulate matter.

ARB's Technology and Fuels Assessments provide information on the current and projected development of mobile source technologies and fuels, including current and anticipated costs at widespread deployment. The assessments can be found at http://www.arb.ca.gov/msprog/tech/tech.htm.

We're hoping to get all of your ideas incorporated in these documents before we take into our Board of Directors in December, so please bring them forward as soon as possible.

Thank you,

Damian Breen
Deputy Air Pollution Control Officer
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Tel: (415) 749-5041

CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA OAKLAND, CALIFORNIA 94612-2033

City Administrator's Office
Oakland Army Base Project Implementation

(510) 238-3541
FAX (510) 238-2240
TDD (510) 238-3254

Date: October 18, 2017
To: Damian Breen, Bay Area Air Quality Management District
From: Claudia Cappio, Assistant City Administrator CC
Subject: Input about the BAAQMD Emission Reduction Actions for the former Oakland Army Base

This memo is a follow up to the conference call meeting of October 3, 2017 during which BAAQMD staff discussed the draft August 2017 document "BAAQMD Emissions Reductions Actions for the Port of Oakland/Former Oakland Army Base" with both City and Port representatives. You indicated that the City and Port should respond to the Air District in writing to be sure our comments and suggestions were accurately presented. Also, I reiterate that the City shares the overall goal of reduction of diesel emissions for this important project.

As we discussed during the conference call, the City would like to work with staff from the BAAQMD to refine the proposed emission reduction actions set forth in the draft document in the interest of ensuring that the identified emissions reduction measures are both economically and technologically feasible, and that their adoption does not exceed the legal authority of the City, Port or BAAQMD.

I'm not sure if you are aware that we have been working with staff from the BAAQMD and CARB to review air quality/diesel emission reduction plans for construction of three sites within the City's portion of the former Oakland Army Base during the past year. Much of the input received from BAAQMD and CARB staff has been incorporated into these plans, resulting in reduced diesel emissions and reduced air quality impacts during construction of these sites. In fact, many of the suggestions have been incorporated into our standard mitigation practices for air quality impacts during construction.

As an initial matter, it will be important for the City to better understand the intended implementation and legal status of the proposed Action list. If we know more about how you intend to use and implement these Actions, we can approach these issues more constructively. Nevertheless, until we receive your response to this inquiry, and as you requested in the telephone meeting, below is a list of our questions, concerns and comments.

1. How does BAAQMD intend to use and implement this list of Actions?

002984 2020-10-29

2. What action do you anticipate the Board of the BAAQMD will take on the Action list? Is there some sort of formal adoption of the proposed action items? How does BAAQMD intend that the document, once adopted, will be enforced?

3. We welcome more information from you about grant funding that is available and appropriate for use by the future tenants at the City's portion of the former Oakland Army Base. As you know, these tenants will include three logistics warehouses, two recycling facilities, 15-acres of truck parking/trucker services, one bulk terminal and a storage yard for empty shipping containers. Some specific information regarding grant funding which would be applicable to these types of tenants would be welcomed right away.

4. Many of the Actions in your document use the terms "require that…", "all equipment…", "all…shall be". Such definitive terms are of concern to us. We recommend replacing these terms with "strive for…", "most equipment…", "most … should be". As a general matter, the City's authority to monitor and ensure compliance with project-specific mitigation measures and conditions of approval identified in the "Standard Conditions of Approval and Mitigation Monitoring and Reporting Program" for the 2012 approvals is limited to requirements that are both economically and technologically feasible. CEQA Guidelines Section 15364 defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." Accordingly, we recommend that the majority of these formulations be replaced with language that is aspirational or hortatory, and that acknowledges that many of the specific requirements may not be applicable for full nor immediate implementation. Actions framed as mandatory allow no room for the City to determine "feasibility" when implementing the mitigation measures, and simply exceed the City's legal authority to enforce.

5. Some of the items on the Action list we believe will be considered by the City to be feasible under the CEQA Guidelines, while other items are of concern to us.

6. Briefly, the items of concern from the Action list are:
   - 1.10 Please see our comments on this item on page 3 of this memo.
   - 1.12 Perhaps this could be modified to address a phase-in program for existing equipment. For example, replacing Tier 3 forklifts with Tier 4 or electric on a phase-in schedule.
   - 1.15 Unclear.
   - 1.16 Needs to be discussed as it relates to the future West Gateway terminal.
   - 2.2 An appointment system might not be needed at the warehouses or at the recycling facilities.
   - 2.3.1 The City's role regarding commercial harbor craft is unclear.
   - 2.4 Electric mobile cargo handling equipment that may be used at the buildings on the City's portion of the OAB might not yet be commercially available or feasible.

2.5 The three logistic warehouse will be LEED Gold. It is unclear if any diesel emission reductions would result from requiring LEED Platinum for other future buildings at the City's portion of the OAB. Additionally, the second part of 2.5 needs to be studied regarding "All buildings providing sources of energy." This may not be feasible for every building and we are not familiar with individual buildings providing tidal or wind energy.

2.8 The intent may be a good idea, but the current wording requiring changes to private property owned by others is of concern.

2.10.1 We understand that employers with 50 or more full-time employees are subject to the Bay Area Commuter Benefits Program, BAAQMD Regulation 14, Rule 1. Our concern is that 2.10.1 states that a committee would be formed… The requirement for, and function of, such a committee is unclear.

2.10.2 "Provide on-site services such as cafeterias, banks, dry cleaners and convenience market" is of concern. "Construct transit facilities and improve transit bus service to the area" needs to be further studied. We agree that transportation control measures are required (reference mitigation measure 4.4-5), but the specifics in 2.10 need more attention to make them applicable, usable, and feasible.

2.10.4 "Provide a shuttle to and from the West Oakland BART station and mid-day shuttles to food service" is a good intent but the goal could be accomplished in other ways, hence our concern about wording of this item.

2.11.1 For new stationary sources moving to the OAB, such as Custom Alloy Scrap Services (CASS), the requirement that the City shall fund emission reduction beyond regional and State requirements is of concern.

3.3 While the intent is good we have concern about the strict language; does ARB At-Berth regulation apply to bulk vessels? The only terminal at the West Gateway will be a bulk terminal.

3.4 - 6 We needs to review these Actions regarding the railroads in greater detail.

Regarding item 1.10, perhaps your staff could provide us with the background information they used prior to proposing this Action item. It will be important to know if other Air Districts have imposed this requirement, or any of the components therein, since it covers many items. Can your staff help by providing information on fleets of some of the delivery company to whom this requirement would apply, such as how many of their trucks already meet or exceed the 2010 emission standards and the financial implications of requiring a portion of the fleets be replaced with 2010 trucks two to five years in advance of the CARB Rule? Perhaps they could provide fleet scheduling strategies so that it can be better understood how this requirement would affect the operational aspects of delivery company fleets who would be required to allocate only certain trucks to deliver to the OAB. Implementing a requirement that advances the Truck and Bus Rule by two to five years that would apply to delivery trucks and recycling trucks which will serve approximately five buildings at the OAB would need analysis to understand its feasibility and practicality. It would be helpful for your staff can provide the background information they gathered in order to propose this Action item as a requirement.

We feel that several working meetings between City, Port and BAAQMD staff to work through the intent of, and specific wording of, these actions items would be a useful way to move forward.

We welcome such meetings and will await hearing from you this set of important issues.

cc: Rebecca Kaplan, Councilmember
Barbara Parker, City Attorney
Sabrina Landreth, City Administrator
William Gilchrist, Director Bureau of Planning and Building
Darin Ranelletti, Deputy Director Bureau of Planning and Building
Doug Cole, OAB Project Manager
Richard Sinkoff, Port of Oakland, Director of Environmental Programs and Planning

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/25/2017 12:49:03 AM
To: Brian Beveridge Personal Address / Ex. 6
CC: Alison Kirk [AKirk@baaqmd.gov]; David Vintze [DVintze@baaqmd.gov]; Yura, Elizabeth@ARB [eyura@arb.ca.gov]; Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]; Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]; Margaret Gordon Personal Address / Ex. 6
Subject: Re: Request to review draft AQ plans with the City for development at the former Oakland Army Base

If invited I will attend any appropriate meeting. RG

From: Brian Beveridge Personal Address / Ex. 6
Sent: Monday, April 24, 2017 5:27 PM
To: Grow, Richard
Cc: Alison Kirk; David Vintze; Yura, Elizabeth@ARB; Lee, Anna, Public Health, OOD; Marvin, Cynthia@ARB; Margaret Gordon
Subject: RE: Request to review draft AQ plans with the City for development at the former Oakland Army Base

We have not heard from EarthJustice yet, but I did have an interesting call from Kaplan today. I think we should have a meeting of our ConC group and discuss it.
Brian

On Apr 24, 2017 1:14 PM, "Grow, Richard" <Grow.Richard@epa.gov> wrote:

FYI – I'm told the complaint has been "acknowledged" by at least EPA and probably by DOT, via a letter (likely to Earthjustice) several days ago. Basically this simply acknowledges receipt of the complaint. The next step would be formal "acceptance" (or rejection) of the complaint by either or both agencies, based on "jurisdictional" review, which would confirm an actual investigation. While my guess is this is likely in the next week or so, it doesn't actually change much in the near term, while the federal agency(ies) develop plans for investigation.

Richard

From: Lee, Anna, Public Health, OOD [mailto:Anna.Lee@acgov.org]
Sent: Monday, April 24, 2017 12:47 PM
To: 'Marvin, Cynthia@ARB' <cynthia.marvin@arb.ca.gov>; David Vintze <DVintze@baaqmd.gov>; Brian Beveridge <brian.woeip@gmail.com>
Cc: Alison Kirk <AKirk@baaqmd.gov>; Grow, Richard <Grow.Richard@epa.gov>; Margaret Gordon <margaret.woeip@gmail.com>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>
Subject: RE: Request to review draft AQ plans with the City for development at the former Oakland Army Base

Same here, but want to follow Brian's advice of waiting until the Feds acknowledge the complaint.

Thanks,

Anna

From: Marvin, Cynthia@ARB [mailto:cynthia.marvin@arb.ca.gov]
Sent: Sunday, April 23, 2017 5:30 PM
To: David Vintze <DVintze@baaqmd.gov>; Brian Beveridge Personal Address / Ex. 6
Cc: Alison Kirk <AKirk@baaqmd.gov>; Lee, Anna, Public Health, OOD <Anna.Lee@acgov.org>; Richard Grow <grow.richard@epa.gov>; Margaret Gordon Personal Address / Ex. 6 Yura, Elizabeth@ARB <eyura@arb.ca.gov>
Subject: RE: Request to review draft AQ plans with the City for development at the former Oakland Army Base

ARB is open to participating in these meetings, assuming the first one is substantive and productive. There are some other State players trying to help get the City onboard and we will be approaching on multiple fronts simultaneously. All with the same objectives as we've discussed as group. If you have any questions or concerns, please call (v. email) to discuss. Thanks.

Cyn

From: David Vintze [mailto:DVintze@baaqmd.gov]
Sent: Friday, April 21, 2017 10:56 AM
To: Brian Beveridge
Cc: Alison Kirk; Anna Public Health CAPE Lee; Richard Grow; Margaret Gordon; Marvin, Cynthia@ARB; Yura, Elizabeth@ARB
Subject: Re: Request to review draft AQ plans with the City for development at the former Oakland Army Base

My guess is that they may be going further on the mitigation side than before the most recent events, but probably not as far as we would like. We won't know the answer to that question until we see the plan either in a pre-public release of the operational plan or when it is publicly released. I think my management will want me to attend at least one meeting with the City per their request. I will let everyone know if that is the case. Dave

Dave Vintze

Air Quality Planning Manager

Bay Area Air Quality Management District

375 Beale Street. Suite 600

San Francisco, CA. 94105

Desk. 415-749-5179

Cell. Personal Address / Ex. 6

On Apr 20, 2017, at 11:21 PM, "Brian Beveridg Personal Address / Ex. 6 wrote:

Hi Dave

Thanks for the notice. My first concern is the continued reference to the SCA/MMRPs. If they aren't going beyond those docs, they are just rearranging the life boats. Do you think they are taking the recommendations from BAAQMD and CARB seriously? We are holding off with any formal meetings until we get acknowledgement from the feds.

Regards, Brian

On Apr 20, 2017 12:19 PM, "David Vintze" <DVintze@baaqmd.gov> wrote:

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Margaret/Brian, and others please weigh in on your preference. Dave

Dave Vintze

Air Quality Planning Manager

Bay Area Air Quality Management District

375 Beale Street. Suite 600

San Francisco, CA. 94105

Desk. 415-749-5179

Cel Personal Address / Ex. 6

Begin forwarded message:

From: "McGowan, Patricia" <PMcGowan@oaklandnet.com>
Date: April 19, 2017 at 2:51:48 PM CDT
To: David Vintze <dvintze@baaqmd.gov>, "Yura, Elizabeth@ARB" <eyura@arb.ca.gov>
Cc: "Anna Lee (anna.lee@acgov.org)" <anna.lee@acgov.org>, "Richard Grow (grow.richard@epa.gov)" <grow.richard@epa.gov>, "Cappio, Claudia" <CCappio@oaklandnet.com>, "Ranelletti, Darin" <DRanelletti@oaklandnet.com>, "Monetta, John" <JMonetta@oaklandnet.com>, "Cole, Doug" <DCole@oaklandnet.com>, "Wald, Mark" <MWald@oaklandcityattorney.org>, "Damian Breen (dbreen@baaqmd.gov)" <dbreen@baaqmd.gov>
Subject: Request to review draft AQ plans with the City for development at the former Oakland Army Base

Hello Dave and Elizabeth,

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Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com |
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Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/24/2017 8:14:42 PM
To: Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]; 'Marvin, Cynthia@ARB' [cynthia.marvin@arb.ca.gov]; David Vintze [DVintze@baaqmd.gov]; Brian Beveridg Personal Address / Ex. 6
CC: Alison Kirk [AKirk@baaqmd.gov]; Margaret Gordon Personal Address / Ex. 6 Yura, Elizabeth@ARB [eyura@arb.ca.gov]
Subject: RE: Request to review draft AQ plans with the City for development at the former Oakland Army Base

FYI – I'm told the complaint has been "acknowledged" by at least EPA and probably by DOT, via a letter (likely to Earthjustice) several days ago. Basically this simply acknowledges receipt of the complaint. The next step would be formal "acceptance" (or rejection) of the complaint by either or both agencies, based on "jurisdictional" review, which would confirm an actual investigation. While my guess is this is likely in the next week or so, it doesn't actually change much in the near term, while the federal agency(ies) develop plans for investigation.

Richard

From: Lee, Anna, Public Health, OOD [mailto:Anna.Lee@acgov.org]
Sent: Monday, April 24, 2017 12:47 PM
To: 'Marvin, Cynthia@ARB' <cynthia.marvin@arb.ca.gov>; David Vintze <DVintze@baaqmd.gov>; Brian Beveridge Personal Address / Ex. 6
Cc: Alison Kirk <AKirk@baaqmd.gov>; Grow, Richard <Grow.Richard@epa.gov>; Margaret Gordon Personal Address / Ex. 6 ura, Elizabeth@ARB <eyura@arb.ca.gov>
Subject: RE: Request to review draft AQ plans with the City for development at the former Oakland Army Base

Same here, but want to follow Brian's advice of waiting until the Feds acknowledge the complaint.

Thanks,
Anna

From: Marvin, Cynthia@ARB [mailto:cynthia.marvin@arb.ca.gov]
Sent: Sunday, April 23, 2017 5:30 PM
To: David Vintze <DVintze@baaqmd.gov>; Brian Beveridg Personal Address / Ex. 6
Cc: Alison Kirk <AKirk@baaqmd.gov>; Lee, Anna, Public Health, OOD <Anna.Lee@acgov.org>; Richard Grow <grow.richard@epa.gov>; Margaret Gordo Personal Address / Ex. 6 Yura, Elizabeth@ARB <eyura@arb.ca.gov>
Subject: RE: Request to review draft AQ plans with the City for development at the former Oakland Army Base

ARB is open to participating in these meetings, assuming the first one is substantive and productive. There are some other State players trying to help get the City onboard and we will be approaching on multiple fronts simultaneously. All with the same objectives as we've discussed as group. If you have any questions or concerns, please call (v. email) to discuss. Thanks.

Cyn

From: David Vintze [mailto:DVintze@baaqmd.gov]
Sent: Friday, April 21, 2017 10:56 AM
To: Brian Beveridge
Cc: Alison Kirk; Anna Public Health CAPE Lee; Richard Grow; Margaret Gordon; Marvin, Cynthia@ARB; Yura, Elizabeth@ARB
Subject: Re: Request to review draft AQ plans with the City for development at the former Oakland Army Base

My guess is that they may be going further on the mitigation side than before the most recent events, but probably not as far as we would like. We won't know the answer to that question until we see the plan either in a pre-public release of the operational plan or when it is publicly released. I think my management will want me to attend at least one meeting with the City per their request. I will let everyone know if that is the case.
Dave

Dave Vintze
Air Quality Planning Manager
Bay Area Air Quality Management District
375 Beale Street. Suite 600
San Francisco, CA. 94105
Desk. 415-749-5179
Cell Personal Address / Ex. 6

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> San Francisco, CA. 94105
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>
> Begin forwarded message:
>
> > **From:** "McGowan, Patricia" <PMcGowan@oaklandnet.com>
> > **Date:** April 19, 2017 at 2:51:48 PM CDT
> > **To:** David Vintze <dvintze@baaqmd.gov>, "Yura, Elizabeth@ARB" <eyura@arb.ca.gov>
> > **Cc:** "Anna Lee (anna.lee@acgov.org)" <anna.lee@acgov.org>, "Richard Grow

(grow.richard@epa.gov)" <grow.richard@epa.gov>, "Cappio, Claudia" <CCappio@oaklandnet.com>, "Ranelletti, Darin" <DRanelletti@oaklandnet.com>, "Monetta, John" <JMonetta@oaklandnet.com>, "Cole, Doug" <DCole@oaklandnet.com>, "Wald, Mark" <MWald@oaklandcityattorney.org>, "Damian Breen (dbreen@baaqmd.gov)" <dbreen@baaqmd.gov>
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Website: www.oaklandnet.com/planning

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/20/2017 9:55:44 PM
To: David Vintze [DVintze@baaqmd.gov]
Subject: RE: Request to review draft AQ plans with the City for development at the former Oakland Army Base

Dave – however you all decide to respond to this, I would be interested in sitting in if there is anything along the lines of a multi-agency discussion. We would also be glad to field more senior staff if that had some tactical appeal. My own guess is the table will need to be reset, in effect setting up a negotiation of sorts, but that's not a sure thing and if there is progress to be made in the meantime, especially if it further establishes a record, then great.

