

October 30, 2023

By email

Michael Regan
Administrator, U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Ave. NW
Washington, D.C. 20460
Regan.Michael@epa.gov

Office of External Civil Rights Compliance
United States Protection Agency
Mail code 2310A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Title_VI_Complaints@epa.gov

Daria Neal
Deputy Chief
Federal Coordination and Compliance Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
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, Regarding Civil Rights Violations by the City of Atlanta against the people of color in DeKalb County.

Dear Administrator Regan, Acting Director Hoang, and Deputy Chief Neal:

South River Watershed Alliance files this Title VI Administrative Complaint against the City of Atlanta for violating Title VI of the Civil Rights Act of 1963 and its implementing regulations by voting to spend \$31 million dollars to fund construction that violates EPA nondiscrimination regulations and by choosing to site the Atlanta Public Safety Training Center in a majority Black and Hispanic neighborhood, thereby creating a disparate impact.

We request that the United States Department of Justice play a coordinating and oversight role to ensure the consistent application and effective implementation of Title VI to this complaint process.¹

¹ Executive Order 12250, charges DOJ with ensuring the “consistent and effective implementation” of federal civil rights laws, and explicitly directs the Attorney General to “coordinate the implementation and enforcement by Executive agencies” of nondiscrimination provisions including Title VI. Exec. Order No. 12250, 45 FR 72995 (Nov. 2, 1980); See Exec. Order No. 14096, 88 FR 25251 (Apr. 21, 2023) (directing the Attorney General to assess agency efforts to ensure compliance with civil rights laws in programs that potentially affect human health or the environment.); See also DOJ Title VI Legal Manual, at Section III (“DOJ Title VI Manual”), <https://www.justice.gov/crt/fcs/T6manual>.

I. Introduction

City of Atlanta is reinforcing environmental injustice in DeKalb County, Georgia with its decision to give \$31 million dollars more towards construction of the Atlanta Public Safety Training Facility and its decision to site the Atlanta Public Safety Training Facility in Parcel (b)(6) Privacy.² The South River has long been a dumping ground for raw sewage.³ The clearcutting of the South River Forest for the construction of the facility has caused significant amounts of sediment to enter the South River, worsening pollution. The clearcutting of the South River Forest and the subsequent discharge of sediment into the South River are both environmental harms.

Parcel (b)(6) Privacy is in DeKalb County's Commission District 3, which is 74% Black and Hispanic.⁴ It is part of the nearest greenspace for many of DeKalb County's residents. The clearcutting of the South River Forest and the dumping of illegal levels of sediment into the South River is either intentional discrimination or disparate impact borne by the Black and Hispanic communities of DeKalb County.

II. Parties

South River Watershed Alliance (Complainant) is a nonprofit organization committed to ecological restoration of the South River for the benefit of nature and people.

City of Atlanta is a city in Georgia. In 2017 Atlanta City Studio released a document including 5 values: Equity, Progress, Ambition, Access, and Nature.⁵ These values came with named challenges.⁶ The challenge for Equity is the continuous, contentious, and often unappreciated work of ensuring that all the benefits of Nature, Access, Ambition, and Progress accrue fairly to everyone.⁷ The challenge for Progress is to protect people and places with meaning from the market forces that will otherwise overrun them.⁸ The challenge for Nature is to protect and expand the ecological value of Atlanta's watersheds, forest, and habitat in the face of rapid urbanization.⁹ This document named the South River Forest one of Atlanta's four lungs.¹⁰

III. Jurisdiction

Under Section 601 of Title VI of the Civil Rights Act of 1964 ("Title VI"), "[n]o person in the United States shall, on the ground of race, color, or national origin, . . . be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."¹¹

² Sean Keenan and Rick Rojas, New York Times, Atlanta City Council Approves 'Cop City' Funding Despite Protests, June 6, 2023, <https://www.nytimes.com/2023/06/06/us/atlanta-cop-city-funding-vote.html>

³ John Ruch, Saporta Report, South River Forest: a big green dream starts coming true.

<https://saportareport.com/south-river-forest-a-big-green-dream-starts-coming-true/columnists/johnruch/>

⁴ DeKalb County Planning and Sustainability Long Range Division, DeKalb Commission District 3 Profile, 3.

