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MAY 9, 2014

Subject: Federally funded development increases burden of trucks on West Oakland's residents and violates Civil Rights Act

This letter serves to outline our complaint and notify the City of Oakland, a recipient of federal transportation funding, of its violation of Title VI of the U. S. Civil Rights Act of 1964. The basis of our complaint is that the city failed to produce a comprehensive Truck Management Plan as called for in the 2002 Environmental Impact Report for the Oakland Army Base redevelopment project. This failure has led to the introduction of additional truck traffic in the Prescott neighborhood, a community with a more than significant population of low-income people of color. It is a violation of Title VI for a grantee to use federal funds for a project that increases the environmental, health or economic burden on communities of color.

We contend that the City of Oakland, through the actions of its Planning Commission, violated the Civil Rights Act when it approved the permit for a U.S. Customs Examination Station to operate in the Prescott neighborhood. This permit approval serves to facilitate the introduction of thousands of truck trips each year into the community. This port-related truck traffic could have been avoided if a Truck Management Plan had been produced prior to eviction of trucking tenants and the start of construction on the OAB logistics center.

As a recipient of federal contracts, the CES operator, North American 3PL, is also in violation of Title VI due to the truck traffic that their new operation will bring into the community. Customs and Border Patrol had no protocols for civil rights or public safety in the selection of a new site for CES operations and relied solely on the contractor's understanding of City of Oakland zoning regulations to protect the public from increased impacts deriving from the CES contractor's activities.

We add the Port of Oakland to this complaint due to that entities failure to plan for the transition of port-related businesses resident on port land during construction of the port's portion of the OAB redevelopment project. This failure to plan for the port-serving trucking industry led Three Rivers Trucking to relocate from port property and into the Prescott neighborhood. The Port further exacerbated this discriminatory situation by refusing to provide an adequate lease term for the U.S. Customs Examination Station formerly housed at the Oakland Army Base. As a recipient of federal funds, the Port's failure to create a transition plan, and failure to participate with the City in creation of the mandated Truck Management Plan, constitutes a violation of Title VI and must disqualify for the Port of Oakland for further federal funding.

Being reasonable people, and in the spirit of our broader support for the overall potential value of the OAB development project, we offer the City and Port of Oakland 5 business days from the receipt of this letter to contact us and engage in discussions intended to rectify these violations. If that window of opportunity passes without remediation or opening of discussions intended to rectify this added burden we will file a formal complaint with the Departments of Transportation, Customs and Border Patrol and the U.S. Department of Justice in its role of enforcing the Civil Rights Act.

BACKGROUND ON THE COMPLAINTANT

The West Oakland Environmental Indicators Project (WOEIP) is a community-based, resident-led environmental justice organization located in the western-most section of the city of Oakland, Ca. Our leadership and staff are all low-income Oakland residents and two-thirds of our staff is African American. West Oakland residents experience some of the highest levels of asthma and cancer in the state. We are a "fenceline" community, sharing a freeway as the dividing line between residents and the Port of Oakland; fifth largest port in the U.S. Our study of living conditions in West Oakland, "Knowledge for Change", established 17 indicators of community health and set the tone for planning based change here in 2002. Our studies of port-related truck traffic in 2003 and 2008 established the baseline understanding of freight-related trucking impacts on local residents. In 2005, we established a formal partnership with Region 9 of the U.S. Environmental Protection Agency and, through that partnership, designed a model for collaboration with government and business. Our Collaborative Problem-Solving Model has been used to develop the Port of Oakland's Maritime Air Quality Improvement Plan and as a tool to reduce conflict between residents, housing developers and the industrial recycling industry. In short, we are experts at collaboration and have deep understanding of regulatory processes and data-based decision making.

Since 2005 we have provided leadership and technical assistance to numerous community groups working to assure a local vision for the redevelopment of the decommissioned Oakland Army Base. We co-chair the West Oakland Community Advisory Group, which was originally commissioned 16 years ago to guide the redevelopment plans for the base. Until the elimination of the Redevelopment Agency, we co-chaired the West Oakland Project Area Committee empowered to advise the City on local goals for urban development in the seven neighborhoods that make up this community. We and our allies serve on the resident advisory and technical advisory committees for the TIGER funded West Oakland Specific Plan.