Richard

From: David Vintze [mailto:DVintze@baaqmd.gov]
Sent: Thursday, April 20, 2017 11:19 AM
To: Margaret Gordon Personal Address / Ex. 6
Cc: Cynthia@ARB Marvin <cynthia.marvin@arb.ca.gov>; Elizabeth Yura <eyura@arb.ca.gov>; Grow, Richard <Grow.Richard@epa.gov>; Anna Public Health CAPE Lee <Anna.Lee@acgov.org>; Alison Kirk <AKirk@baaqmd.gov>
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Desk. 415-749-5179
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Subject: Title VI and: Request to review draft AQ plans with the City for development at the former Oakland Army Base

FYI all re Title VI status.

EPA, DOT and DOJ have held discussions on this and the first step is a "jurisdictional" review in which each agency determines whether to formally accept the complaint, after which (assuming it is accepted) the investigation phase commences. My best estimate (often erroneous) is that this will occur within the next two weeks. The complaint requested DOT take the lead, and most of you met their chief investigator when he was here in December. DOJ's role is to ensure coordination at the federal level. I anticipate our office (EPA/R9) will have a significant role on the mitigation issue, whether or not EPA formally accepts the complaint.

You all have seen the complaint, which concludes with this statement:

"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."

I assume all will consider the relevance of this position in determining how to proceed.

Richard

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To: Margaret Gordon Personal Address / Ex. 6
Cc: Cynthia@ARB Marvin <cynthia.marvin@arb.ca.gov>; Elizabeth Yura <eyura@arb.ca.gov>; Grow, Richard <Grow.Richard@epa.gov>; Anna Public Health CAPE Lee <Anna.Lee@acgov.org>; Alison Kirk <AKirk@baaqmd.gov>
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Sent: 4/20/2017 4:19:27 PM
To: Adams, Elizabeth [Adams.Elizabeth@epa.gov]
CC: Lakin, Matt [Lakin.Matthew@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: RE: West Oakland Title VI complaint update

Deliberative Process / Ex. 5

Richard

From: Adams, Elizabeth
Sent: Thursday, April 20, 2017 8:25 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Lakin, Matt <Lakin.Matthew@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>
Subject: Re: West Oakland Title VI complaint update

Do you think we should go to these upcoming meetings between the city and air agencies? Have we gone in the past?
Elizabeth Adams
Acting Director, Air Division
US EPA Region 9
415-972-3183
Cell: 415-297-4308

On Apr 20, 2017, at 7:54 AM, Grow, Richard <Grow.Richard@epa.gov> wrote:

All

Deliberative Process / Ex. 5

Richard

From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, April 19, 2017 12:52 PM
To: David Vintze <dvintze@baaqmd.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>
Cc: Anna Lee (anna.lee@acgov.org) <anna.lee@acgov.org>; Grow, Richard <Grow.Richard@epa.gov>; Cappio, Claudia <CCappio@oaklandnet.com>; Ranelletti, Darin <DRanelletti@oaklandnet.com>; Monetta, John <JMonetta@oaklandnet.com>; Cole, Doug <DCole@oaklandnet.com>; Wald, Mark <MWald@oaklandcityattorney.org>; dbreen@baaqmd.gov
Subject: Request to review draft AQ plans with the City for development at the former Oakland Army Base

Hello Dave and Elizabeth,

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Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/20/2017 2:54:15 PM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]; Jordan, Deborah [Jordan.Deborah@epa.gov]
CC: Miller, Amy [Miller.Amy@epa.gov]; Garnett, Desean [Garnett.Desean@epa.gov]; Adams, Elizabeth [Adams.Elizabeth@epa.gov]; Matthew Lakin [Lakin.Matthew@epa.gov]; Reyes, Deldi [Reyes.Deldi@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Machol, Ben [Machol.Ben@epa.gov]
Subject: West Oakland Title VI complaint update

All

Deliberative Process / Ex. 5

Richard

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We look forward to working with you on this.

Best Regards,
Pat McGowan

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/19/2017 9:43:40 PM
To: David Vintze [DVintze@baaqmd.gov]; Lee, Anna, Public Health, CAPE (Anna.Lee@acgov.org) [anna.lee@acgov.org]; Marvin, Cynthia@ARB (cynthia.marvin@arb.ca.gov) [cynthia.marvin@arb.ca.gov]; Elizabeth Yura (eyura@arb.ca.gov) [eyura@arb.ca.gov]; Alison Kirk [AKirk@baaqmd.gov]
Subject: Re: Request to review draft AQ plans with the City for development at the former Oakland Army Base

I would suggest at a minimum you have the discussion with Margaret and Brian before committing.

From: David Vintze <DVintze@baaqmd.gov>
Sent: Wednesday, April 19, 2017 2:20 PM
To: Lee, Anna, Public Health, CAPE (Anna.Lee@acgov.org); Marvin, Cynthia@ARB (cynthia.marvin@arb.ca.gov); Elizabeth Yura (eyura@arb.ca.gov); Grow, Richard; Alison Kirk
Subject: FW: Request to review draft AQ plans with the City for development at the former Oakland Army Base

This request is in response to my request that the city meet with agency staff outside the developer to discuss the mitigation program for future development at OAB. I think we should meet with the City staff (one more time) to try and hammer out an effective mitigation program, if I can be so naive. At least this will be staff on staff so we can ask very frank questions to the City about meeting their mitigation obligation. Unfortunately I cannot attend the first two meetings but Alison will attend with our concerns and recommendations. What do you all think – should we engage in this process without Margaret and Brian? Dave

---

From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Wednesday, April 19, 2017 12:52 PM
To: David Vintze <DVintze@baaqmd.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>
Cc: Anna Lee (anna.lee@acgov.org) <anna.lee@acgov.org>; Richard Grow (grow.richard@epa.gov) <grow.richard@epa.gov>; Cappio, Claudia <CCappio@oaklandnet.com>; Ranelletti, Darin <DRanelletti@oaklandnet.com>; Monetta, John <JMonetta@oaklandnet.com>; Cole, Doug <DCole@oaklandnet.com>; Wald, Mark <MWald@oaklandcityattorney.org>; Damian Breen <dbreen@baaqmd.gov>
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Best Regards,
Pat McGowan

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Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/19/2017 9:24:54 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: Re: Oakland TA

Understood, hope you have time to talk with me/us while you're here.

From: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>
Sent: Wednesday, April 19, 2017 2:22 PM
To: Grow, Richard
Subject: RE: Oakland TA

We're going to keep it in-house, between DOT and its recipients, but when it comes to the investigation, we will certainly be in touch.

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst
Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
W78-312
(202) 366-1979

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Wednesday, April 19, 2017 5:21 PM
To: Fitzpatrick, Ryan (OST)
Subject: Re: Oakland TA

Thanks. If there's any chance we (meaning me) could observe or particpate I'd be interested.

From: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>
Sent: Wednesday, April 19, 2017 2:19 PM
To: Grow, Richard
Subject: Oakland TA

Hey Richard:

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So just to be clear, this doesn't have anything to do with the complaint or any investigation, and we won't be conducting any investigation-related activities while we're out there. Its just going to be Pattie and I. But I wanted to give you a heads up, since we've been communicating so much on these issues.

Give me a call if you have any questions.

Ryan

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst
Departmental Office of Civil Rights
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W78-312
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Sent: 4/19/2017 9:21:10 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: Re: Oakland TA

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Sent: 4/19/2017 9:12:11 PM
To: ryan.fitzpatrick@dot.gov
Subject: Note from City of Oakland: Request to review draft AQ plans with the City for development at the former Oakland Army Base

Deliberative Process / Ex. 5

Richard

From: McGowan, Patricia <PMcGowan@oaklandnet.com>
Sent: Wednesday, April 19, 2017 12:51 PM
To: David Vintze; Yura, Elizabeth@ARB
Cc: Anna Lee (anna.lee@acgov.org); Grow, Richard; Cappio, Claudia; Ranelletti, Darin; Monetta, John; Cole, Doug; Wald, Mark; dbreen@baaqmd.gov
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Sent: 4/19/2017 9:04:04 PM
To: Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]; Yura, Elizabeth@ARB [eyura@arb.ca.gov]; David Vintze [DVintze@baaqmd.gov]
Subject: City meeting request

Cynthia, Elizabeth and Dave

I see the City's request. The T6 complaint is in the process of being formally accepted ("jurisdiction review") and EPA and DOT are working closely on this but may take a couple more weeks to formally accept. Frankly the "working to resolve" statement in their note doesn't correspond to anything I am seeing. Let me know if we should have a conference call, I'm good tomorrow (Thursday), Friday tied up meeting with 100 or so advocates at our office. Next weel also good.

Richard

By electronic and certified U.S .mail

April 4, 2017

Attn: Ryan Fitzpatrick
Lead Civil Rights Analyst, Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave., S.E.
Washington, D.C. 20590
ryan.fitzpatrick@dot.gov

Attn: Velveta Golightly-Howell
Director, Office of Civil Rights
United States Environmental Protection Agency
U.S. EPA Office of Civil Rights (Mail Code 1201A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
Title_VI_Complaints@epa.gov

Attn: Daria Neil
Deputy Chief, Federal Coordination and Compliance Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Daria.neal@usdoj.gov

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

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[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).

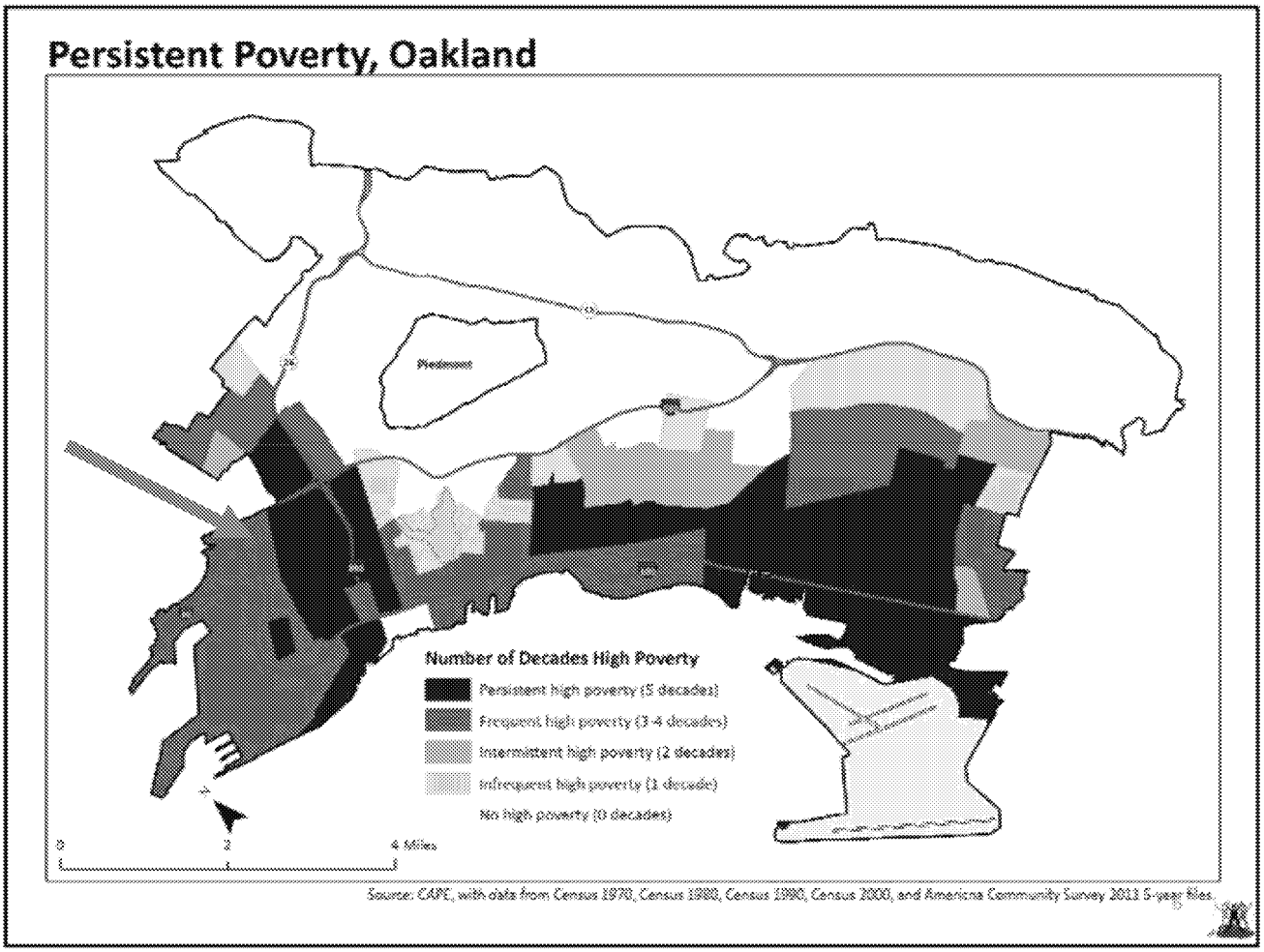

Figure 1 Map of areas of persistent poverty in Oakland (with arrow pointing to West Oakland).[24]

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.

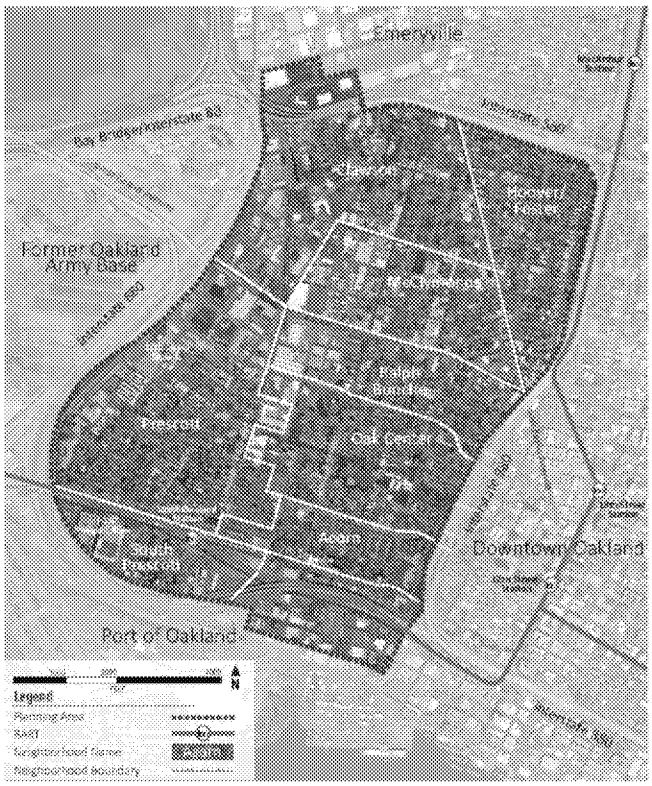

Figure 2 Map of the community of West Oakland.[27]

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.