⁵ Atlanta City Studio, Our Future City 4, <https://www.atlantaga.gov/home/showdocument?id=30594>

⁶ Id. at 5-9.

⁷ Id. at 5.

⁸ Id. at 6.

⁹ Id. at 9.

¹⁰ Id. at 39.

¹¹ 42 U.S.C. § 2000d.

Title VI is concerned with how the effects of the programs and activities of a federal funding recipient are distributed based on race, color, or national origin.¹² “EPA and other federal agencies are authorized to enact regulations to achieve the law’s objectives in prohibiting discrimination,” including through regulations preventing federal funding recipient actions that cause racially disparate impacts.¹³

This administrative complaint is filed with EPA pursuant to 40 C.F.R. § 7.120. The Office of External Civil Rights and Compliance (OECRC), which is located in EPA’s Office of Environmental Justice and External Civil Rights, carries out the agency’s federally-mandated responsibility to enforce Title VI and conduct complaint investigations. When evaluating complaints for acceptance, EPA regulations require the complaint to (1) be in writing; (2) allege a discriminatory act that violates the EPA’s nondiscrimination regulations; (3) identify a recipient of EPA financial assistance as the entity that committed the alleged discriminatory act; and (4) be received by OECRC within 180 calendar days of the alleged discriminatory act. *Id.* This complaint satisfies all of these requirements.

IV. Background and Procedural History

In 2017, The Atlanta Police Foundation began approaching Atlanta council members with plans to build the Atlanta Public Safety Training Center on a site located near America’s fourth most endangered river—the South River.¹⁴ This river is endangered because sewage spills into the river.¹⁵ An estimated 32 million gallons spilled into the river between 2014 and 2021.¹⁶ There is a decades long history of the area being used as a dump for sewage poured through the South River.¹⁷

In September 2021, the Atlanta City Council voted 10 to 4 in favor of a proposal to build the training center in South DeKalb County.¹⁸ The land that the project is slated to be built on, Parcel (b)(6) Privacy, is located within a majority Black and Hispanic and disinvested part of DeKalb

¹² Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance), 65 Fed. Reg. 39,650, 39,680 (June 27, 2000).

¹³ EPA, U.S. EPA’s External Civil Rights Compliance Toolkit, Chapter 1, at 8, (Jan. 18, 2017) <https://www.epa.gov/ogc/chapter-1-us-epas-external-civil-rights-compliance-office-compliancetoolkit-chapter-1> (“Civil Rights Compliance Toolkit”); See also Exec. Order No. 14096, 88 FR 25251, 25255 (directing federal agencies to ensure that all programs or activities receiving Federal financial assistance that potentially affects human health or the environment comply with Title VI).

¹⁴ [Next stop, Cop City? What's happening with the controversial plan for a new police and fire training center in DeKalb - Atlanta Magazine](#); David Pendered, Saporta Report, National spotlight shines on South River as example of environmental injustice (Apr. 14, 2021.) <https://saportareport.com/national-spotlight-shines-on-south-river-as-example-of-environmental-injustice/sections/reports/david/>

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ John Ruch, Saporta Report, South River Forest: a big green dream starts coming true. <https://saportareport.com/south-river-forest-a-big-green-dream-starts-coming-true/columnists/johnruch/>

¹⁸ Sam Worley, Atlanta Magazine, Next stop, Cop City? What's happening with the controversial plan for a new police and fire training center in DeKalb, Sep 13, 2021, <https://www.atlantamagazine.com/news-culture-articles/next-stop-cop-city-whats-happening-with-the-controversial-plan-for-a-new-police-and-fire-training-center-in-dekalb/>

County.¹⁹ The facility's planned features include a firing range, a vehicle skills pad, a burn building for firefighters, and a mock village.²⁰

In January 2023, The City of Atlanta said "The facility will not be built on a forest. The training center will sit on land that has long been cleared of hardwood trees through previous uses of the site."²¹ However, the Atlanta Police Foundation submitted a notice of intent for coverage under its general permit to clear 86.9 acres for the Atlanta Public Safety Training Center.²² In June 2023, the City of Atlanta voted to allocate about \$31 million dollars to the project.²³

V. City of Atlanta's Failure to Consider Whether its Permitting Decisions Violates Title VI of the Civil Rights Act and its Implementing Regulations

EPA's Title VI regulations forbid recipients of federal funding from intentionally discriminating against protected groups, including communities of color.