We are part of an engaged community with great knowledge of our history and the common interests of our neighbors. With this background we are deeply concerned about the permitting by the City of the United States Customs and Boarder Patrol cargo examination station being relocated into our community and the civil rights violations accompanying these actions. We hold the Port of Oakland complicit in these violations due to its failure to provide a suitable location for CES activities during the development of the joint City/Port logistics center.

STUDIES AND STATISTICS

It has long been recognized and acknowledged by local, state and federal agencies that West Oakland is a community over-burdened by pollution from the freight industry in general and from the Port of Oakland specifically. The impacts of the trucking industry on our community are clear and well documented. County health agencies proclaim the extremely elevated incidence of asthma in children and families. Oakland city Public Works decried their inability to repair the damaged streets, curbs and sidewalks ruined by heavy-duty trucks plying streets to narrow for modern freight haulers. Streets are blocked; passenger vehicles damaged and pedestrians are killed in interactions with port trucks. In a cityscape already blighted by municipal indifference and capital disinvestment, the port freight industry uses West Oakland like its own private parking lot.

In 2003, with support from the US Environmental Protection Agency, West Oakland community groups undertook a truck traffic study. That study, published by the Pacific Institute and titled, "Clearing the Air", determined that an average of 10,000 truck trips per day were made to and from the Port of Oakland and OAB logistics companies through and around the neighborhoods of West Oakland.

In 2008, The California Air Resources Board conducted a health assessment of the community of West Oakland in order to determine the impact of freight-related diesel emissions from the Port of Oakland on the neighboring residents. That study determined that West Oakland residents suffer 2 -4 times the average cancer risk from diesel emissions as compared to typical residents of the state.

The Port of Oakland's own truck registry program contains records on over 6,000 separate trucks servicing the port, yet the city and port provide less than 1,000 parking spaces for port related trucks.

Years of effort by the community led to the creation of truck parking areas at the OAB and the incidence of trucks parking and operating on neighborhood streets was significantly reduced. In the fall of 2013, eviction actions by the City of Oakland caused an increase in trucking activity in our neighborhoods. This increase was documented by city staff and reported to City Council and the city administration. The Assistant City Administrator for Oakland, Fred Blackwell, stated publicly that the lack of a transition plan for the tenants at the OAB has led to increased impacts in the neighboring community.

In December of 2013, our organization petitioned the City to block the reintroduction of port-related trucking activities into our neighborhood. The City Planning Department first rejected an application to operate a CES warehouse in the Prescott neighborhood, and then reversed their decision. In April of this year our appeal of that decision was rejected and the customs inspection warehouse, previously housed at the OAB, was cleared to begin operations in West Oakland.

BACKGROUND

In July, 2012, the Oakland City Council approved the plan for its Master Developer to begin redevelopment of the former Oakland Army Base (OAB). The plan for a modern logistics center called for the clearing of all existing structures and the investment of nearly \$400,000,000 of public funds for site preparation. The raising of the existing facilities required that all of the long-time tenants at the OAB be evicted. Over a period of two years the City of Oakland evicted or refused to renew leases for over a dozen logistics companies that were tenants at the OAB. Despite our continued requests, no transitional plan was made to manage the truck traffic generated by the eviction of these businesses.

ONE CLEAR EXAMPLE

One of those businesses, PCC Logistics, held the contract to provide secure warehouse space for cargo inspections by the U.S. Customs Service. Their eviction caused the San Francisco division of Customs and Border Patrol (CBP) to publish a notice seeking new space for their operations. Even though PCC Logistics had acquired new space in the immediate port area, they were disqualified for the contract. Due to the lack of transition planning, the city was unaware that their eviction of PCC Logistics would impact CBP operations.