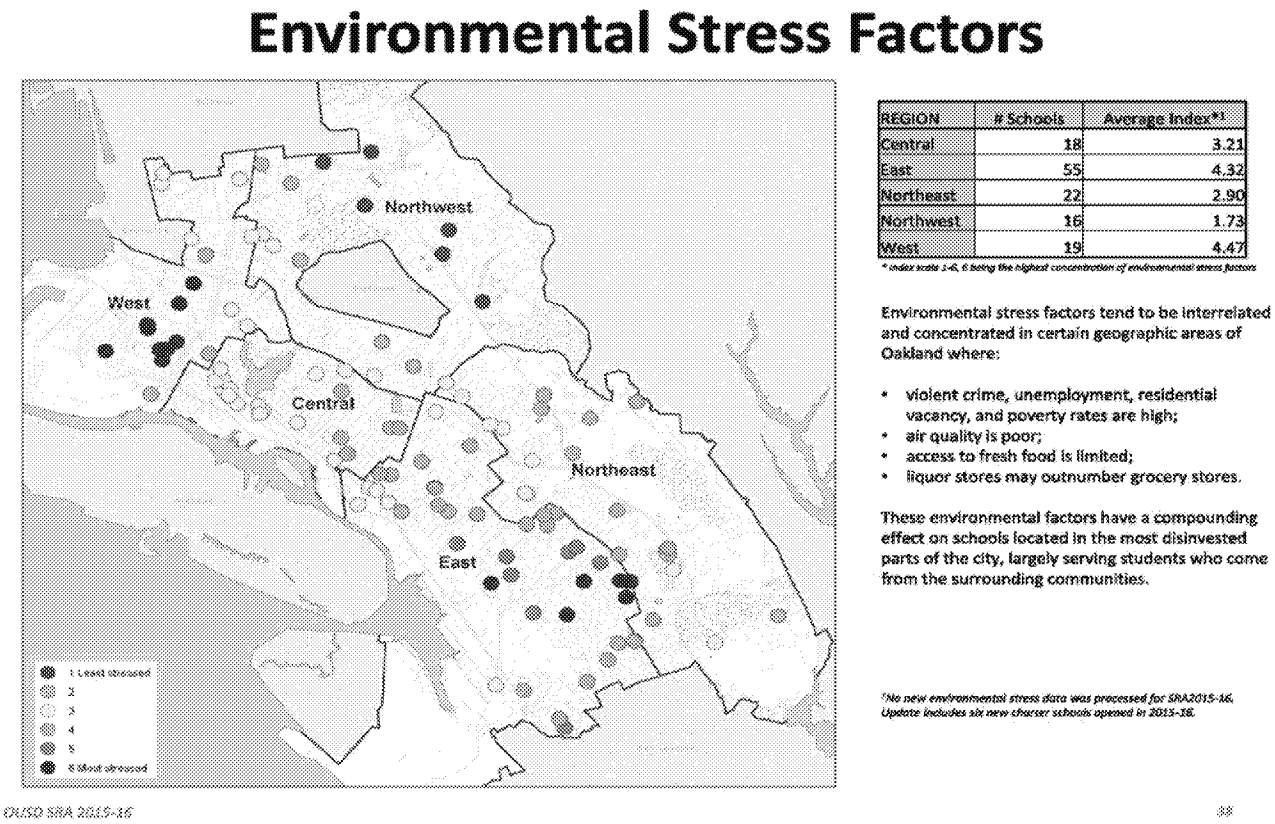

Figure 3 Environmental stress factors by school.

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).

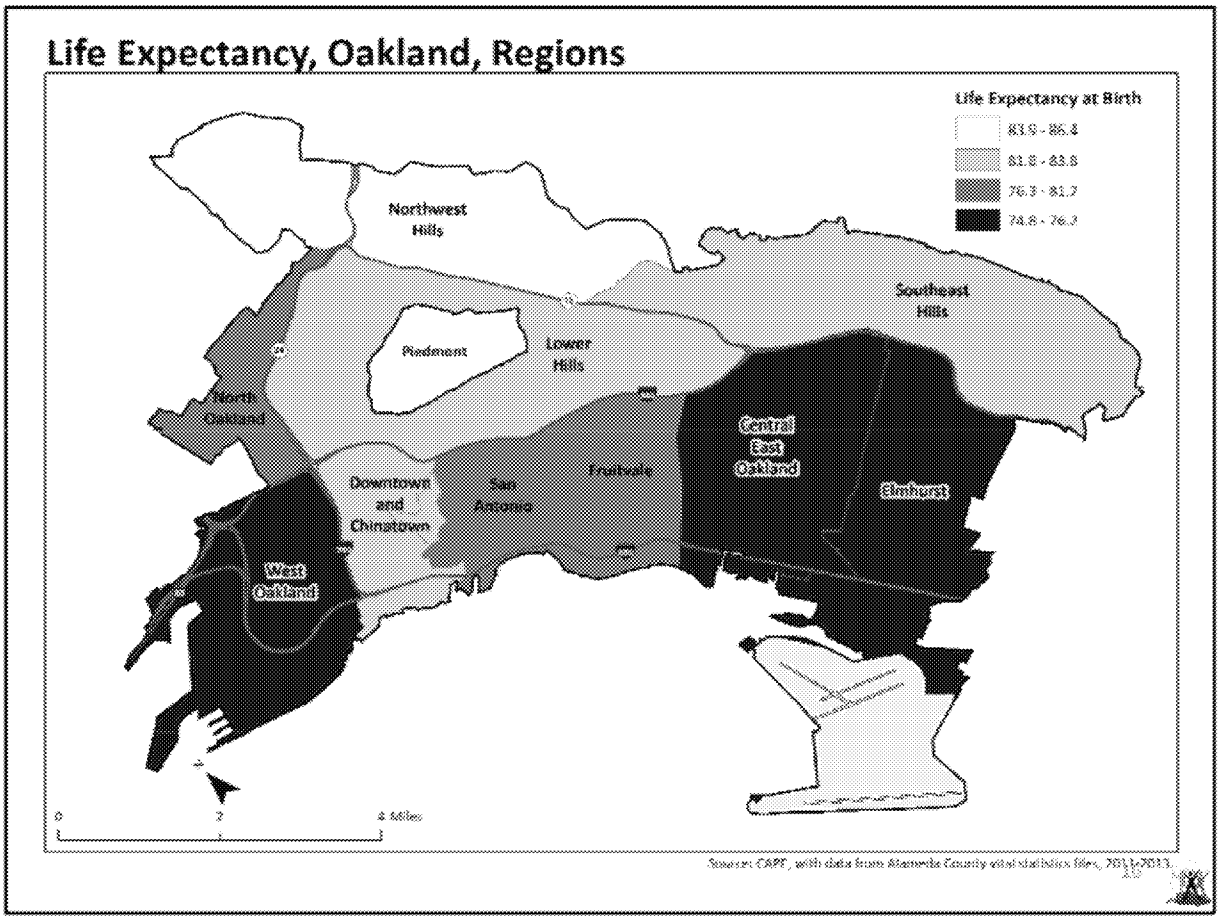

Figure 4 Life expectancies in Oakland's communities.[39]

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.

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[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]

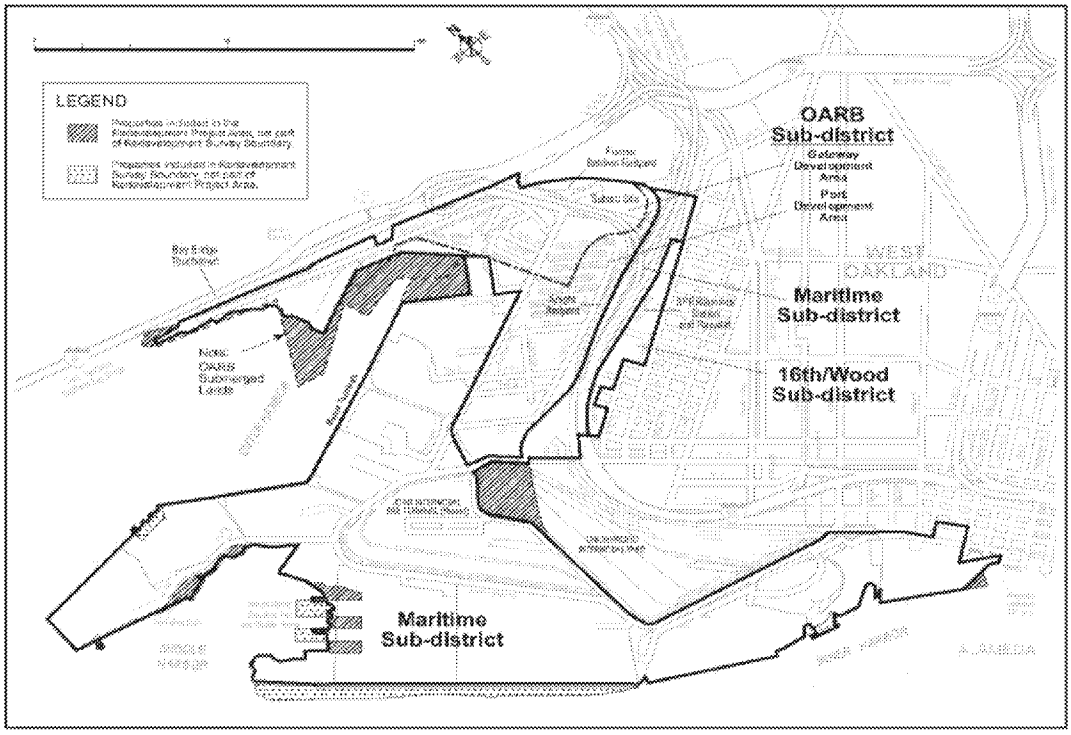

Figure 5 Oakland Army Base Redevelopment Area Sub-Districts, April 2002[52]

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

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[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]

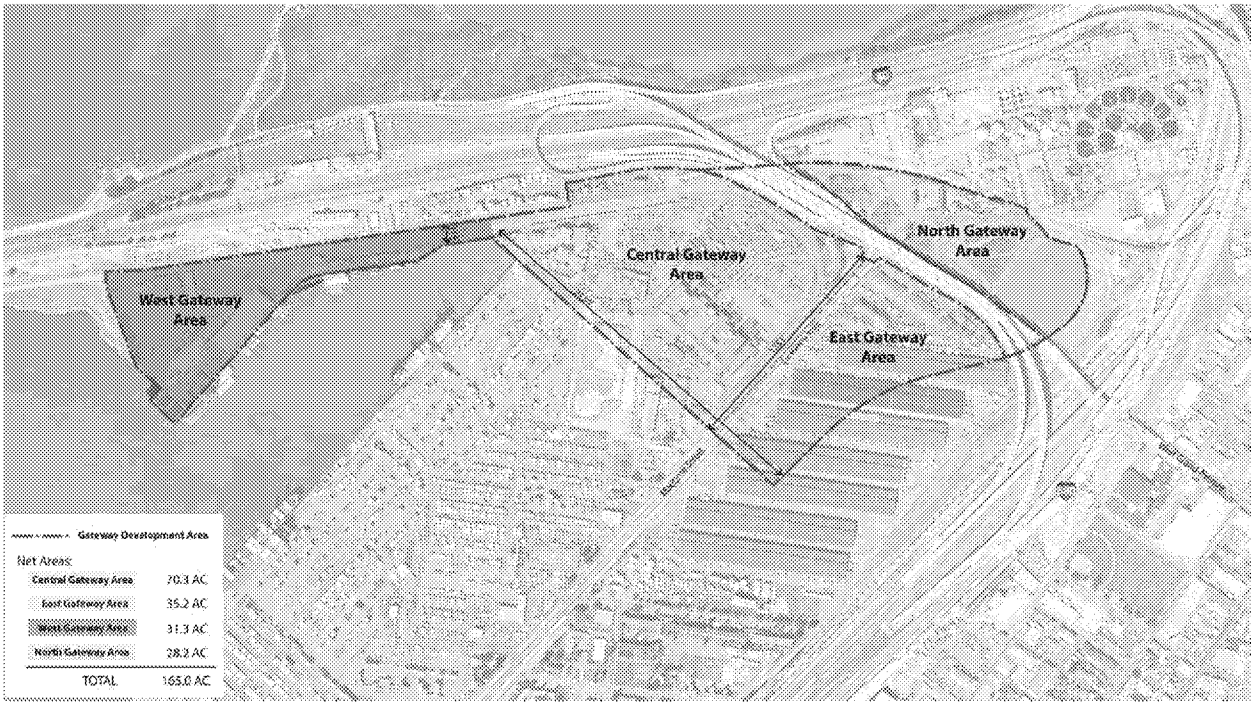

Figure 6 Gateway Development Area.[62]

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[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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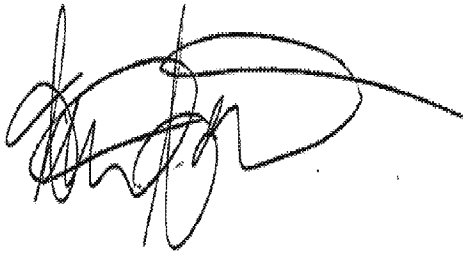
Complainant further requests that the City and Port be brought into compliance by: (a) requiring the City to withdraw its approvals of the Gateway construction management plans unless and until the City conducts a full review of the construction and long-term operation of all of the Gateway areas, and 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,

Yana Garcia
Paul Cort
Attorneys for West Oakland Environmental Indicators Project



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PORT OF OAKLAND

J. Christopher Lytle
Executive Director

August 16, 2017

VIA EMAIL AND UPS OVERNIGHT MAIL

Mr. Charles E. James, Sr.
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Mail code 1201A
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Re: Port of Oakland Response to Title VI Complaint, DOT # 2017-0093, EPA File No. 14R-17-R9

Dear Mr. James and Ms. Dorka:

I am writing on behalf of the Board of Port Commissioners ("Board") and the Port of Oakland (collectively referred to as the "Port") to respond to the U.S. Department of Transportation ("DOT") and U.S. Environmental Protection Agency's ("EPA") July 18, 2017, Notification of Acceptance for Investigation ("Acceptance Letter") issued to the Port and the City of Oakland ("City"), and the April 4, 2017, West Oakland Environmental Indicators Project ("WOEIP") Complaint Under Title VI of the Civil Rights Act of 1964 against the Port and the City ("Complaint").[1] This letter is written solely on behalf of the Port and not the City. I understand that the City is providing a separate letter to the DOT and EPA in response to the Acceptance Letter.

As further described in Section I below, while the Port is a department of the City, it is a separate legal entity from the City. The Port holds all Port property in trust for the people of the

[1] The information provided in this letter is submitted in the spirit of cooperation and for the sole purpose of assisting with the DOT and EPA investigation in this matter. This letter is not intended to be used, nor does the Port consent to its use, in any other administrative, trial, or other proceeding. While we believe this letter to be accurate in all respects, as further information becomes available, the Port may modify, correct, or supplement the information contained in this letter, but undertakes no obligation to do so.

State of California and must use and maintain its trust assets consistent with its Tidelands Trust obligations to promote commerce and navigation.

EXECUTIVE SUMMARY

In the Acceptance Letter[2], DOT and EPA state that their investigation will focus on:

(1) whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the OAB subjects the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 ("Title VI"); and

(2) whether the City's and Port's methods, including their public participation process, for approving and authorizing new development and expanded activities at the Port of Oakland and the OAB subject the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI.[3]

With respect to the first focus of the EPA-DOT investigation, the Port was not involved in the City's approval of a construction management plan or permission for groundbreaking on the Northeast Gateway development project and has no role in that project.[4] Accordingly, the Port will focus this letter and the legal analysis provided in Section III below, on the second prong of DOT's and EPA's investigative focus: the public participation process and other methods for approving and authorizing new development and expanded activities at the Port.

As we will show in this letter, the Port strives to operate both as a significant contributor to the local, regional, and national economies and as a steward of the public interest in management of Port assets. The health and welfare of residents who are the Port's neighbors is an integral concern of the Port's day-to-day operations. The Port has built into its decision-making process and operations various channels and manners of soliciting input from stakeholders, the public, and local communities, including when planning new development or activities. Indeed, there are multiple avenues for public participation and engagement in the Port's decision-making process,

[2] Although EPA and DOT have already determined that the WOEIP Complaint meets the agencies' jurisdictional requirements, the Port notes that the Complaint was submitted to DOT and EPA more than 180 days after the City's October 4, 2016, approval of the Northeast Gateway construction management plan. Furthermore, although specific dates of any Port action are not alleged in the Complaint, the Port's Oakland Army Base ("OAB") development project began years ago, and certainly more than 180 days prior to filing of the WOEIP Complaint.

[3] Acceptance Letter, p. 2.

[4] *See* October 4, 2016, Northeast Gateway development project approval from the City, attached as Exhibit A.

including, but not limited to: (1) the Board's open public meetings held in accordance with the Brown Act and the Port of Oakland Sunshine Ordinance No. 4265 ("Sunshine Ordinance")[5]; (2) the Port's Social Responsibility Department's ("SRD") engagement with community members at various West Oakland venues to solicit feedback on a variety of Port programs; (3) specific community outreach associated with the OAB development; and (4) meaningful public engagement and environmental mitigation pursuant to the California Environmental Quality Act ("CEQA").

Through its process of robust public engagement, the Port has committed to measures and procedures to address Port-related air pollutant emissions that have broken new ground and often have exceeded State and Federal regulatory requirement. These efforts include, but are not limited to: (1) developing a precedent setting Air Quality Mitigation Program associated with the Vision 2000 Maritime Development Program ("V2K Program"); (2) voluntarily undertaking emissions inventories; (3) cooperating with a State-led health risk assessment for West Oakland; (4) developing and implementing a Maritime Air Quality Improvement Plan ("MAQIP"); (5) developing and implementing a Comprehensive Truck Management Program ("CTMP") for the Port; (6) working with the City to develop a City-Port Truck Management Plan for the entire OAB; (7) supporting a cutting-edge battery-powered big rig truck pilot test at the Port; and (8) applying for and securing grants to aid in the design and construction of the necessary infrastructure to provide "shore power" so that vessels can plug in while at berth. This effort includes commissioning a high-voltage cable-on-reel system that will connect more vessels to the Port's landside shore power grid.

As we demonstrate below, the WOEIP Complaint mischaracterizes the Port's public engagement and air emissions reduction achievements. At the crux of WOEIP's Complaint, WOEIP alleges that the Port has "continuously refused, to engage the community in a meaningful process by which to receive and incorporate their input."[6] WOEIP's allegation simply is not true. In fact, community groups in West Oakland, including WOEIP, have publicly acknowledged the collaborative approach taken by the Port to reduce air pollutant emissions while expanding Port operations.