EPA's Title VI regulations also forbid recipients of federal funding from using "criteria or methods of administering its program" or choosing "a site or location of a facility that has" the effect of subjecting protected groups, including communities of color, to discrimination.²⁴ One way to establish that a policy or practice violates EPA's Title VI regulations is to make a prima facie showing that a policy or practice has an adverse effect that falls disproportionately on a racial group.²⁵ To make such a showing, a complainant must (1) identify the policy or practice at issue; (2) establish adversity; (3) establish significant disparity; and (4) establish causation.²⁶

Once a prima facie showing of a 'disparate impact' is established, the burden shifts to the recipient to demonstrate the existence of a substantial legitimate justification for the policy or practice.²⁷ Generally, a recipient must establish that the challenged policy was "necessary to meeting a goal that was legitimate, important, and integral to the [recipient's] institutional mission."²⁸ Even if there is a justification for the policy or practice, it may still constitute a violation if there are less discriminatory alternatives that would achieve the same purpose.²⁹

¹⁹ Micah Herskind, Scalawag Magazine, This is the Atlanta Way, a Primer on Cop City, <https://scalawagmagazine.org/2023/05/cop-city-atlanta-history-timeline/>

²⁰ Charles Bethea, New Yorker, The New Fight Over an Old Forest In Atlanta, Aug. 3 2022, <https://www.newyorker.com/news/letter-from-the-south/the-new-fight-over-an-old-forest-in-atlanta>

²¹ Bill Chappel, NPR, What's at stake in Atlanta's 'Cop City' protests Mar. 7, 2023, <https://www.npr.org/2023/03/07/1161343394/atlanta-cop-city-protests-explained>

²² Complaint, *South River Watershed Alliance v. City of Atlanta*, No. 1:23-cv-03416-JPB, at 17.

²³ Sean Keenan and Rick Rojas, New York Times, Atlanta City Council Approves 'Cop City' Funding Despite Protests, June 6, 2023, <https://www.nytimes.com/2023/06/06/us/atlanta-cop-city-funding-vote.html>

²⁴ 40 C.F.R. § 7.35(b)-(c); See Civil Rights Compliance Toolkit at 8

²⁵ DOJ Title VI Manual, Section VII at 6

²⁶ DOJ Title VI Manual, Section VII at 9

²⁷ *Id.*; *N.Y. Urban League, Inc. v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995).

²⁸ Civil Rights Compliance Toolkit, at 9.

²⁹ *Id.* At 10-11.

EPA is responsible for this inquiry, and “if such an alternative is available to the recipient, even if the recipient establishes a justification, the policy or practice will still violate disparate impact regulations.”³⁰

a. City of Atlanta is a Recipient of Federal Fund Assistance

Entities who receive financial assistance from a federal agency are recipients under Title VI.³¹ Entities that accept financial assistance from a federal agency and therefore become subject to Title VI’s requirements are direct recipients.³² The acceptance of federal assistance triggers Title VI coverage and becomes formalized when a recipient signs an assurance: a contract whereby the recipient agrees to comply with the nondiscrimination provisions as a condition of receiving federal assistance.³³

Before EPA can undertake a Title VI complaint investigation, it first needs to establish it is providing federal financial assistance to the recipient alleged to be engaging in discriminatory conduct.³⁴ This financial assistance does not have to relate to a program in which the complainant participates or seeks to participate or used for the complainant’s benefit.³⁵ To find an entity is a recipient of federal financial assistance, EPA only has to prove the entity received federal financial assistance when the discrimination occurred.³⁶

The City of Atlanta is the recipient of 4 grants from the EPA and therefore is a direct recipient of federal funds.³⁷ The City of Atlanta receives approximately 9.1 million dollars in grant dollars from the EPA and therefore is a direct recipient of federal funds.³⁸ These grant allocations are for the year 2023.³⁹ Therefore, the City of Atlanta is a recipient of federal financial assistance and must meet Title VI’s nondiscrimination requirements.⁴⁰

³⁰ Id. (“[I]f there are no mitigation measures that can address the unjustified disparate impacts, denial of the permit may be the only means of avoiding a Title VI violation.”).

³¹ Civil Rights Division, U.S. Department of Justice, Title VI Legal Manual Sec V 14.