About August, 2013, we were contacted by a local business person who had recently purchased the shuttered warehouse facility at 1700 20th St. Oakland. This was the former site of a beverage distributor that closed and relocated to another city in the region. When that facility closed, over a thousand truck trips a month were eliminated from the local neighborhood. It is very important to note that this facility is directly across the street from the most popular youth sports fields in Alameda County and less than two blocks from family housing. This community is very poorly zoned, with little separation between housing and industry.

During our meeting with the new property owner, he informed us of several business opportunities that he hoped to bring to the building. He spoke of LED lighting manufacturing and hearing aid manufacturing. He also expressed his interest in pursuing the contract with U.S. Customs for their inspection station. We stated at that time our dislike of the Customs business due to the large volume of trucks that it would reintroduce into the neighborhood. We encouraged him to pursue the light-manufacturing business despite the trucks needed to service that business because of the much lower volume of traffic that would be created by non-port trucks in exchange for better quality manufacturing jobs. Unfortunately, he casually dismissed our concerns. A few weeks later we were informed that his company, North American 3PL, was a finalist in the competition for the Customs contract. That contract has since been awarded to NA3PL and the facility is expected to generate on average 1200 truck trips per month.

We contend that U.S. Customs and Border Patrol, a division of the Federal office of Homeland Security, is allowing a violation of Title VI of the Civil Rights Act of 1964 by letting a contract with federal funds to a vendor who will increase the burden of truck traffic and emissions in our community.

CITY ACTION

The Environmental Impact Report (EIR) for the OAB was certified by the Oakland City Council in 2002. That report called for a series of specific planning documents to be produced, among them a Truck Management Plan. That plan was never produced. The City's development team has stated that since all the truck businesses were evicted there is no need for a truck management plan. They also state that the Truck Management Plan will be produced after the new logistics facilities are constructed. This strategy misses the point of a truck management plan, ignores the impact of actions already taken and increases the burden of trucks in our community.

The failure by the City to produce a transition plan for its own tenants on the Oakland Army Base left those trucking businesses to fend for themselves. The nearest available sites are in the West Oakland community. The added failure by the City to protect the community with appropriate zoning controls exacerbates the first wrong action. Ultimately, the lack of a comprehensive Truck Management Plan, as called for in the project EIR, has led to hundreds more truck trips each week into the South Prescott neighborhood with one of the highest concentrations of low-income people of color in the city.

Compounding these decisions, the City decided not to revisit the 2002 EIR with a formal Supplement, instead opting for an Addendum, which does not require a public process. As an alternative to the certified EIR environmental mitigations, the City development team created a set of Standard Conditions of Approval and mitigation requirements, which fall to the City's contracted Master Developer to fulfill. Contained in those requirements include a Truck Management Plan for the project. The 2002 EIR mitigations did not specify that the required Truck Management Plan applied only to the eventual operations that would follow the redevelopment of the OAB. We contend that all truck activity, from the relocation of the evicted businesses, to the truck traffic generated by site preparation and construction, and the eventual logistics operations at the

new Oakland Global Logistics Center must be thought through and planned for in such a way that the already overburdened community of West Oakland does not experience even greater impacts from the Port and OAB expansion.

We contend that the failure by the City and Port of Oakland, and its Master Developer, Oakland Global, LLC (CCIG/Prologis) to create a transition plan as part of a comprehensive Truck Management Plan has already increased port related trucking impacts on our community.

We contend that the federal Department of Transportation in its oversight role in the use of TIGER funds must suspend federal funding to the City and Port project until these increased burdens have been rectified.

We contend that the permitting of the Customs Examination Station in West Oakland by the Oakland Planning Commission constitutes a clear bad act by the City as federal grantee under the terms of Title VI of the Civil Rights Act of 1964.

We contend that the Port of Oakland, also a recipient of federal funds, aided in this civil rights violation by not providing an adequate site for CES activities and failing to engage the City in the creation of a Truck Management Plan that would have avoided the increased burden on our community.

The City and Port of Oakland are recipients of federal funds through the TIGER transportation stimulus program and the City is now seeking additional TIGER funds to support the OAB redevelopment project. The City's use of previous federal funds is increasing the health and environmental burden on the low-income people of color in West Oakland. The City of Oakland must be denied additional federal funding until these civil rights violations have been rectified.