For example, in 2011, the Port announced that it was allocating $2.7 million to the Port of Oakland's Shore Power Program and to an Energy Efficiency and Renewable Energy Study. At the time of this announcement, Margaret Gordon, co-chair of the WOEIP and at that time a member of the Board of Port Commissioners, stated that "[t]his action is delivering real emission reduction results that benefit the community and paves the way for an innovative approach to energy and the

[5] Port Ordinance No. 4265: Ordinance Approval and Adopting Rules and Requirements for Noticing, Agendizing and Posting of Board of Port Commissioners Meetings, Assuring Public Access and Participation and Providing Cure and Correction of Non-Compliance with Open Meeting Laws, adopted Dec. 12, 2013, attached as Exhibit B

[6] Complaint, p. 28.

environment going forward...I am pleased that the Port and West Oakland community worked collaboratively to get us here and look forward to more collaborative partnerships as these projects are implemented."[7]

Ray Kidd, co-chair of the West Oakland Neighbors, had similar comments, stating that "West Oakland residents and many Port stakeholders have benefited from the emission reductions that have been achieved through the Port-community dialogue targeting sources such as trucks, buses, tugboats, cargo handling equipment, and now ships. We are pleased the Port has also embraced the community's suggestion of directing funding to an innovative and exciting energy research initiative in partnership with the community."[8]

As will be demonstrated in this letter, the Port's commitment to an open and public decision-making process, as well as its commitment to reducing Port-related emissions, goes back decades and has continued to the present day. The facts show that this public engagement and collaborative decision making has yielded huge reductions in air pollutants from Port-related sources.

The facts here simply do not support a Title VI disparate impact claim. The Port's methods for approving and authorizing new development and expanded activities provide for robust public engagement and have resulted in reduced air emissions. Even if there were a valid argument that the Port's public engagement methods were insufficient (which they are not), there is no causal link between those methods and the alleged disparate air quality in West Oakland, particularly because the Port is not the primary cause of air pollution in West Oakland.

In Section I below, we briefly describe the Port of Oakland and its critical role as part of the local, State, and national economy. In Section II, we provide some further factual background, including the Port's commitment to public engagement and emissions reductions, a description of air quality in West Oakland, and a description of the Port's strong civil rights and anti-discrimination policies. In Section III, we discuss the applicable legal standards and our conclusion that the Port has not discriminated against communities of color in violation of Title VI, and confirm the Port's commitment to environmental stewardship and its willingness to cooperate with this investigation. The Port believes DOT and EPA should close this investigation without any finding of discrimination against the Port. Nevertheless, the Port remains open to discussing the possibility of an informal resolution of this investigation.

[7] Press Release, Port Allocates $2.7 Million for Shore Power & Innovative Energy Study, April 4, 2011 ("Shore Power Press Release")(available at: http://www.portofoakland.com/press-releases/press-release-223/).
[8] Shore Power Press Release.

I. THE PORT OF OAKLAND

A. Port Established in 1927 Pursuant to an Amendment to The Charter of the City of Oakland: Duty to Promote Commerce, Shipping, and Navigation

Since the Port was founded in 1927, the Oakland maritime port ("Seaport") has served as a principal ocean gateway of the nation for international containerized cargo shipments. It is currently the 3rd busiest Seaport in California and the 7th busiest Seaport in the U.S., both as measured by cargo volume. Unlike some "operating port authorities" (*i.e.,* ports with employees who directly operate cargo handling facilities), the Port is mainly a "landlord" Seaport; that is, the Port leases land and facilities to various private companies (such as marine terminal operators and logistics businesses) who handle maritime cargo at various points in the supply chain. The Port does not engage in day-to-day operations of shipping, cargo handling, or transportation.

The Port is an independent department of the City governed by the Board, which is vested with exclusive control and management of Port property, Port facilities, and revenues by the Charter of the City of Oakland ("Charter").[9] The Port was established pursuant to an amendment to the Charter "[t]o promote and more definitely insure the comprehensive and adequate development of the Port of Oakland through continuity of control, management and operation."[10] The Board has the complete and exclusive power, and duty for and on behalf of the City to make provisions for the needs of commerce, shipping, and navigation of the Port and to promote, develop, construct, repair, maintain and operate all water front properties including piers, wharves, docks, and warehouses. Said Board power and duty includes the obligation to establish, equip and operate all other facilities or aids incident to the development, protection, and operation of the Port, as may be deemed proper and desirable in its judgment; the Board may modify its plans from time to time as the requirements of commerce, shipping, and navigation may demand.[11]

B. Port Holds All Port Property in Trust for the People of the State of California: Obligation to Comply with Tidelands Trust

The State of California holds all right, title, and interest in tide and submerged lands and beds of navigable waterways within its borders, and all such lands are held in trust for the benefit of the people of California. Beginning in 1919, the State granted the City of Oakland the right to the tidelands and submerged lands at the Port of Oakland. In that grant, the State limited the use of the tidelands:

> Only for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips,

[9] Article VI, Section 601 (Adopted by the people of the City of Oakland, Nov. 5, 1968).
[10] Article VII, Section 700 of the Charter.
[11] Article VII, Section 706(2) of the Charter.

quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation.[12]

Under the State's grant and the Tidelands Public Trust Doctrine, uses on the Port's public trust lands must serve statewide, as opposed to purely local, public purposes; those purposes are limited to water dependent or related uses, including commerce, fisheries, navigation, ecological preservation, and recreation. Thus, the Port is constrained in how it can use the land, and has the affirmative duty to use and develop the land consistent with these tideland trust consistent uses. Moreover, the Port is strictly constrained by the Tidelands Public Trust to use all of its assets consistent with trust purposes. Finally, the Port must not only comply with environmental laws and regulations, but also must comply with a myriad of other Federal and State laws and regulations, including the Shipping Act, which imposes restrictions and requirements on how the Port interacts with its tenants and customers.

C. Port Divided into Three Major Geographical Areas

The Port's property is divided into three major areas which are managed by three revenue divisions: the Oakland Seaport or Maritime area managed by the Maritime Department; the Oakland International Airport ("Airport") managed by the Aviation Department; and commercial properties managed by the Commercial Real Estate Department. All of the allegations in the Complaint relate to the Port's Maritime operations, which will be the focus of this response letter.

D. Port's Fundamental Role in the Economy

The Oakland Seaport consists of 1,300 acres of maritime-related facilities serving a local market of over 14.5 million consumers, 34 million within a seven-hour drive, and 50% of the US population by rail.

The Port is a fundamental part of the Bay Area and national economy. In Fiscal Year 2016, a total of approximately 2.3 million 20-foot equivalent units ("TEUs") of containerized cargo moved through the marine terminals located at the Port.[13] In 2010, the Port's Seaport operations were responsible for nearly 11,000 direct jobs, and another 17,000 induced or indirect jobs. In 2010, the Port paid more than $538 million in employee wages and salaries and generated approximately $233 million in State and local taxes.[14] About 80 percent of the containerized cargo exported through the Port is estimated to originate in the Bay Area and Northern California, and 85 percent of the containerized imports are consumed in the region.[15]

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[12] Chapter 516, Statutes of 1919.
[13] Port of Oakland Comprehensive Annual Financial Report for the Years Ended June 30, 2016 and 2015, p. ii.
[14] The Economic Import of the Port of Oakland – 2010, Martin Associates, April 18, 2011 ("Economic Impact Report"), pp 12-14, attached as Exhibit C.
[15] Economic Impact Report, p. 33.

II. FACTUAL BACKGROUND

A. The Port's Demonstrated Commitment to Public Engagement

The Port embraces environmental stewardship as one of its core organizational principles. As stated in the Port's Board-approved Strategic Plan, one of the "Prioritized Goals" for the Port is to "[s]ustain healthy communities through leading edge environmental stewardship." The objectives of this goal include, "[e]nsure effective communication and education regarding environmental and safety standards with business partners and the community."[16] At the Port, the "environment" includes both the natural environment and the human built environment and communities. In line with these goals, and in concert with community stakeholders, the Port has developed and implemented numerous programs to reduce the impacts of Seaport operations and development on the environment.

1. Board Adopted Sunshine Ordinance To Require More Notice And Promote Full Public Participation in the Port's Decision-Making Process Beyond State Law Requirements

The Port is a public entity with a strong commitment to an open and public decision-making process. Any approval or authorization made by the Board goes through a thorough public notice and review process. All major projects are presented to the Board of Port Commissioners in a public meeting and are included in advance on the public agenda, pursuant to California's open meetings law. In addition to following the public-notice and participation requirements of State law - the Brown Act - the Port of Oakland follows its own enhanced[17] public notice and participation rules in its Sunshine Ordinance.

The Board adopted the Sunshine Ordinance "to assure public access to and information of Board meetings and transparent public notice, information and input are essential for the proper administration and discharge of the Board's duties and powers and for the management and government of the Port and facilities."[18] Section 1.B. of the Sunshine Ordinance provides: "Requiring the noticing and posting of Board meetings beyond the requirements of the Brown Act provides for more time for the public and Board members to obtain and study the items on the Board's agenda, enhances understanding of the issues and encourages public input to and participation in the Board's decision-making."[19] In addition to the notice requirements, the

[16] Port of Oakland Strategic Plan, Fiscal Years 2011-2015 ("Strategic Plan"), p. 21.
[17] For example, under the Brown Act, there is a general requirement to post agendas 72-hours in advance of regular meetings, whereas under the Port's Sunshine Ordinance, agendas must be posted 10 days in advance of regular meetings. Sunshine Ordinance No. 4265, § V.A.1.
[18] Sunshine Ordinance No. 4265, p. 1.
[19] Sunshine Ordinance No. 4265, § 1.B.

Sunshine Ordinance provides for public comment in writing or at Board meetings on any item on the agenda and on any other item of interest that a member of the public would like to raise.[20]

The Board's open meeting process provides the public notice of, and the opportunity to comment on, all major Port activities, including development projects like those at the OAB. All of the emissions reduction programs and development projects discussed below went through the Board's open meeting and public participation process, in addition to any special efforts undertaken to incorporate public engagement for an individual project. Thus, the public had ample notice and opportunity to provide meaningful comment on these important Port plans.

2. The Port Implements Comprehensive Outreach Coordinated by Two Port Departments that Specifically Engage the Public

The Port's SRD is charged with engaging community stakeholders and instilling institutional culture and programs to fulfill the Port's social responsibilities. The SRD holds multiple public forums throughout the year to update residents living near Port property on Port activities, gathers community feedback, and follows up on suggestions and complaints. These meetings are open to all who are interested in learning about the Port's activities and providing feedback. Additionally, SRD employees regularly go to the Port's neighboring communities, like West Oakland, to attend community meetings as representatives of the Port and to solicit feedback from residents on a variety of Port projects and initiatives.

EPA recently recognized the Port's SRD as a "successful example" of a program that "can be tailored to emphasize investments in near-port communities and/or communities experiencing high rates of poverty, unemployment and underemployment."[21] The report describes the Port's efforts to invest in near-port communities, and highlights the following programs: "a small local business utilization policy, a disadvantaged business enterprise program, a Maritime and Aviation Project Labor Agreement (which includes a commitment to local hiring and local workforce development), and a living wage policy."[22]

The Port's Environmental Programs and Planning Department ("EPPD") leads the Port's programs specifically to ensure the highest standards of regulatory compliance and environmental performance. The EPPD works to improve responsiveness to environmental concerns raised by the community and Port customers, and increase the Port's capacity to respond to emerging environmental regulations, policies, and conditions.

[20] Sunshine Ordinance No. 4265, § X.
[21] U.S. EPA, A Ports Primer for Communities, Section 6.4 Case Studies: Job and Benefits, published July 2016 ("EPA Ports Primer") (available at https://www.epa.gov/ports-initiative/ports-primer-64-case-studies-job-and-benefits#oakland).
[22] EPA Ports Primer.

These Port Departments help to focus the Port on environmental impacts on neighboring communities and incorporate community concerns in the Port's decision-making process. In addition, the public has ready access to the Port's public website, which provides a wide variety of information about the Port's operations and future plans.[23] Board agendas and resolutions are posted on the website, along with many of the technical and planning documents discussed herein. The Port's website has a "live chat" option that connects members of the public with a member of the Port staff, who will respond to all nature of inquiries and requests, and, if necessary, connect the member of the public with the appropriate technical person at the Port.

3. *The Port Fully Complies With The California Environmental Quality Act Which Is Designed To Provide For Meaningful Public Input on Proposed Development*

CEQA is a State statute that requires State and local agencies to identify the significant environmental impacts of their proposed discretionary actions and any feasible alternatives or feasible mitigation measures that would substantially lessen the significant environmental effects of those actions.[24] Public disclosure and participation are "Basic Purposes of CEQA."[25]

Consistent with its Charter-conferred duties and powers, the Board functions as a Lead or Responsible Agency under CEQA. As defined in the CEQA Guidelines, the Lead Agency is "the public agency which has the principal responsibility for carrying out or approving a project"[26] and a Responsible Agency is an agency that is not the Lead Agency, but also has some discretionary approval power over the project, and consults with the Lead Agency regarding CEQA review."[27] For example, the Port acted as the Lead Agency for the Vision 2000 EIR (1998) and as a Responsible Agency for the City's Oakland Army Base Redevelopment Plan EIR (2002).

Pursuant to CEQA, if there is substantial evidence that a project may have a significant effect on the environment, the Lead Agency must prepare an environmental impact report ("EIR"). The EIR process requires multiple layers of public review and opportunity to comment.[28]

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[23] *See*, www.portofoakland.com.
[24] Public Resources Code § 21002.
[25] 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a).
[26] CEQA Guidelines, § 15367.
[27] CEQA Guidelines, § 15381.
[28] Public Resources Code § 21080(d). The Lead Agency must provide public notice that it is preparing an EIR; other agencies and the public then have 30 days to comment on the scope of the EIR. Public Resources Code § 21092(a). The Lead Agency then issues the Draft EIR, which must contain a project description and identify the project's environmental setting, significant environmental effects, unavoidable significant adverse effects, growth-inducing impacts, cumulative impacts, mitigation measures, and alternatives. The Lead Agency must provide public notice of the availability of the Draft EIR, with a minimum 45-day public comment period for most projects. The Lead Agency must evaluate comments on environmental issues, prepare written responses to comments, and include those responses in a Final EIR published prior to the Lead Agency's decision to approve or disapprove the project. If the project

The CEQA Guidelines provide that "Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities."[29] A primary substantive goal of CEQA (which is different from the federal National Environmental Policy Act process) is to require identification and implementation of feasible mitigation measures to reduce environmental impacts to less than significant levels.

The Vision 2000 EIR and the OAB Redevelopment Plan EIR fully complied with CEQA, including its public participation requirements, as have the Port's subsequent approvals of activities that implement these approved plans. As discussed below with regard to the OAB development project, the Board consulted with the City on its EIR (through Port staff), and then, acting as a Responsible Agency, adopted findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program ("MMRP") after considering the record, including the City's 2002 OAB Redevelopment EIR. The Port and the City are implementing mitigation measures in the MMRP as approved developments at the OAB proceed. Although litigation challenging the adequacy of projects' CEQA compliance is common, the approvals of the OAB Development Plan did not lead to CEQA litigation.

To the extent the Complaint asserts that it is inappropriate, due to the passage of time, for the Port and the City to continue to look to the 2002 OAB EIR (see Complaint p. 24), it is incorrect. Under CEQA, once an EIR has been certified for a project, further CEQA review is disfavored.[30] When considering a new discretionary action that would implement the approved project, the public agency must determine only whether new, or substantially more severe, significant environmental impacts would result compared to those identified in the earlier EIR, due a change in the project, a change in its circumstances, or new information that could not have been known with the exercise of reasonable diligence at the time the EIR was certified.[31] Mere passage of time

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would cause significant environmental impacts that cannot be reduced to a less-than-significant level through feasible mitigation measures or project alternatives, the Lead Agency can still approve the project, but only by identifying to the public, in a "statement of overriding considerations," why the benefits of the project outweigh its remaining significant environmental effects. Public Resources Code § 21081. A Responsible Agency must also make its own statement of overriding considerations if it decides to approve a project with significant unavoidable environmental effects.

[29] CEQA Guidelines, § 15201; see also CEQA Guidelines § 15002, subj. (i).

[30] Public Resources Code § 21166; *Friends of the College of San Mateo Gardens v. San Mateo Comity Coll. Dist.*, 1 Cal. 5th 937 (2016).

[31] Public Resources Code § 21166; CEQA Guidelines § 15162.

does not undermine reliance on a previously certified EIR; the question is whether the EIR remains relevant.[32]

B. The Port's Success in Reducing Air Pollutants from Port Sources

Through means described in this section, the Port's 2015 Seaport Emissions Inventory shows that the Port's emissions reductions efforts have been successful, resulting in major reductions in emissions associated with the Port from 2005 to 2015:

- Truck Diesel Particulate Matter ("DPM") emissions have decreased from 16 tons to 0.4 tons.
- Total DPM emissions at the Oakland Seaport decreased by 76%
    - Trucks - DPM down 98%
    - Locomotives - DPM down 89%
    - Cargo handling equipment - DPM down 82%
    - Ocean going vessels - DPM down 75%
    - Harbor Craft - DPM down 53%[33]

Independent sources have also confirmed that Port-related DPM emissions have significantly decreased, confirming what the Port has found in its Emissions Inventories. In 2015 and 2016, the University of California, Berkeley published independent research studies on Port trucks.[34] The studies evaluated truck emissions before and after the State Drayage Truck Regulation requirements took effect and required drayage trucks to use diesel particulate filters and selective catalytic reduction systems. The study found that between 2009 and 2015, black carbon and particulate matter ("PM") emissions from trucks serving the Port reduced by approximately 73% and 74%, respectively.[35]

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[32] *Friends, supra; Committee for Re-Evaluation of the T-Line Loop v. San Francisco Mun. Transp. Agency*, 6 Cal. App. 5th 1237 (2016) (upholding reliance on 1998 EIR); *Citizens Against Airport Pollution v. San Jose*, 227 Cal. App. 4th 788 (2014) (upholding 8th addendum to 1997 EIR).