³² Civil Rights Division, U.S. Department of Justice, Title VI Legal Manual Sec V 14.

³³ Civil Rights Division, U.S. Department of Justice, Title VI Legal Manual Sec V 26.

³⁴ See, e.g., *Bachman v. Am. Soc. of Clinical Pathologists*, 577 F. Supp. 1257, 1261 (D.N.J. 1983) (defendant received funds during the period of alleged discrimination).

³⁵ Civil Rights Division, U.S. Department of Justice, Title VI Legal Manual Sec V 11-12.

³⁶ See *Howe v. Hull*, 874 F. Supp. 779, 789 (N.D. Ohio 1994) (“Defendant cannot receive federal funds on the one hand, and on the other deny he is covered by the [federal Rehabilitation Act] simply because he received no federal funds for his involvement with [complainant.]”); see also *Estate of Alcalde v. Deaton Specialty Hosp. Home, Inc.* 133 F. Supp. 2d 702, 708 (D. Md. 2001) (motion to dismiss denied in case where the court emphasized “the receipt of federal funds when determining liability under [Section 504 of the Rehabilitation Act]” where defendant claimed he was not subject to federal financial assistance requirements because he saw the patient in his office and not at the hospital and it was the hospital that entered into the grant with the federal agency).

³⁷ Award Summary, USA Spending.gov [GRANT to ATLANTA, CITY OF | USAspending](#) (Grant of 3.9 million dollars); Award Summary, USA Spending.gov [GRANT to ATLANTA, CITY OF | USAspending](#) (Grant of 3.3 million dollars); Award Summary, USA Spending.gov [GRANT to ATLANTA, CITY OF | USAspending](#) (Grant of 1.6 million dollars); Award Summary, USA Spending.gov [GRANT to ATLANTA, CITY OF | USAspending](#). (Grant of \$300,000).

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

b. City of Atlanta’s allocation of approximately \$31 million dollars to the Atlanta Police Foundation for the Atlanta Public Safety Training Center is a program or activity.

The following instrumentalities of a state or local government may constitute a “program or activity” under Title VI: All of the operations of a department, agency, special purpose district, or other instrumentality of a local government or the entity of such State or local government that distributes such assistance and each such department or agency to which the assistance is extended, in the case of assistance to a state or local government, any part of which is given federal assistance. Civil Rights Division, U.S. Department of Justice, Title VI Legal Manual Sec V 24; 42 U.S.C. § 2000d-4a(1). Regarding public institutions or private institutions that serve a public purpose, the “program or activity” that Title VI covers encompasses the entire institution and not just the part of the institution that receives federal financial assistance. 42 U.S.C. § 2000d-4a. The City of Atlanta is a direct recipient of EPA funds. City of Atlanta gave approximately \$31 million to Atlanta Police Foundation to build the training center.⁴¹ This allocation is an activity of a recipient—an operation of a local government that distributes its assistance, is a program or activity under Title VI.⁴² Civil Rights Division, U.S. Department of Justice, Title VI Legal Manual Sec V 24. Therefore the City of Atlanta’s allocation of greater than \$30 million to the Atlanta Police Foundation is a program or activity.⁴³

c. City of Atlanta’s \$31 million dollar allocation is a program or activity that discriminates against Black and Hispanic people in DeKalb County.

Intentional Discrimination

Generally, intentional discrimination occurs when the recipient acted, at least in part, because of the actual or perceived race, color, or national origin of the alleged victims of discriminatory treatment.⁴⁴ While discriminatory intent need not be the only motive, a violation occurs when the evidence shows that the entity adopted a policy at issue “‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.”⁴⁵ Some assume that the intentional use of race should be carefully scrutinized only when the intent is to harm a group or an individual defined by race, color, or national origin. That is not true: the Supreme Court in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989), and *Adarand Constructors, Inc., v. Peña*, 515 U.S. 200, 226 (1995), established that any intentional use of race, whether for malicious or benign motives, is subject to the most careful judicial scrutiny. Accordingly, the record need not contain evidence of “bad faith, ill will or any evil motive on the part of the [recipient].”⁴⁶ The “totality of the relevant facts”

⁴¹ Krystal Dixon, City backs \$30 million toward “Cop City” project, Axios Atlanta, May 25, 2023; City of Atlanta Georgia, Ordinance 23-O-1257, https://atlantacityga.igam2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=3838&MediaPosition=&ID=32709&CssClass=; Sean Keenan and Rick Rojas, New York Times, Atlanta City Council Approves ‘Cop City’ Funding Despite Protests, June 6, 2023, <https://www.nytimes.com/2023/06/06/us/atlanta-cop-city-funding-vote.html>

⁴² Civil Rights Division, U.S. Department of Justice, Title VI Legal Manual Sec V 24.