We contend that Customs and Border Patrol, a federal agency, failed in its oversight role under Title VI of the CRA when it made a contract, despite extensive community pressure against the action, with a firm that will bring port-related trucking into West Oakland and increase this burden on our residents.

DOCUMENTED IMPACTS

Documents provided by US Customs include a chart of monthly container volumes inspected by CES in 2013. Those numbers demonstrate that average operations at the CES generate about 1,200 truck trips in and out of the facility each month. These numbers rise and fall based on seasonal cargo volumes. The closing of the former beverage distribution operation at the West Oakland site eliminated slightly less than this volume of diesel truck traffic from the community. Consequently, any new truck traffic must be credited to the Customs service as an increase in this burden. And, since the Customs service was evicted from the OAB in order to begin the redevelopment, the responsibility for this significant increase in port-related truck traffic can only be placed on the City. However, as a federal agency, Customs and Border Patrol must take care not to expend federal dollars under contracts to violate the Civil Rights Act.

AN ENVIRONMENTAL JUSTICE VIOLATION

The West Oakland Specific Plan (WOSP), funded by a federal TIGER grant, recommends the elimination of trucking and warehousing from the commercial zoning code, which covers part of the proposed CES warehouse. The WOSP recognizes that West Oakland cannot overcome its economic disadvantages and become a clean, health, modern urban community as long as heavy-duty trucks rumble through our streets.

In this year, the 20th anniversary of President Clinton's Executive Order 12898, which established environmental justice as a responsibility of federal agencies, President Obama reaffirmed that principle. It is clearly the responsibility of federal agencies to consider the health and environmental impact of their actions in the communities in which they act. By introducing more than a thousand trucks to West Oakland, CBP and the City of Oakland are clearly adding to the environmental and public health burden on this already overburdened community.

TITLE VI CIVIL RIGHT VIOLATION

Title VI of the Civil Rights Act of 1964 clearly requires federal agencies to take whatever steps are necessary to avoid discriminatory effects of their actions through their contractors or grantees. The law is clear that Federal agencies may not knowingly, *or effectively*, increase the burden on communities that are already disproportionately burdened by industrial, environmental, economic or social impacts. By allowing the introduction of more than a thousand new truck trips into West Oakland, a low-income community of color well documented by state and federal agencies to be disadvantaged and overburdened, the Customs and Border Patrol and Office of Homeland Security have clearly failed to fulfill their obligations under Title VI of the CRA. We have further described numerous actions above that contribute to this violation of the Civil Rights Act by both Customs and Border Patrol and the Department of Transportation. The City of Oakland is a recipient of federal funds for the Oakland Global project, which evicted the CES warehouse without a contingency plan, and shares this civil rights obligation with DOT, DHS and CBP.

IMMEDIATE RELIEF SOUGHT

Of the Department of Transportation: As the agency providing the transportation funding to support the OAB development, we demand that you place an immediate hold on all funding being provided to the City and/or Port of Oakland. We further seek that funding be withheld until the City, Port and OAB Master Developer create a comprehensive Truck Management Plan in collaboration with the residents and businesses in West Oakland. Such a plan must implement the reduction of port-related truck trips through our community.

Of Customs and Border Patrol: We demand that the Customs Examination Station contract to North American 3PL be rescinded or placed on hold until such time as a suitable location outside any disadvantaged community is located. We also demand that the Department of Homeland Security, as the parent agency of CBP, determine protocols

for the placement of CES facilities that will take into account the health, safety and civil rights of nearby communities.

We are copying this document to your sister federal agencies, including the Department of Justice in its role of overseeing enforcement of Title VI across the federal government, as well as, our federal representatives and request that they take up the critical issue of the increasing health and safety burden brought about by the actions of these federal grantees. In the mean time, we expect that, in light of the evidence supplied here, the US Department of Transportation and the Customs and Border Patrol will take immediate action to stop this civil rights violation against our community.

We look forward to your prompt response.

Sincerely,



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