[33] 2015 Seaport Air Emissions Inventory, Final Report, October 2016 ("2015 Emissions Inventory"), p. 8, attached as Exhibit D.

[34] Effects of Particle Filters and Selective Catalytic Reduction on Heavy Duty Diesel Drayage Truck Emissions at the Port of Oakland Preble, et al., *Environmental Science and Technology*, June 26, 2015 ("2015 UC Berkeley Study"); Effects of Exhaust After-Treatment and Fleet Modernization on Port of Oakland Truck Emissions Following Complete Implementation of California's Drayage Truck Regulation, Draft Final Report, Preble, et al., Department of Civil and Environmental Engineering, University of California, Berkeley, November 2016 ("2016 UC Berkeley Study"), attached as Exhibit E.

[35] 2016 UC Berkeley Study, p. v.

Numerous efforts and programs have contributed to these emissions reductions at the Port, including:

- A truck management program (described later in this letter) including a $38 million grant program to upgrade and replace the oldest trucks operating at the Port and a ban on "dirty" drayage trucks years ahead of California State truck emission requirements.
- Shipping lines switching to cleaner burning, low sulfur fuel, while they are within a certain distance of land.
- A $60 million project to construct a power grid that ships can plug into at berth rather than run auxiliary diesel engines.

In addition, the Port's strategic management decisions also help to mitigate emissions and other environmental impacts of the Port's operations, including:

- Based on need, night and/or weekend operations at marine terminals, to spread out truck traffic and reduce idling.
- Appointments to pick up international cargo, further reducing congestion.
- $100 million railyard developed to bring more cargo by rail and cut truck traffic.
- Warehousing/distribution developments planned adjacent to docks to cut truck traffic on roadways outside the Port.
- Shipping lines loading more cargo on fewer ships to cut vessel traffic.
- The Port is negotiating to bring a fueling station and truck service center to the Seaport which is intended to keep trucking-related activities out of the adjoining neighborhoods.

Finally, it is important to note that the above emissions reductions were achieved over a period of time in which the Port saw an increase in container volume. In the period from 2005-2012, TEU container volumes increased by 3% while overall DPM emissions decreased by 70%. The Port is now conducting an update to its Emissions Inventory which is expected to show continued reduction in air emissions generated from Port operations.

C. Chronological History of Port Emissions Reduction Programming and Commitment to Continued Public Engagement

1. *Vision 2000 Maritime Development Program: Air Quality Mitigation Program with $9 Million for Emissions Reductions*

The Port has been working for decades to continually reduce the impacts of its operations and development on local communities. In 1997, the Port embarked on the redevelopment of the former Fleet Industrial Supply Center, Oakland ("FISCO"), in a project known as the V2K

Program. The V2K Program included developing two new marine terminals, a rail terminal, a public park, roadways, and ancillary facilities. Most of these facilities have been completed.

As part of the V2K Program, the Port established a groundbreaking Air Quality Mitigation Program ("AQMP") and committed to fund the AQMP with nearly $9 million. The V2K AQMP was guided by a Technical Advisory Committee ("TAC"). The AQMP TAC included community members (including WOEIP), industry members, Federal and State environmental agencies, and other interest groups. The AQMP TAC met regularly to discuss project updates and seek guidance on new projects and programs, like the Truck Replacement Project discussed below.

Projects funded under the AQMP included:

- **Truck Replacement Project:** The Port subsidized the retrofit of truckers' diesel truck engines with new engines meeting California emission standards for new diesel engines, or add-on exhaust treatment devices;

- **Cargo-handling Equipment:** The Port subsidized the retrofit of tenants' diesel cargo-handling equipment with new engines meeting California emission standards for new diesel engines, or add-on exhaust treatment devices; and

- **Air Quality Baseline Study:** The Port initiated an air quality and meteorological monitoring program in April 1997 to measure the levels of PM in West Oakland.[36]

2. Port Voluntarily Undertakes Emissions Inventories

Following the progress made related to the V2K Program, the Port instituted policies to monitor and evaluate emissions associated with its operations on a regular basis. Beginning in 2005, the Port engaged consultant Environ International Corporation (n/k/a Ramboll Environ) to prepare an air Emissions Inventory for its Seaport operations. A copy of the 2005 Emissions Inventory is attached hereto as Exhibit F. Although not legally required to create such an inventory, the Port voluntarily chose to prepare the air Emissions Inventory and update it periodically over subsequent years. The Port conducted subsequent air Emissions Inventories in 2012 and 2015. Copies of the 2012 and 2015 Emissions Inventories are attached hereto as Exhibits G and D, respectively. The Emission Inventories provide estimates for emissions of five air pollutants: reactive organic gas ("ROG"), carbon monoxide ("CO"), nitrogen oxides ("NOx"), PM (including diesel), and sulfur oxides ("SOx").[37]

[36] Summary Report to West Oakland Neighbors, Vision 2000 Air Quality Mitigation Program, December 2006, attached as Exhibit H.
[37] Port of Oakland 2005 Seaport Air Emissions Inventory, Environ International Corp., March 14, 2008 ("2005 Emissions Inventory"), p. ES-2.

Emissions were estimated for the five major source categories at the Port: ocean-going vessels, harbor craft, cargo handling equipment, drayage trucking, and locomotives.[38] Beginning in 2012, the Seaport Emissions Inventories also include other off-road equipment, for example from construction. The results of the Port's Emissions Inventories are published on the Port's public website. The Emissions Inventories have been a crucial tool in evaluating how the Port could reduce air emissions and determining how successful emissions reductions programs have been over the past decade. Indeed, the 2012 and 2015 Emissions Inventories have shown dramatic decreases in Port-related emissions, as discussed above.

3. *Port Cooperates with* CARB *Health Risk Assessment*

During the Port's development of the Emissions Inventory, the California Air Resources Board ("CARB") announced that it intended to conduct a health risk assessment ("HRA") of the potential health effects of DPM on the neighborhood of West Oakland. The Port worked closely and cooperatively with CARB to assist with the HRA, and adapted the Port's Emissions Inventory to align with CARB's methodologies at the time. CARB published its report, "Diesel Particulate Matter Health Risk Assessment for the West Oakland Community Preliminary Summary of Results," in 2008.[39] We will address the findings of the CARB HRA in more detail below.

4. *Port Spearheads Development and Implementation of Maritime Air Quality Improvement Plan Shaped by Local Communities and Regulatory Agencies*

During the first Emissions Inventory and the CARB HRA for West Oakland, the Port partnered with neighborhood and business representatives and air quality regulators to develop the MAQIP.[40] The MAQIP is attached hereto as Exhibit I. The MAQIP planning process involved extensive public stakeholder participation. The MAQIP process began in 2006, when discussions with community groups, regulatory agencies, and other interested parties led to the formal initiation of the Port's air quality plan and establishment of the MAQIP Task Force.

The MAQIP Task Force was comprised of 35 stakeholders, including the WOEIP, and was created to develop goals and actions to guide air quality improvement efforts at the Port.[41] Members of the MAQIP Task Force were selected through a public nomination process from community members, Port tenants, environmental advocacy groups, air quality and health agencies, and maritime-related businesses. The MAQIP Task Force had four co-chairs: the Executive Director of the Port, the Executive Officer of the Bay Area Air Quality Management

[38] 2005 Emissions Inventory, p. ES-1.
[39] Diesel Particulate Matter Health Risk Assessment for the West Oakland Community Preliminary Summary of Results, California Air Resources Board, December 2008 ("CARB HRA").
[40] Port of Oakland Maritime Air Quality Improvement Plan, Final, Approved by Board of Port Commissioners, April 2009 ("MAQIP").
[41] MAQIP, pp. 16-19.

District ("BAAQMD"), the Co-Chair of WOEIP, and the Executive Vice President of GSC Logistics Inc.[42]

The MAQIP Task Force met seven times at roughly one to two-month intervals during the plan development phase. The role of the Task Force included proposing or reviewing meeting topics, prioritizing air emissions reduction measures, deliberating on the merits of proposed actions, contributing to strategies for implementation, monitoring, and adaptive management and generally shaping plan content. The process was led by staff from a neutral facilitator, all Task Force meetings were open to the public, and comment was solicited from both Task Force and non-Task Force members. Stakeholder deliberations routinely included brainstorming sessions, break-out group exercises, and roundtable discussions following various presentations by select stakeholder groups. Port staff worked in consultation with Task Force members and other stakeholders to develop broad-based consensus on the elements of the MAQIP, although no formal voting procedure was used to decide on the final MAQIP content.[43] In short, while the Board was responsible for approving the final content of the MAQIP through the formal approval of the plan, the policy direction and content were shaped by the Port's planning partners through this consultative process – which included WOEIP as a Co-Chair.

The MAQIP Task Force identified seven guiding principles, including:

> **Promote Environmental Stewardship:** The Port of Oakland holds environmental stewardship as one of its core organizational goals. The Port is committed to ensuring that Seaport activities are carried out in an environmentally responsible manner, minimizing adverse impacts on our neighbors and the environment, and striving to improve the environmental conditions in the Seaport area for the benefit of both present and future generations;
>
> **Engage Stakeholders:** The Port of Oakland Seaport commits to actively engage and partner with its diverse stakeholder community in developing, implementing, and monitoring the MAQIP. The Port recognizes the need to especially collaborate and partner with those who are most affected by Seaport operations, including, but not limited to, labor, tenants, customers, and neighboring residents; and
>
> **Promote Environmental Justice:** The Port of Oakland seeks to prevent and address adverse impacts to communities that experience disproportionate environmental and economic effects.[44]

The MAQIP Task Force also adopted two planning goals:

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[42] MAQIP, p. 16.
[43] MAQIP, p. 17.
[44] MAQIP, pp. 19-20.

Goal 1: Reduce the adverse public health impacts of the Port of Oakland's Seaport-related air emissions at the Seaport area and in neighboring communities that are most affected by goods movement at the Seaport (in particular West Oakland) and on workers in the maritime area, as expeditiously as feasible; and

Goal 2: Reduce the adverse impacts of the Port of Oakland's Seaport-related air emissions on ambient air quality in West Oakland and more generally in the San Francisco Bay Area Air Basin, as expeditiously as feasible.[45]

The MAQIP was finalized in 2009, and it provides a master plan for the Port's long-term commitment to reducing the air quality and health risk impacts of its maritime operations. It builds upon the Port Maritime Air Quality Policy Statement ("Policy Statement"), adopted by the Board in March 2008, which sets a goal of reducing the excess community cancer health risk related to exposure to DPM emissions associated with the Port's maritime operations by 85% from 2005 to 2020, through all practicable and feasible means.[46] In the Port's Policy Statement, the Board affirmed "that it has the social responsibility to minimize exposure of neighboring residents to air pollution from Port sources and to support the rights of community, local businesses and workers to clean air and fair working conditions."[47] The Board committed to funding air emissions reductions and to adopt air emissions reductions measures prior to the dates such measures are required under State or Federal law. In addition to the significant public participation measures in the MAQIP process, the Port's Policy Statement was publicly noticed on the Board's agenda in advance of the Board meeting, and discussed at the Board's public meeting, with full opportunity for members of the public to comment. Then-Board Commissioner Margaret Gordon (co-chair of WOEIP) voted in favor of the Policy Statement, along with all other Board Commissioners.

In line with the guiding principles and planning goals established by the MAQIP Task Force, the MAQIP not only supports current and future State and local emission reduction requirements, but also enhances these requirements through early implementation goals and by pursuing emission reductions that exceed legally mandated requirements when and where feasible.

The MAQIP identified concrete and high-impact control measures and strategies the Port would undertake independently or together with its tenants to significantly reduce emissions, including:

- Early action retrofit and/or replacement of Port drayage trucks;

[45] MAQIP, p. 20.
[46] MAQIP, p. ix; Board Resolution No. 08057, adopted March 18, 2008.
[47] Board Resolution No. 08057.

- Construction of infrastructure to enable compliance with CARB's "shore power" regulation, even though the Port was not required to take any such action under the regulation;
- Design and operational efficiencies;
- Participation in pilot and verification projects for NOx and DPM reduction strategies;
- Early action construction emissions reduction;
- Support enforcement of regulations by CARB and BAAQMD through coordination with tenants; and
- Accountability, monitoring and reporting.[48]

In addition to the above strategies, the MAQIP Task Force identified 355 initiatives that had the potential to achieve emissions and risk reductions beyond regulatory requirements. The TAC reviewed and evaluated all of these initiatives; ultimately, Port staff identified a number of primary and secondary interest air quality initiatives for potential implementation.[49]

To ensure the Port's accountability in implementing its emissions reductions programs going forward, the Port committed to convene a stakeholder group to serve as a forum for sharing project information, to prepare written status reports, and to reconvene the MAQIP Task Force in five and ten years to review progress towards the plan's goals.[50] In satisfaction of this commitment, on November 19, 2013, Port staff held a public meeting to present a progress report on the MAQIP to MAQIP Task Force members and other interested members of the public; over 30 people attended this meeting. In connection with MAQIP progress reports, the Port is committed to reconvening the MAQIP Task Force.

5. Port Comprehensive Truck Management Program Bans Dirty Port Drayage Trucks Ahead of State Regulations

As part of its CTMP, the Port in 2009 adopted a ban[51] from entry into the Port of drayage trucks that fail to meet the State of California truck emission standards. This ban prohibits access to drayage trucks with 1993 or older engines as well as trucks with 1994-2003 model year engines unless equipped with a verified diesel particulate filter. In 2011, the Port modified its truck ban[52]

[48] MAQIP, p. 65.
[49] MAQIP, pp. 75-94.
[50] MAQIP, p. 70.
[51] Port Ordinance No. 4112.
[52] Port Ordinance No. 4174.

to require all drayage trucks to meet or exceed 2007 model year California or Federal emissions standards.

To help truckers transition to clean trucks ahead of the State regulatory requirements, the Port spent over $5 million to subsidize truck conversions. Overall implementation of the CTMP was estimated at the time to cost over $15 million, with Port staff costs around $1 million for the first 3 years.[53] Port staff estimates that the Port has spent more than $21 million on outside vendors for CTMP-related costs. This section describes the history and success of the Port's CTMP.

In conjunction with the MAQIP process, in 2007, the Port began work on the CTMP.[54] The CTMP was finalized in 2009 and, through certain of its components, fulfilled a key mitigation measure of the 2002 OAB EIR.[55] The CTMP is attached hereto as Exhibit J; it sets forth plans and actions for comprehensively addressing air quality, safety and security, business and operations, and community issues associated with drayage. Through adoption and implementation of the CTMP, the Port sought to identify drayage trucks serving the Seaport, support regulations to reduce emissions of air pollutants, increase safety and security domain awareness, improve operations, reduce traffic and congestion, and involve and educate all Seaport stakeholders.[56]

Similar to the process that took place to develop the MAQIP, the Port established a CTMP TAC to assist Port staff in developing the CTMP. The TAC was comprised of State and Federal regulators, marine terminal operators, trucking companies, and West Oakland residents, including the WOEIP.[57] The TAC met formally on multiple occasions and provided ideas and solutions that shaped the development of a truly comprehensive plan that incorporated a number of inter-related issues ranging from air quality to security.

The efforts made by the Port under the CTMP have resulted in significant improvements to truck traffic and air pollution in West Oakland. Key components of the CTMP include:

- **Port Registry & Truck Ban:** Only Licensed Motor Carriers ("LMCs") and trucks associated with those LMCs that have agreed to fully comply with all applicable laws and entered their information into the Port Registry database are allowed to serve the Port's Seaport facilities;

- **Clean Trucks:** The Port contributed $5 million, in addition to local, State and Federal funding, to provide grants to retrofit and/or replace trucks to meet CARB emissions standards, notably the CARB Drayage Truck and Statewide Truck and Bus Regulations.

[53] CTMP, p. 6.
[54] Port of Oakland Maritime Comprehensive Truck Management Program, A MAQIP Program, Adopted June 16, 2009 ("CTMP").
[55] Mitigation Measure 4.3-7.
[56] CTMP, p. 1.
[57] CTMP, pp. 20-22.

The Port also severely restricted the ability of "dirty" trucks from serving Port facilities, while providing truckers an opportunity to comply with clean truck standards before having to consider alternative employment to Seaport-related trucking;

- **Traffic and Congestion:** The Port participated in traffic, congestion, and parking studies, and made improvements to reduce congestion and truck idling. The Port also provides approximately 55 acres of truck parking and service facilities on Port property, which alleviates the problem of trucks parking in West Oakland; and

- **Customer Service Center:** The Port established and continues to fund and manage the Customer Service Center, which maintains the Port Registry and manages turned away trucks.[58] During the initial stage of the State's Drayage Truck Regulation, the Port translated materials into the languages representing the demographic make-up of port truckers. Additionally, the Customer Service Center continues to provide assistance in multiple languages, to facilitate the needs of the diverse port trucker community.

6. Port Actively Developing Joint City-Port Truck Management Plan

The Port is currently engaged with the City in the planning stages of developing a joint truck management plan, focused on West Oakland, the Port, and the OAB ("Truck Management Plan"). The Truck Management Plan will be developed over the next year, in a process that will involve meaningful communication and input from the West Oakland community and other interested stakeholders. The Port and the City are conducting outreach to WOEIP and numerous other West Oakland community groups to participate in the Truck Management Plan planning process. The Truck Management Plan is a key mitigation measure of the 2002 OAB EIR.[59]

As part of the Truck Management Plan process, the Port has hired a transportation engineering firm, Kittleston & Associates, Inc., to conduct a truck study that specifically looks at drayage truck parking in the West Oakland neighborhood. This was one of several truck parking surveys conducted in 2015, 2016, and 2017. In addition, on August 27, 2015, Port employees participated in the WOEIP "Yard Party" where the Port set up a table and solicited input from community members for the West Oakland truck parking study. West Oakland residents were asked to identify truck parking "hot spots" in West Oakland, and that information was collected by the Port's consultant for use in the parking survey.