⁴³ Id.

⁴⁴ *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 548 (3d Cir. 2011).

⁴⁵ *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

⁴⁶ *Williams v. City of Dothan*, 745 F.2d 1406, 1414 (11th Cir. 1984).

will determine whether the recipient has engaged in intentional discrimination in violation of Title VI.⁴⁷

The City of Atlanta has long discriminated against Black people in investment decisions. The City of Atlanta's funding of the Atlanta Public Safety Training Center should be understood as part of a trend of nonprofit, state, and corporate forces shaping the city at the expense of Black residents.⁴⁸

Additionally, the facts in the disparate impact analysis below should be considered part of the totality of relevant facts showing that City of Atlanta intentionally discriminated against the Black and Hispanic community impacted by the construction of the Atlanta Public Safety Training Center. The totality of relevant facts does show that City of Atlanta discriminated against Black and Hispanic residents.

Disparate Impact

When deciding whether there is a disparate impact, EPA must determine whether the recipient uses a facially neutral policy or practice that has a sufficiently harmful and disproportionate effect based on race.⁴⁹ The focus is on the consequences of the recipient's policies or decisions, not the recipient's intent.⁵⁰ The neutral policy or decision need not be formalized in writing, and can be understood as standard operating procedure by recipient's employees.⁵¹ Similarly, the neutral practice need not be affirmatively undertaken, but could be the failure to take action.⁵²

If evidence establishes a prima facie case of adverse disparate impact, EPA must then determine whether the recipient has articulated a substantial legitimate justification for the challenged policy or practice.⁵³ Substantial legitimate justification analysis requires balancing recipients' interests in implementing their policies with the substantial public interest in preventing discrimination.⁵⁴ Though determining a substantial legitimate justification is a fact-specific inquiry, EPA will generally consider whether the recipient can show the challenged policy was necessary to meeting a goal that was legitimate, important, and integral to the recipient's institutional mission in order to establish a substantial legitimate justification.⁵⁵ As part of its assessment, EPA will generally consider the views of the affected community in its assessment of whether a permitted facility, for example, will provide direct economic benefits to a community.⁵⁶

⁴⁷ See *Washington v. Davis*, 426 U.S. 229, 242 (1976) (discussing analysis of intentional discrimination generally).

⁴⁸ Teresa Wiltz, *How Atlanta Became a City I Barely Recognize*, Politico Magazine, September 16, 2022; Krystal Dixon, *Atlanta Residential Segregation Declining, but Still High*, Axios Atlanta, July 7, 2022; Micah Herskind, *This is the Atlanta Way: A Primer on Cop City, Scalawag*, available at <https://scalawagmagazine.org/2023/05/cop-city-atlanta-history-timeline/>

⁴⁹ EPA External Civil Rights Compliance Office, *Toolkit—Chapter 1*, Jan. 18, 2017, at 8

⁵⁰ *Id.* at 9

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

If a recipient shows a substantial legitimate justification for its policy or decision, EPA must also determine whether there are any comparably effective alternative practices that would result in less adverse impact.⁵⁷ If there are less discriminatory alternatives, the challenged policy or decision will violate federal civil rights law even if there is a substantial legitimate justification.⁵⁸

Discrimination

The EPA nondiscrimination regulations prohibit recipients from using criteria or methods of administering its program or activity that discriminate based on race.⁵⁹ EPA's nondiscrimination regulations also prohibit recipients from choosing a site or location of a facility that has the effect of subjecting individuals to discrimination based on race.⁶⁰ City of Atlanta's allocation of funds to Atlanta Police Foundation triggers both of these regulations.