The Port is committed to making the public engagement in the updated Truck Management Plan as inclusive and meaningful as possible and has begun outreach to initiate that process. The Port and the City are designing a robust public engagement process as a component of the Truck Management Plan. Pursuant to this process, Port staff are currently conducting outreach to community groups, commerce associations, elected officials and residents in West Oakland,

[58] CTMP, pp. 2-5.
[59] Mitigation Measure 4.3-7.

including the WOEIP, to solicit input on the Truck Management Plan. Under the public engagement process, the Port and the City are planning public meetings, many of which will take place in West Oakland, to engage with the public and incorporate their feedback into the plan. The public meetings will be facilitated by a professional communications consultant and include information and reports from a transportation consultant.

The joint Truck Management Plan, coupled with the Port's existing CTMP, demonstrate the decades-long Port commitment to addressing truck-related impacts comprehensively.

7. The Port Continues to Implement Emissions Reductions Programs

The above programs highlight just some of the efforts the Port has undertaken to ensure that its activities take into account the views of its neighboring communities and to design, fund, and implement programs that minimize potentially adverse effects and maximize beneficial effects on the surrounding area's health and wellbeing. The Port is proud of its track-record of public engagement and emissions reductions which is well-documented.

The Port continues to implement practices and policies that will further reduce emissions from Port operations and maintain contact and collaboration with the local community. The Port has accomplished significant emissions reductions over the past 15 years, and the Port continues to look for new and innovative ways to further reduce the impact Port operations have on the environment and local communities. One example of this continuing effort is the very recent announcement, made on August 2, 2017, that a major Port of Oakland-based trucking operator plans to test battery-powered (i.e., non-diesel) big rig technology at the Port beginning in September.[60] The Port trucking operator will conduct a three-year trial with a heavy-duty, all-electric truck as part of a statewide effort to determine the feasibility of zero-emission freight hauling. This will be the first ever test of battery-powered trucks in Northern California, and is the next logical step in the Port's effort to reduce diesel emissions with the corresponding goal of improving the local public health.

Another example of this continuing effort is an even more recent announcement, made on August 14, 2017, that the Port has commissioned a high-voltage cable-on-reel system that will connect more vessels to the Port's landside shore power grid.[61] The mobile platform can be deployed alongside any vessels thus allowing vessels with limited onboard power cables to be able to reach the Port's landside shore power grid thereby further reducing air emissions from ships.

[60] Press Release, Port of Oakland-based firm first to test battery-powered big rig, August 2, 2017, available at: http://www.portofoakland.com/press-releases/port-oakland-based-firm-first-test-battery-powered-big-rig/.

[61] Press Release, Port of Oakland OKs new high-power line to plug in more ships, August 14, 2017, available at:http://www.portofoakland.com/press-releases/port-oakland-oks-new-high-power-line-plug-ships/.

8. Emissions Reduction Grants

The Port has made numerous requests for grants related to emissions reductions in recent years. WOEIP's claims that the Port has refused to accept or apply for funding to support emissions reduction efforts is simply not true.[62] Indeed, WOEIP references a 2013 EPA grant awarded to the Port through EPA's National Clean Diesel Reduction Program.[63] In fact, the Port has completed this Clean Diesel Reduction project, and on July 11, 2017, the Port submitted to EPA its final close-out reports for that project.

Other examples of emissions reductions grants pursued and received by the Port include grants from the BAAQMD Mobile Source Incentive Fund, CARB Good Movement Emission Reductions Program ("GMERP"), federal funds administered locally by the Metropolitan Transportation Commission ("MTC"), and Transportation Investment for Generating Economic Recovery ("TIGER") administered by the U.S. DOT and Maritime Administration, all to install grid-based shore power infrastructure at the Seaport marine terminal in 2011-2014. The grant funding totaled approximately $29 million. In addition, Port tenants obtained grant funding independently to construct additional shore power infrastructure and/or reduce vessel emissions. This infrastructure project allows the Port to offer electric plug-ins for ships at berth at the Port, allowing those ships to turn off auxiliary diesel engines and reduce DPM emissions.

In 2010, the Port conducted outreach and education on the Port's implementation of shore power in an effort to secure the maximum funding from CARB's GMERP. Outreach was made to the wider community including West Oakland residents, and the community was overwhelmingly supportive of the Port's efforts to secure funding for this program. Indeed, numerous community organizations and groups, including the West Oakland Community Advisory Group, sent letters to CARB in support of the Port's efforts and asked CARB to award maximum shore power funding to the Port.

In 2016, the Port applied for California Energy Commission ("CEC") grant funding to demonstrate zero-emission hydrogen fuel cell trucks, and also supported BAAQMD's application for demonstration of zero-emission container yard equipment and trucks. In sum, the Port has sought and received numerous grants to enhance sustainability through infrastructure improvements and innovative projects to reduce emissions.

D. The Oakland Army Base Development

1. CEQA Review Process

The U.S. Army designated the OAB for closure in 1995 pursuant to the Defense Base Closure and Realignment Act of 1990. In July 2000, the City adopted and approved the

[62] *See* Complaint, p. 30.
[63] Complaint, p. 6.

Redevelopment Plan for the OAB Redevelopment Project, and established an approximately 1,730-acre redevelopment project area. The City, as the Lead Agency, prepared a Draft EIR in accordance with CEQA for the OAB Area Redevelopment Plan. The Redevelopment Plan divides the OAB into the City's Gateway Development Area (approximately 193 acres) and the Port Development Area (approximately 187 acres).

The City issued a Notice of Preparation of the Draft EIR in August 2001 and held a Planning Commission meeting to take public comments on the EIR's scope in September 2001. All public comments received during the scoping process were included and addressed in the Draft EIR.[64] The City made the Draft EIR available for review and comment by government agencies and by the general public. Copies of the Draft EIR were sent to those who provided input regarding the EIR's scope, to responsible agencies, and to those who had requested copies. In addition, copies were placed in libraries in Oakland, made available at the planning Department of the City, and on the City's web site.[65] A 45-day public EIR review and comment period occurred between April 29 and June 12, 2002. As a Responsible Agency, the Port both consulted with the City on the Draft EIR and submitted comments on it. The City conducted a public hearing to solicit comments on June 5, 2002, at the Oakland Planning Commission.[66] Numerous parties commented on the Draft EIR, and those comments were all addressed in the Response to Comments section of the Final EIR.[67]

The City issued a Response to Comments and a Final Environmental Impact Report ("Final EIR"), certified the EIR, and adopted a Final OAB Reuse Plan on July 31, 2002, for the OAB Area Redevelopment Plan.[68] Shortly thereafter, as a Responsible Agency, the Port adopted its own

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[64] Draft EIR, pp. 1-8 - 1-17; Appendix 1.

[65] Response to Comments and Final Environmental Impact Report for the OAB Area Redevelopment Plan, July 2002 ("Final EIR"), p. 1-1.

[66] Final EIR, p. 1-1.

[67] WOEIP did not comment on the 2002 EIR. WOEIP now cites, as the sole basis for its claim that community concerns were ignored, a June 11, 2002, comment made by a representative of the West Oakland Citizens Advisory Group ("WOCAG"). Complaint, p. 18, fn. 56 & 57. The Complaint claims the comment asserted 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." Complaint, p. 18. The comment, however, did not say this and did not discuss community benefits; instead, it objected that WOCAG's own plan for the OAB was not analyzed in the EIR and advocated adoption of the Gateway Adaptive Reuse/Eco-Park Alternative "although it would not meet the very high job generation goals." (See Exhibit K.) In addition to mischaracterizing the comment letter, the Complaint does not mention that detailed responses were provided in the Final EIR, including explanations of the ways in which certain WOCAG recommendations had been incorporated into the proposed plan and alternatives studied in the EIR (see pages 3-12 to 3-17 of Final EIR).

[68] Final EIR, p. 1-1.

findings, statement of overriding considerations, and mitigation program. The Final EIR was not challenged in any administrative or court proceedings.

In addition to analyzing the impacts of anticipated development on the portion of OAB designated for City ownership, the EIR analyzed the environmental impacts -- including impacts to air quality and human health risk -- of future Port cargo throughput of 4.05 million TEUs per year. The Final EIR identified numerous mitigation measures that the City and/or Port would undertake related to the OAB plan's air quality impacts, including the following:

> **Mitigation Measure 4.4-3:** The Port shall develop and implement a criteria pollutant reduction program aimed at reducing or off-setting Port-related emissions in West Oakland from its maritime and rail operations to less than significant levels, consistent with applicable Federal, State, and local air quality standards. The program shall be sufficiently funded to strive to reduce emissions from redevelopment related contributors to local West Oakland air quality, and shall continually reexamine potential reduction toward achieving less than significant impacts as new technologies emerge. The adopted program shall define measureable reductions within specific time periods.
>
> **Mitigation Measure 4.4-4:** The City and the Port shall jointly create, maintain, and fund on a fair share basis, a truck diesel emission reduction program. The program shall be sufficiently funded to strive to reduce redevelopment related contributions to local West Oakland diesel emissions to less than significant levels, consistent with applicable Federal, State, and local air quality standards. The adopted program shall define measureable reduction within specific time periods.
>
> **Mitigation Measure 5.4-1:** The City and the Port shall encourage, lobby for, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality.[69]

The Port is implementing these mitigation measures through, among other things, its MAQIP and the CTMP (including the ongoing process to develop the Truck Management Plan), and the testing of low diesel emission technologies.

In 2012, the City adopted an amended OAB Reuse Plan, supported by an Addendum to the 2002 Final EIR. The primary difference between the 2002 Reuse Plan and the 2012 Reuse Plan is a shift at the City's Gateway Development Area from office and research and development square footage to a greater amount of warehouse distribution and maritime-related logistics.[70] Other project modifications include plans to designate approximately 27.3 acres in the Gateway Development Area for recycling facilities. Notably, the recycling facilities are currently operating

[69] Draft EIR, pp. 4.4-26 – 28, 5-20.
[70] 2012 Oakland Army Base Project Initial Study / Addendum, May 2012 ("2012 EIR Addendum"), p. 4.

in the West Oakland neighborhood. In response to community concerns about the health, trucking, and noise effects of the current neighborhood-based recycling companies, the City is providing for these companies to relocate out of the West Oakland neighborhood and into the OAB property. This will remove a significant (non-Port-related) source of air pollution, truck traffic and parking, and noise from the West Oakland neighborhood. The Port has entered into a purchase and sale agreement with the City to sell to the City approximately 1.6 acres of land without which relocation of the recycling facilities would be precluded or limited.

The 2012 Oakland Army Base Initial Study concluded that none of the circumstances necessitating preparation of additional CEQA review, as specified in CEQA and the CEQA Guidelines were present[71]. In particular, the Initial Study concluded that the 2012 Project air quality impacts would be lower than those identified in the 2002 EIR, and that no further CEQA review, for example, a supplemental EIR, was required.[72] The City documented these conclusions in an Addendum to the 2002 Final EIR.

After publication of the 2002 EIR, the City of Oakland adopted Standard Conditions of Approval ("SCA") that are applicable to all development projects within the City. Many requirements of the SCA apply directly to air emission impacts, including: SCA AIR-1: Construction Management Plan; SCA AIR-2: Construction-Related Air Pollution Controls (Dust and Equipment Emissions); SCA AIR-3: Exposure to Air Pollution (Toxic Air Contaminants: Particulate Matter); and SCA TRANS-1: Parking and Transportation Demand Management.[73] These SCA requirements provide additional emissions controls and reductions beyond the mitigation measures implemented under the 2002 EIR.

In sum, the 2002 EIR and the 2012 Addendum identified mitigation measures that would greatly reduce impacts related to air quality impacts of the OAB development projects. All development projects at the OAB are required to comply with those mitigation measures.

2. *The Port's OAB Development*

Between 2003 and 2007, some portions of the OAB were transferred to City-related entities and other portions were transferred to the Port. The Port is developing the Port Development Area, either directly or in coordination with prospective Port tenants, into a logistics center ("Seaport Logistics Complex") that will include new logistics facilities (including rail-served warehouses to transload cargo), new rail yards (manifest, support, and intermodal), and related facilities. The development will facilitate the efficient movement of cargo in and out of the Port's marine terminals, improve intermodal service, and position the Port to stay competitive. The first phase of development – construction of the manifest and support rail yards – was completed in January 2017. The Port is currently finalizing negotiations with a developer to lease an approximate 27-

[71] 2012 EIR Addendum, p. 1.
[72] 2012 EIR Addendum, p. 146.
[73] 2012 EIR Addendum, p. 126-28.

acre site on which a new logistics facility would be built (by the developer), and the Port anticipates executing a lease for this parcel in Fall 2017.

Further development of the former OAB, including additional intermodal rail capacity and logistics buildings, is anticipated to be phased based on market demand. Currently, the Port anticipates that development of the entire Port Development Area will take at least ten years to complete. The Port currently does not anticipate reaching throughput of 4.05 million TEUs per year - the amount assumed and analyzed in the OAB EIR - before the year 2040.

The redevelopment of the Port Development Area of the OAB will have significant and enduring impacts on the economic success and viability of the Port. The San Francisco Bay Conservation and Development Commission ("BCDC") acknowledged the significance of the Port's OAB development in its most recent San Francisco Bay Area Seaport Plan ("Seaport Plan"). In the Seaport Plan, BCDC designated the Port's OAB property as "port priority use" property, and noted that the OAB "creates an opportunity for the Port to increase its container cargo throughput without significant Bay fill."[74]

The Port's OAB development will allow the Port to efficiently manage the distribution of goods through the Port, making the Port more profitable while also offering opportunities to lessen the Port's environmental impact. For example, the Port Development Area contains approximately 55 acres of truck parking and approximately 15 acres of servicing facilities; these facilities have reduced and will continue to reduce the amount of trucks parking and driving through West Oakland. Likewise, the Port's realignment of its rail yard will increase the movement of cargo directly to rail, thereby decreasing the need for drayage trucks.

The Port's plans to redevelop its portion of the OAB property have been part of an ongoing, open, and public process over the last fifteen years. In addition to the public CEQA process, and as with all significant Port projects and decisions, the Port's decisions related to redevelopment of the OAB were subject to full public notice and comment pursuant to the Brown Act and the Port's Sunshine Ordinance, discussed above. All major decisions were and continue to be presented to the Board for approval at public meetings, and are fully analyzed in advance in publicly-noticed Agenda Reports prepared by Port staff, which are posted on the Port's public website.

For example, the decision to start the process to issue a request for qualifications, seeking a qualified party to enter into a long-term lease for the operation, maintenance and development of the Port's OAB property, was proposed in Board Agenda Report No. M-4, presented at a public Board meeting on December 2, 2008. The Agenda Report explained the background of the OAB development project and identified how the project conformed to the EIR. The associated Resolution Number 08254 was voted on by the Board of Port Commissioners in the December 2,

[74] San Francisco Bay Area Seaport Plan, San Francisco Bay Conservation and Development Commission and Metropolitan Transportation Commission, April, 18, 1996 as amended through January 2012.

2008, public meeting.[75] WOEIP co-chair, Margaret Gordon, was a Port Commissioner at the time this OAB proposal was presented to and voted on by the Board, and Commissioner Gordon voted for this proposal.

Thus, the public had ample notice and opportunity to comment on this decision as well as on the Port's other development plans and proposals for the OAB. Additionally, Port staff facilitated public participation on the June 30, 2009 "Proposal Interview Panel" by including the Chairperson of the West Oakland Community Advisory Group, Mr. George Bolton, on the selection panel. A live viewing or simulcast of the session for members of the public to attend was also part of the public participation.

Additionally, the Port is currently engaged in a collaborative process with community groups in West Oakland to develop a jobs policy and community agreement related to the first logistics development on the Port Development Area of the OAB. The Port held over 18 working sessions in 2016 to develop an agreement that would enhance the Port's local hire policy, provide financial support for job readiness, and create a community advisory group. The Port has been working cooperatively on these agreements with the Oakland Works Coalition, of which WOEIP is a member, and the Revive Oakland Coalition, a broad coalition representing 30 community based organizations.

E. Air Quality in West Oakland

As discussed above, the Port has worked on numerous projects explicitly designed to decrease Port-related emissions that might impact West Oakland for many years. In 2008, CARB finalized its HRA for West Oakland, specifically analyzing health effects from Port and non-Port DPM emissions on residents of West Oakland.[76] As mentioned above, the Port fully cooperated in the development of the CARB HRA and supplied data to CARB from the Port's Emissions Inventory. The CARB HRA found that the West Oakland community is exposed to DPM ambient concentrations at higher levels than background in the Bay Area.[77] Due to exposure to higher DPM in the ambient air, the CARB HRA concluded that the West Oakland community had an increased estimated lifetime potential cancer risk.

The CARB HRA determined that 80% of the increased cancer risk was due to non-Port and non-railroad operations, while 4% of the increased cancer risk was due to railroad operations and only 16% was due to Port-related operations.[78] In fact, according to the CARB

[75] Board of Port Commissioners, City of Oakland, Resolution No. 08254, Dec. 2, 2008.
[76] CARB HRA, p. 1.
[77] CARB HRA, p.2.
[78] CARB HRA, p. 25.