City of Atlanta's City Council's vote to allocate approximately \$31 million to fund the construction of the Atlanta Public Safety Training Center triggers EPA's prohibition on using criteria or methods of administering its program or activity in a manner that has a disparate impact based on race.⁶¹

City of Atlanta's choice of site triggers EPA's prohibition on recipient's choosing sites or location that creates a disparate effect. The City of Atlanta is identified as the site owner on the notice of intent for coverage under the Clean Water Act general permit for stormwater discharges from construction sites (General Permit No. GAR 100001).⁶² City of Atlanta chose to place the site on Parcel 15 051 01 002 site even though doing so causes a disparate impact to be borne by Black and Hispanic people in DeKalb County.⁶³

Policy or Practice

Accurate disparate impact analyses begin with identifying the policy or practice that allegedly caused the disparate harm.⁶⁴ The City of Atlanta gave approximately \$30 million to Atlanta Police Foundation to build the training center.⁶⁵ The City of Atlanta's funding of Atlanta Public Safety Training Center is the policy or practice at issue.

⁵⁷ Id.

⁵⁸ Id. a 9-10.

⁵⁹ 40 CFR § 7.35(b).

⁶⁰ 40 CFR § 7.35(c).

⁶¹ Sean Keenan and Rick Rojas, New York Times, Atlanta City Council Approves 'Cop City' Funding Despite Protests, June 6, 2023, <https://www.nytimes.com/2023/06/06/us/atlanta-cop-city-funding-vote.html>

⁶² Complaint, *South River Watershed Alliance v. City of Atlanta*, No. 1:23-cv-03416-JPB, at 7.

⁶³ Aja Arnold, The Appeal, Why Atlantans are Pushing to Stop 'Cop City' Dec. 8, 2021, <https://theappeal.org/atlanta-cop-city-police-training-facility/>

⁶⁴ *Inclusive Communities*, 135 S. Ct. at 2523.

⁶⁵ Krystal Dixon, City backs \$30 million toward "Cop City" project, Axios Atlanta, May 25, 2023; City of Atlanta Georgia, Ordinance 23-O-1257,

https://atlantacityga.igam2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=3838&MediaPosition=&ID=32709&CssClass=

Harm

Harm exists if a fact specific inquiry determines the nature, size, or likelihood of the impact is sufficient to make it an actionable harm.⁶⁶ City of Atlanta is emitting stormwater discharges from Atlanta Public Safety Training Center construction site not in compliance with its general permit, including Parts I.C.4, III.D.1, III.D.2, III.D.3, and V.A2.⁶⁷ Intrenchment Creek Park, across the stream from the Atlanta Public Safety Training Center has been closed to the public since shortly after clearing started.⁶⁸

The site is part of the South River Forest, which was designated as one of four major city lungs in a report put together by Atlanta's city-planning department.⁶⁹ This site requires the clearcutting of some of the South River Forest. Such a decision will lower property values and negatively impact air quality nearby.⁷⁰ It also will increase the heat index.⁷¹

South River Watershed Alliance has members who use DeKalb County Parcel (b)(6) Privacy which includes Intrenchment Creek from (b)(6) Privacy to the South River, adjacent wetlands, and riparian habitat.⁷² Id. at 3. Native wildlife on Parcel (b)(6) Privacy includes beavers, otters, box turtles, amphibians, owls, blue herons, and other migratory birds that depend on Intrenchment Creek and wetlands for habitat and feeding.⁷³

Sediment from the Atlanta Public Safety Training Center construction site is degrading the water quality and aquatic habitat in Intrenchment Creek and lessening the aesthetic, scenic, and recreational values of the area.⁷⁴ It continues to pollute an already maxed out allocation of sediment in Intrenchment Creek. Surface runoff from a portion of the Atlanta Public Safety Training Center Stormwater runs off into a creek on the property that discharges into Intrenchment Creek. Intrenchment Creek then discharges into the South River.

Sediment from the Atlanta Public Safety Training Center construction site is degrading the water quality and aquatic habitat on Parcel (b)(6) Privacy and is lessening the aesthetic, scenic, and recreational values of Parcel (b)(6) Privacy for South River Watershed Alliance's members who use this area.⁷⁵ Stormwater discharged from the Atlanta Public Safety Training Center construction site harms nearby residents by causing additional impairment to Intrenchment Creek's water quality and

⁶⁶ Civil Rights Division, U.S. Department of Justice, Title VI Legal Manual Sec VII 11.