HRA, the largest contributors of DPM pollution impacting West Oakland are on-road heavy-duty trucks not associated with Port operations.[79]

CARB has not updated the HRA since its publication in 2008. As discussed above, the Port's DPM emissions have dropped significantly since the HRA was conducted. Although CARB has not updated the 2008 CARB HRA, air quality data in West Oakland have been collected over the past several years. Beginning in 2013, the City began collecting air quality data at the OAB and in West Oakland.[80] The BAAQMD also collects air quality data from a monitor in West Oakland. The data from these monitors show that while there were some periods whose emissions exceeded EPA's 24-hour $PM_{2.5}$ (fine particulate matter) standard, the ambient air concentrations at these monitors was below the EPA standard for the majority of the time over the past several years.[81]

In addition, researchers from the Environmental Defense Fund ("EDF"), working with the University of Texas at Austin, Google Earth Outreach, and Aclima, have measured and charted air quality in Oakland using Google Street View mapping cars equipped with mobile air monitors.[82] The 2017 EDF study does not evaluate health impacts from the air quality and does not determine what air pollution might be associated with the Port versus other sources. The data collected in this project does provide a snapshot of air quality in West Oakland, and indicates the heaviest concentrations of air pollutants are present along transportation corridors (interstate highways) and near industrial facilities (concrete supply company, metals recycling business).[83] The Port understands that the City and EDF, along with other regulatory agencies, continue to collect air quality data in West Oakland.

F. The Port Maintains Strong Civil Rights and Anti-Discrimination Policies

The Port requires that its staff, customers, and tenants abide by all Federal, State, and local civil rights statutes and internal Port anti-discrimination policies. The Port maintains an Equal Opportunity Policy to promote, facilitate, and encourage the fullest possible participation by all persons, including women and minorities, in the activities of the Port.[84] The Port's Equal Opportunity Policy applies to Port personnel, public works contracts, and tenants leasing and businesses operating on Port property. In addition, the Port has a policy requiring reasonable accommodation for individuals with disabilities and discrimination complaint procedures. Under these policies, any employee who believes she has been the subject of discrimination can contact

[79] CARB HRA, p. 2.
[80] Oakland Global Air Quality Web Portal (available at: http://ngem.com/OAB_AQM/).
[81] Oakland Global Air Quality Web Portal.
[82] See EDF website, available at: https://www.edf.org/airqualitymaps.
[83] *See* Environ. Sci. Technol., *High-Resolution Air Pollution Mapping with Google Street View Cars: Exploiting Big Data*, J. Apte et al., 2017, 51, 6999–7008, available at: http://pubs.acs.org/doi/pdf/10.1021/acs.est.7b00891.
[84] Port of Oakland Policy No. AP 450, Equal Opportunity, attached hereto as Exhibit L.

the Port's Office of Equal Opportunity ("OEO"). The OEO will investigate the claim of discrimination under procedures detailed in the Port's policy.

Additionally, contracts issued by the Port contain standard provisions prohibiting discrimination by bidders, contractors, subcontractors, licensees, lessees, and permittees. Contract provisions specifically prohibit discrimination in violation of Title VI of the Civil Rights Act and related regulations. For example, the standard language in Port Professional Service Agreements ("PSAs") with certain types of vendors contains the following:

> The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Similar language is found in the wide range of agreements the Port enters on a regular basis. This language and these policies are further evidence of the Port's commitment to equal opportunity and prohibiting discrimination in its operations.

G. WOEIP Mischaracterizes the Port's Public Engagement and Air Emissions Reductions

As the Port has demonstrated above, it has engaged in an open and public process to expand or modify operations while simultaneously significantly reducing air emissions associated with Port operations. The facts alleged by WOEIP in its Complaint regarding the Port's public participation and air emissions are largely inaccurate or misleading.[85] WOEIP alleges that "most of the pollution burden West Oakland residents shoulder directly results from the activities taking place at and around the Port and OAB."[86] However, as discussed in the previous section, the CARB HRA, which WOEIP relies on to substantiate adverse health impacts, clearly states that as of 2005, 80% of DPM emissions impacting West Oakland come from on-road heavy-duty trucks NOT associated with Port operations.[87] Thus, contrary to WOEIP's claims, "most of the pollution" impacting West Oakland comes from sources other than the Port.

[85] While the Port is addressing and rebutting certain allegations made by WOEIP, it has not responded to every statement made in the Complaint. The Port's failure to rebut any specific statement should not be deemed acceptance of that statement. Furthermore, many of WOEIP's allegations relate solely to the City, and the Port is not responding to those City-specific statements.
[86] Complaint, p. 13.
[87] CARB HRA, p. 25.

Furthermore, WOEIP's claims completely ignore the fact that while the CARB HRA used data from 2005, as of 2015, the Port has reduced aggregate DPM emissions from Port sources by 76 percent from 2005 levels – from 261 tons emitted in 2005 to 63 tons emitted in 2015.[88] Thus, the Port's contribution to air quality impacts in West Oakland is even lower today than it was in 2005, and is certainly not the source of "most of the pollution" in West Oakland. This further puts into question WOEIP's claim that "[f]urther expansions of the Port's activities will...further [elevate] the amount of diesel particulate matter in the air throughout West Oakland."[89]

Additionally, WOEIP often lumps together the City and the Port, implying that many decisions regarding the OAB expansion involved both entities. For example, WOEIP alleges that "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."[90] In fact, the Port has no involvement with the Gateway or Oakland Global Logistics Center development projects. Including the Port in this allegation is misleading and inappropriate.

Finally, many of the "Less Discriminatory Alternatives" sought by WOEIP have already been implemented by the Port or are underway.[91] WOEIP alleges that the Port has refused to engage the community in a meaningful process by which to receive and incorporate community input regarding continued expansion of the Port's activities.[92] Specifically, and as directed to the Port, WOEIP alleges that the Port has: (1) refused to develop a meaningful emissions reduction plan for activities at the Port and OAB; (2) failed to produce or require a comprehensive truck management plan; and (3) refused to mitigate the negative air quality and health impacts caused by increase in truck traffic to and from the Port and the OAB.

These allegations are directly refuted by the facts laid out above. In fact, the Port has robust public engagement policies at all levels of decision making; these policies allow for and in many cases require public participation and input above and beyond any statutory requirements. As described above, the Port organized numerous stakeholder task forces to guide development of both the MAQIP and the CTMP. Currently, the City and the Port are collaborating on, and seeking to organize, similar stakeholder groups to develop a joint Truck Management Plan to address quality of life impacts that might be caused by truck operations resulting from operations at the facilities developed at the OAB. Likewise, and as acknowledged by WOEIP and other community organizations, the Port has implemented and funded numerous emission mitigation projects that have and will continue to have a significant positive impact on the air quality and related public health in West Oakland.

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[88] 2015 Emissions Inventory, Final Report, p.8.
[89] Complaint, p. 14.
[90] Complaint, p. 21.
[91] Complaint, pp. 28-30.
[92] Complaint, p. 28.

III. LEGAL ANALYSIS

WOEIP alleges that the Port has violated Title VI and the associated DOT and EPA civil rights regulations, because the Port did not have a meaningful public participation process to address the adverse impacts of the Port's expansion of activities, which resulted in a disproportionate impact on the communities of color in West Oakland, and the Port has failed to implement less discriminatory alternatives.[93] This allegation is flatly refuted by the facts above.

In the Acceptance Letter, DOT and EPA state that their investigation will focus on:

(1) whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the OAB subjects the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964; and

(2) whether the City's and Port's methods, including their public participation process, for approving and authorizing new development and expanded activities at the Port of Oakland and the OAB subject the residents of color of West Oakland to discrimination on the basis of race, color or national origin in violation of Title VI.[94]

As indicated in the Executive Summary above, with respect to the first prong of the EPA-DOT investigation, the Port was not involved in the City's approval of a construction management plan or permission for groundbreaking on the Northeast Gateway development project.[95] Accordingly, the Port will focus its legal analysis on the second prong of DOT's and EPA's investigative focus: the public participation process.

As the facts described above make clear, the Port has developed a meaningful process with robust procedures in place to involve the public in a wide spectrum of activities at the Port. In fact, the public generally, and WOEIP specifically, have been deeply engaged for decades in the Port's development projects and the Port's air emissions reduction efforts. The Port has not discriminated against the communities of color in West Oakland, nor do its public engagement policies related to development or activities have a disparate negative impact on those communities.

The Port's development activities are necessary and integral to the Port's institutional mission. The Port, including the Port's expanded development at the OAB, are located on Port priority property and necessarily have to remain in that water-adjacent location. Due to the location

[93] Complaint, pp. 26-30.
[94] Acceptance Letter, p. 2.
[95] *See* October 4, 2016, approval from the City.

constraints of the Port's operations, no less-impactful alternative exists, beyond the significant efforts the Port has already undertaken to reduce emissions related to its operations.

A. Title VI Background

Title VI provides that "[n]o 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. § 2000d; *see also* 49 C.F.R. § 21.5(a); 40 C.F.R. § 7.30. Discrimination under Title VI can take the form of intentional discrimination or discrimination through disparate impacts. DOT and EPA regulations provide specific prohibitions on: (1) the use of criteria or methods of administering a program or activity which have the effect of subjecting individuals to discrimination based on their race, color, national origin or sex; and (2) choosing a site or location of a facility that has the purpose or effect of subjecting individuals to discrimination under any program or activity on the basis of race, color, national origin or sex. 49 C.F.R. § 21.5(b)(2) and (3); 40 C.F.R. § 7.35(a) and (b).

In situations where allegations of discrimination are based on disproportionate or disparate impacts, Courts and agencies look to a three-part test to determine whether a recipient of Federal funding has violated Title VI: (1) Does the adverse effect of the policy or practice disproportionately affect members of a group identified by race, color, or national origin? (2) If so, can the recipient demonstrate the existence of a substantial legitimate justification for the policy or practice? (3) Is there an alternative that would achieve the same legitimate objective but with less of a discriminatory effect? *Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1407 (1993). Causation between the recipient's policy or practice and the alleged disproportionate impact must be present to prove a disparate impact claim, just as in a direct discrimination investigation. *Id.* Thus, a Title VI disparate impact claim will fail "if the evidence tends to show that even had the [recipient] not engaged in the challenged practice, the same disparate impact would nonetheless have existed." *Id.*

B. The Port Has Not Discriminated Against the Communities of Color in West Oakland

The Port's receipt of Federal funding from DOT and EPA makes it subject to the requirements of Title VI because it is receiving "Federal financial assistance." 42 U.S.C. § 2000d. The Port takes seriously its obligations under Title VI and has complied with its mandate. In short, the Port has not discriminated against communities of color in West Oakland, and a straightforward evaluation of the facts and circumstances surrounding the Port's methods for approving its operational and development projects demonstrates that the Port has, in fact, actively and consistently included WOEIP and other local community groups in the decision making processes for its development, air quality, and truck management programs.

1. Disparate Impact

The first step in evaluating whether a recipient of Federal funds impermissibly discriminated against a protected group based on the disparate impacts of its actions is to identify the specific policy or practice at issue. *Elston*, 997 F.2d at 1407. Here, DOT and EPA have identified the Port's practices at issues as: the Port's methods, including their public participation process, for approving and authorizing new development and expanded activities at the Port and OAB.

Next, and most crucially, DOT and EPA must evaluate: (1) whether there is actual adversity or harm to West Oakland residents; (2) whether that harm is disproportionately impacting communities of color; and (3) whether the Port has caused that disproportionate harm. *See New York City Envtl. Justice All. v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000) (plaintiffs must "allege a causal connection between a facially neutral policy and a disproportionate and adverse impact on minorities.")

The Port acknowledges that the CARB HRA provides some factual support for WOEIP's claims that West Oakland residents (who are predominantly minorities) are harmed by poor air quality, which causes health impacts at a disproportionate rate compared to other communities in the Bay Area. However, this does not prove that the Port's methods for approving new development and activities are the cause of that poor air quality. The speculative chain of causation implied in the Complaint between the Port's public participation methods and air quality in West Oakland is simply too tenuous on its face. **Moreover, the CARB HRA establishes that the Port is not the primary cause of those health impacts**. In fact, on-road heavy duty diesel trucks, not associated with the Port, are responsible for the vast majority of the DPM pollution in West Oakland. Indeed, due to the Port's ongoing emissions reductions efforts which were crafted in collaboration with WOEIP and other West Oakland community members, DPM emissions from Port-related operations have decreased from 261 tons in 2005 (the data used in the CARB HRA) to 63 tons in 2015.

Thus, **regardless** of the Port's public participation methods, and even if the Port ceased all operations at its Seaport and at the OAB, West Oakland residents would still have air quality impacts from industrial business and on-road heavy-duty trucks traveling on the highways surrounding the community. Because the primary cause of air pollution in West Oakland is sources not related to the Port, there is no causal link between the Port's public participation methods and the alleged disproportionate health impact in West Oakland. *See Elston*, 997 F.2d at 1407.

In sum, there is a fatal lack of causation in WOEIP's Complaint. Even if DOT and EPA find that there is a disparate negative health impact on communities of color in West Oakland, the Port is not the primary cause of that disparate impact, nor is the Port's public participation process. Accordingly, the Port cannot be held liable under Title VI.

2. *Legitimate Justification*

As discussed above in the previous section, the Port's activities and expansion practices do not cause a disproportionate adverse impact on West Oakland residents. Nevertheless, the Port separately notes that it has a substantial legitimate justification for its operations and development practices and is duty bound by the Charter and the Tidelands Trust to promote navigation and commerce.

The Port is a crucial part of the local, State, and national economy. As discussed above, the Port of Oakland was established "[t]o promote and more definitely insure the comprehensive and adequate development of the Port of Oakland through continuity of control, management and operation."[96] The Port has the obligation to establish, equip, and operate its maritime operations and to update or modify its operations as the requirements of commerce, shipping, and navigation may demand.[97] In light of those obligations, the Port is continually looking for ways to grow to meet the needs of commerce, while necessarily improving its cargo handling efficiency and reducing its environmental impact.

Indeed, the Port has expanded operations and increased the volume of cargo traveling through the Port, while at the same time drastically reducing the emissions associated with Port activities. Recent development projects at FISCO and the OAB are necessary to meet the Port's legitimate needs to expand and modernize its operations. The Port is a water-dependent use, and is limited in the land it can use for development. Under the BCDC Seaport Plan, Port property, including the Port's OAB property, are designated as a "Port Priority" Area. Utilizing this property to provide modern rail and logistics facilities is legitimate, important, and integral to the Port's institutional mission and duty. *Elston*, 997 F.2d at 1413.

3. *Less Discriminatory Alternatives*

The Port has engaged in a thoughtful, transparent, and publicly accessible process to minimize the environmental impacts of its activities and development. In light of the water-dependent nature of the Port's operations, and the meaningful public process the Port engaged in to reduce its environmental impacts, there is no less discriminatory alternative available. *Elston*, 997 F.2d at 1407, 1413 (Title VI requires recipients to implement a less discriminatory alternative if it is feasible and meets their legitimate objectives).

WOEIP identifies several items that it believes are "Less Discriminatory Alternatives" that the City and/or the Port should implement.[98] However, as explained in detail above, the Port has already undertaken the planning, public engagement, and emissions reductions sought by WOEIP. WOEIP and other community groups have been intimately involved in the Port's AQMP, MAQIP,

[96] Article VII, Section 700 of the Charter.
[97] Article VII, Section 706(2) of the Charter.
[98] Complaint, pp. 28-30.

CTMP, and development of mitigation measures specific to the OAB under the EIR. In addition, the City and the Port are beginning the process to include robust public engagement in the joint City-Port Truck Management Plan that will address truck traffic and emissions at the Port and the OAB.

The remaining claims of the WOEIP in their proposed "Less Discriminatory Alternatives" are simply not true. WOEIP claims that the Port has failed to develop a meaningful emissions reductions plan, failed to develop a comprehensive truck management plan, and failed to mitigate the negative air quality impacts in West Oakland. As detailed above, WOEIP and other community groups were involved with the Port in planning related to all of those activities – with significant emissions reductions as a result.

In sum, WOEIP has not, and cannot, point to any less discriminatory alternatives that the Port has not already engaged in. As such, WOEIP's assertions fail.

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The Port reiterates its commitment to environmental stewardship and its willingness to cooperate with this investigation. The Port is confident that DOT and EPA will find that it has not discriminated against communities of color in West Oakland in violation of Title VI. To the contrary, the Port has a demonstrated and acclaimed track record in public participation processes that are an integral part of the Port's decision making. As the record described herein shows, the Port utilizes all its decision making methods, including public participation, to promote the economic use of its public tidelands on behalf of increasing jobs, employment, public health, and improved quality of life for the Port's neighboring communities, the City of Oakland, and the entire region.

Please let us know if you need anything further from the Port to assist in your investigation.

Sincerely,

J. Christopher Lytle
Executive Director

Enclosures: 1) CD of Exhibits; and 2) List of Exhibits Provided on the Enclosed CD and Additional Materials Available Online

cc: Board of Port Commissioners
Joan Story, President
Cestra Butner, First Vice President
Andreas Culver, Second Vice President

Michael Colbruno, Commissioner
Earl Hamlin, Commissioner
Arabella Martinez, Commissioner
Alan Yee, Commissioner

Danny Wan, Port Attorney

City of Oakland
The Honorable Mayor Libby Schaaf
Barbara Parker, City Attorney
Sabrina Landreth, City Administrator

Exhibits Provided on the Enclosed CD

Exhibit	Title	Date	Page
A	Northeast Gateway development project approval from the City of Oakland	10/4/2016	2
B	Port Ordinance No. 4265: Ordinance Approval and Adopting Rules and Requirements for Noticing, Agendizing and Posting of Board of Port Commissioners Meetings, Assuring Public Access and Participation and Providing Cure and Correction of Non-Compliance with Open Meeting Laws ("Sunshine Ordinance")	12/12/2013	3
C	The Economic Import of the Port of Oakland – 2010, Martin Associates ("Economic Impact Report")	4/18/2011	6
D	2015 Emissions Inventory	October 2016	11, 13
E	Effects of Exhaust After-Treatment and Fleet Modernization on Port of Oakland Truck Emissions Following Complete Implementation of California's Drayage Truck Regulation, Draft Final Report, Preble, et al., Department of Civil and Environmental Engineering, University of California, Berkeley ("2016 UC Berkeley Study")	November 2016	11
F	2005 Emissions Inventory	3/12/2008	13
G	2012 Emissions Inventory	11/5/2013	13
H	Summary Report to West Oakland Neighbors, Vision 2000 Air Quality Mitigation Program	December 2006	13
I	Maritime Air Quality Improvement Plan ("MAQIP")	April 2009	14
J	Comprehensive Truck Management Program ("CTMP")	June 16, 2009	18
K	WOCAG Comment on the Draft EIR for the OAB Redevelopment Plan	June 11, 2002	22
L	Port of Oakland Policy No. AP 450-452, Equal Opportunity	April 2000	27

Additional Materials Available Online

- Press Release, Port Allocates $2.7 Million for Shore Power & Innovative Energy Study, April 4, 2011
    - http://www.portofoakland.com/press-releases/press-release-223/)

- Charter of the City of Oakland
  - https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=THCHOA

- Chapter 516, Statutes of 1919
  - http://www.slc.ca.gov/Programs/Granted_Lands/G01_Alameda/G01-05_City_of_Oakland/S1919_Ch516%20.pdf

- Port of Oakland Strategic Plan, Fiscal Years 2011-2015
  - http://www.portofoakland.com/files/pdf/about/strategicPlan2011-2015.pdf

- Port of Oakland Comprehensive Annual Financial Report for the Years Ended June 30, 2016 and 2015
  - http://www.govwiki.info/pdfs/Special%20District/CA%20Port%20of%20Oakland%202016.pdf

- U.S. EPA, A Ports Primer for Communities, Section 6.4 Case Studies: Job and Benefits, published July 2016
  - https://www.epa.gov/ports-initiative/ports-primer-64-case-studies-job-and-benefits#oakland).

- Port of Oakland Website
  - http://www.portofoakland.com/

- California Public Resources Code
  - https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=2.6.&article=&goUp=Y

- Title 14. California Code of Regulations, CEQA Guidelines
  - http://resources.ca.gov/ceqa/guidelines/art1.html
  - http://resources.ca.gov/ceqa/guidelines/art11.html
  - http://resources.ca.gov/ceqa/guidelines/art13.html
  - http://resources.ca.gov/ceqa/guidelines/art20.html

- Effects of Particle Filters and Selective Catalytic Reduction on Heavy Duty Diesel Drayage Truck Emissions at the Port of Oakland, Preble, et al., *Environmental Science and Technology*, June 26, 2015
  - http://pubs.acs.org/doi/abs/10.1021/acs.est.5b01117

- Diesel Particulate Matter Health Risk Assessment for the West Oakland Community Preliminary Summary of Results, California Air Resources Board, December 2008
  - https://www.arb.ca.gov/ch/communities/ra/westoakland/westoakland.htm

- Board of Port Commissioners Public Agenda Reports, Ordinances, Resolutions and Minutes
    - http://www.portofoakland.com/port/board-of-commissioners/board-meetings/archive/

- Oakland Army Base CEQA/EIR Documents
    - http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157

- Press Release, Port of Oakland-based firm first to test battery-powered big rig, August 2, 2017
    - http://www.portofoakland.com/press-releases/port-oakland-based-firm-first-test-battery-powered-big-rig/

- Press Release, Port of Oakland OKs new high-power line to plug in more ships, August 14, 2017
    - http://www.portofoakland.com/press-releases/port-oakland-oks-new-high-power-line-plug-ships/

- San Francisco Bay Area Seaport Plan, San Francisco Bay Conservation and Development Commission and Metropolitan Transportation Commission, April, 18, 1996 as amended through January 2012
    - http://www.bcdc.ca.gov/seaport/seaport.pdf

- Oakland Global Air Quality Web Portal
    - http://ngem.com/OAB_AQM/

- EDF air quality monitoring website
    - https://www.edf.org/airqualitymaps

- Environ. Sci. Technol., *High-Resolution Air Pollution Mapping with Google Street View Cars: Exploiting Big Data*, J. Apte et al., 2017, 51, 6999–7008
    - http://pubs.acs.org/doi/pdf/10.1021/acs.est.7b00891

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/10/2017 7:24:16 PM
To: Mogharabi, Nahal [MOGHARABI.NAHAL@EPA.GOV]
CC: Matthew Lakin [Lakin.Matthew@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: Request: Earthjustice clip: Title VI complaint about West Oakland FW: EJ News 04/07/17

Nahal

Is there any way you could keep me informed as to what, if anything, we have been saying to the media re the complaint ? Many of our state/local agency allies (ARB, BAAQMD et al) as well as community groups stay in touch with me by way of our ongoing work on West Oakland issues and it would be good if I was up to date as to what we are saying. Thanks

Richard
7-4104

From: Mogharabi, Nahal
Sent: Monday, April 10, 2017 10:48 AM
To: Lakin, Matt <Lakin.Matthew@epa.gov>
Cc: Grow, Richard <Grow.Richard@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>
Subject: Re: Earthjustice clip: Title VI complaint about West Oakland FW: EJ News 04/07/17

Thanks so much, Matt.

Will let you know if the reporter has follow up.

Nahal

On Apr 10, 2017, at 9:01 AM, Lakin, Matt <Lakin.Matthew@epa.gov> wrote:

> Nahal,
>
> Here is the link to the complaint you requested:
> http://earthjustice.org/sites/default/files/files/2017-04-04-TitleVI_Complaint.pdf
>
> http://earthjustice.org/news/press/2017/community-group-alleges-civil-rights-violations-by-the-city-and-port-of-oakland-in-complaint-to-federal
>
> Richard Grow is our staff lead if you have any questions from EPA's perspective.
> Thanks,
> Matt
>
> _____
> Matthew Lakin, Ph.D.
> Acting Deputy Director, Air Division
> US EPA, Region 9 (AIR-1) | 75 Hawthorne St. | San Francisco, CA 94105
> P: 415.972.3851 | E: Lakin.Matthew@epa.gov

Bay Area Air Quality Management District

July 14, 2017

Proposal to Further Reduce Emissions at the Port of Oakland & Former Oakland Army Base

Jack P. Broadbent
Executive Officer/APCO

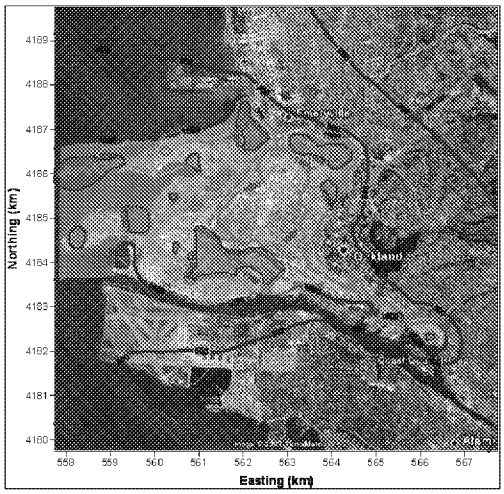
Overview

- Historical emissions & reductions efforts
- Current emissions & reductions efforts
- Future emissions concerns
- Outline of possible emissions reductions solutions

Emissions - 2008 Health Risk Assessment

- Dec. 2008 - Health Risk Assessment (California Air Resources Board/BAAQMD)
- Risk ~3 times higher than Bay Area average
- On-road heavy-duty trucks largest contribution followed by ships, harbor craft, locomotives, and cargo handling equipment

Figure 1 - Modeled Potential Cancer Risk – West Oakland



Established 1927
6th-Largest Port in USA
18 Berths
36 Container Cranes
6,500 trucks
2 Rail yards–UP/BNSF
2016: 2.37 million 20-foot equivalent units (TEU)
Bounded by former Oakland Army Base (OAB) and Port of Oakland
I-580, I-980, I-880
Approximately 22,000 residents
Residents/Air District concerned about Health

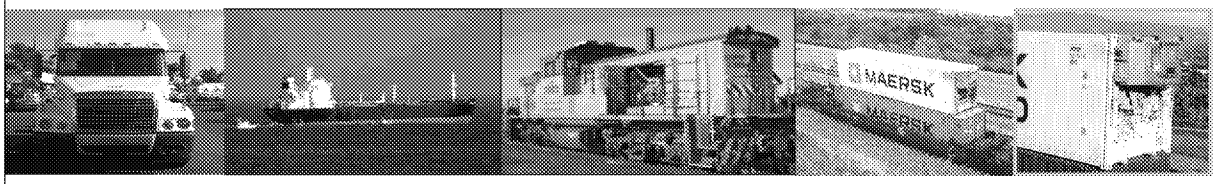
Actions to Reduce DPM

- **Air District - Clean Communities Initiative:**
  - Monitoring, CARE Program, Planning
  - Enforcement
  - Direct Incentives >$80 million (Trucks, Shorepower, Harbor Craft, Locomotives, Vessel Bonnet)
  - On-road >$50 million
  - Currently available - $20 million

- **Port of Oakland:**
  - MAQIP
  - Truck Ban
  - Incentives ~ $5.2 million (Trucks)

- **ARB**
  - Regulations (Trucks, Shorepower, Harbor Craft, Cargo handling equipment, Reefers)
  - Sustainable Freight Plan
  - I-Bond & Cap and Trade Incentives
  - Enforcement

- **Other Partners:**
  - West Oakland Community – MAQIP, Outreach & Truck survey
  - USEPA – Outreach & Incentives ($4 million)
  - ACTC – County-wide goods movement plan
  - MTC – Region-wide goods Movement Plan & Incentives (~$2 million)



Port Truck Emissions Reductions Project ($33.3 million):
$19.2 million – CARB Goods Movement Bond funding
$5 million – BAAQMD funding
$4.1 million – US EPA
1,319 trucks retrofit by grants
627 trucks replaced by grants

Air District provided $24.5 million to help install shore power at 15 berths at the Port of Oakland. Projects were all completed by the end of 2013.

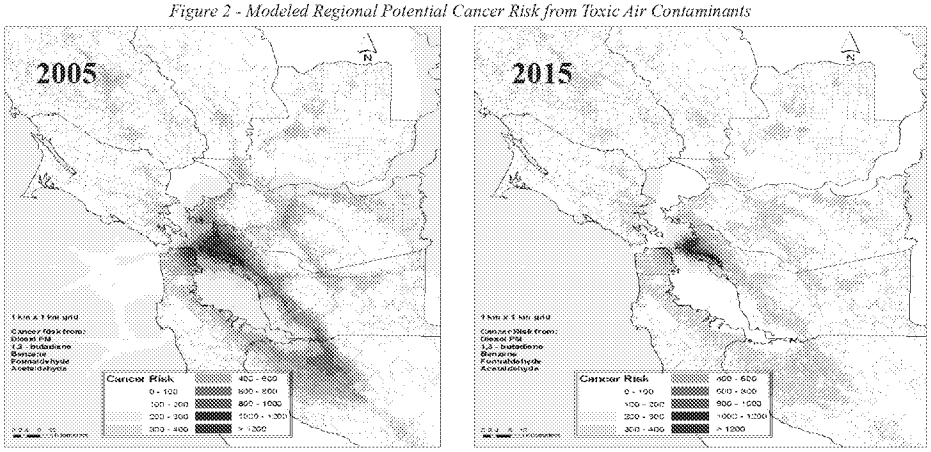
Goods Movement Bond
4 Locomotives - $8.5 million
319 On-road Trucks - $25 million
Vessel Bonnet - $2 million
17 Demo Trucks - $11 million

ARB Regulation:

Vessels at berth: 20% further reduction by 2017
Drayage & On-road Truck: compliance dates through 2023
Cargo Handling Rule: compliance dates through 2017
Commercial Harbor Craft: compliance dates through 2022

Progress in Reducing Cancer Risk from Air Pollution

Figure 2 - Modeled Regional Potential Cancer Risk from Toxic Air Contaminants

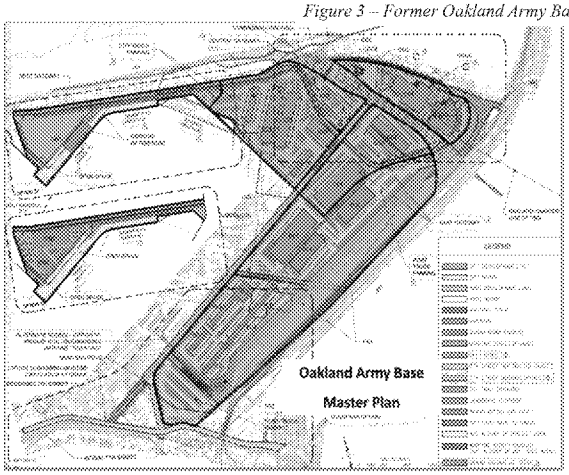


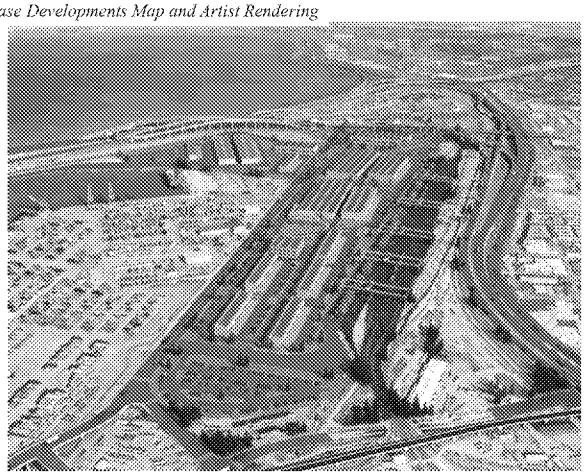
Improving Air Quality & Health in Bay Area Communities, Community Air Risk Evaluation Program Retrospective & Path Forward (2004 - 2013), April 2014, BAAQMD, www.baaqmd.gov/CARE

Significant emissions reductions in DPM and SO2 from TRU, Commercial Harbor Craft, On-dock Equipment
Issue compounded by recent changes to California Office of Environmental Health Hazard Assessment (OEHHA) Health Risk Guidelines have increased the health risk from DPM by a factor of ~3 to 4 times of those originally used in the 2008 HRA
New emissions sources at Oakland Army Base
The numbers of equipment at the Port and OAB are projected to increase in line with cargo volume increases
West Oakland remains the most highly impacted community in the Bay Area relative to exposure to toxic air contaminants

OAB Development Underway

Figure 3 – Former Oakland Army Base Developments Map and Artist Rendering





Source: Oakland Global

BAAQMD Recommendations

- Regulation & Enforcement Action
- Use of Partner Authorities
- Grant Funding
- Defined Policy Direction

Reviewed Port equipment inventories & emissions inventory
Sought understanding what may be developed at OAB
Reviewed planning frameworks at local, state & federal levels to determine how to integrate equipment replacement projects
Examined how the authorities of the various regulatory agencies might be used to reduce emissions
Looked at initiatives at other California ports and evaluating feasible technologies to get further emissions reductions
Updating projections for health risk in the region
Meet with stakeholders for their input

Regulation & Enforcement Action

Enforcement Action - *Emissions reduced: 6 TPY*

- Drayage rule
- Shore power rule

New Regulation - *Emissions reduced: TBD*

- Shore power
- Cargo Handling Equipment
- Locomotives
- Clarify OAB requirements
- Indirect Source Rule

Use of Authorities

Push for Zero and Near Zero Equipment and Infrastructure

- OAB - Lease Disposition and Development Agreement
- Leases & Concessions
- Ordinances
- Fee Authorities

OAB Lease Required Mitigations

- Port to develop and implement a criteria pollutant reduction program to reduce emissions from maritime and rail operations.
- City to administer a West Gateway Rail and Maritime Emissions Reduction Program.
- City and Port to jointly create, maintain, and fund on a fair share basis, a truck diesel emission reduction program.
- City and Port to work with major developers to fund BAAQMD Transportation Control Measures.
- City and Port to encourage, lobby, and potentially participate in emission reduction demonstration projects that promote technological advances in improving air quality.
- Exposure to Air Pollution (Toxic Air Contaminants: Particulate Matter) incorporate health-protective measures into project design to reduce the potential health risk due to exposure to diesel particulate matter (PM) both inside buildings and out-of-doors.
- Greenhouse Gas (GHG) Reduction Plan: The Goal of this Plan shall be to increase energy efficiency and reduce GHG emissions by at least 20 percent with a goal of 36 percent below the project's "adjusted" baseline GHG emissions.

Grants & Incentives

BAAQMD Deemed Available Technologies - *Emissions reduced: 5.2 to 6.8 TPY*

- Locomotives - Tier 4 engines
- Yard Trucks – Electric equipment
- Tug Boats – Tier 4 engines & shore power
- Yard Hostellers – hybrid electric equipment
- Costs: $190 Million – requiring 50% match by industry
- Incentive funds required - $100 million

Under Investigation

- RTG – Electric equipment
- Drayage Truck – Electric/H2 equipment
- Shore power (very limited availability)
- Yard Hostellers – Electric/H2 equipment
- Oceangoing Vessel speed reduction

Defined Policy Direction

- Set Policy Goals:
  - Require Zero or Near Zero equipment as part of any new operations
  - Port and OAB to achieve Zero or Near Zero operations for all equipment by 2030

Questions and Discussion