⁶⁷ Complaint, *South River Watershed Alliance v. City of Atlanta*, No. 1:23-cv-03416-JPB, at 2.

⁶⁸ Id. at 4.

⁶⁹ Charles Bethea, The New Fight Over an Old Forest in Atlanta, *New Yorker* (Aug 3, 2022).

⁷⁰ Nowak et al, Tree and forest effects on air quality and human health in the United States, *Scientific Journal* 2014, <https://www.fs.usda.gov/research/treesearch/46102>.

⁷¹ Guylas et al, Assessment of the microclimatic and human comfort conditions in a complex urban environment: Modelling and measurements, *Building and Environment* Vol 41, Issue 12 (Dec 2006).

⁷² Complaint, *South River Watershed Alliance v. City of Atlanta*, No. 1:23-cv-03416-JPB, at 3.

⁷³ Id. at 5.

⁷⁴ Id. at 4.

⁷⁵ Id.

diminishing the habitat for aquatic species that remain after historic sediment pollution displaced other species.⁷⁶ Stormwater discharged from the Atlanta Public Safety Training Center construction site harms nearby residents by further delaying the time for Intrenchment Creek to be free from sediment that interferes with supporting aquatic life.⁷⁷

The stormwater discharges and cutting of forest are harms and their impacts are also harms.

Disparity

An investigating agency's disparity analysis must decide whether a disproportionate share of the harm borne is based on race, color or national origin.⁷⁸ Black and Hispanic people are a protected class.⁷⁹ Commission District 3 of DeKalb County, the Commission District containing DeKalb County Parcel (b)(6) Privacy is 74% Black and Hispanic and 19% white.⁸⁰

The Atlanta Public Safety Training Center project at (b)(6) Privacy located in the 30316 area code. Gresham Park, Atlanta, Panthersville, Dekalb County, and Fulton County all have land within the 30316 area code.⁸¹ Gresham Park is 81.9% Black and Hispanic and 13.2 % white; Atlanta is 53.2% Black and Hispanic and 41% white; Panthersville is 94.7 % Black and Hispanic and 5.6 % white; DeKalb County is 63.2% Black and Hispanic and 35% white; and Fulton County is 52.4% Black and Hispanic and 44.2 % white.⁸²

The residents of Commission District 3 of DeKalb County are disproportionately Black and Hispanic; More Black and Hispanic people are harmed by the negative impacts to Intrenchment Creek than white people are.⁸³ More Black and Hispanic people's property values are damaged by the loss of the South River Forest, one of Atlanta's Four Lungs.⁸⁴ More Black and Hispanic people's air quality is worsened by the loss of the trees of the South River Forest.⁸⁵ More Black and Hispanic residents of Gresham Park, Atlanta, Panthersville, DeKalb County, and Fulton County are harmed than white residents of those areas are.⁸⁶

Black, Hispanic, and white people all use or used to use the facilities at Parcel (b)(6) Privacy before it was closed to the public. Black, Hispanic, and white people all enjoy the aquatic life in Intrenchment Creek that are being harmed by the Atlanta Public Safety Training Center project.

⁷⁶ Id. at 6.

⁷⁷ Id.

⁷⁸ Civil Rights Division, U.S. Department of Justice, Title VI Legal Manual Sec VII 14.

⁷⁹ Civil Rights Division, U.S. Department of Justice, Title VI Legal Manual Sec II 1.

⁸⁰ DeKalb County Planning and Sustainability Long Range Division, DeKalb Commission District 3 Profile, 3.

⁸¹ United States Census Bureau, QuickFacts, <https://www.census.gov/quickfacts/fact/table/panthersvillecdpgeorgia,fultoncountygeorgia,greshamparkcdpgeorgia,atlantacitygeorgia,dekalbcountygeorgia,US/POP010220>.

⁸² Id.

⁸³ DeKalb County Planning and Sustainability Long Range Division, DeKalb Commission District 3 Profile, 3.

⁸⁴ Atlanta City Studio, Our Future City 39, <https://www.atlantaga.gov/home/showdocument?id=30594>

⁸⁵ Nowak et al, Tree and forest effects on air quality and human health in the United States, Scientific Journal 2014, <https://www.fs.usda.gov/research/treesearch/46102>.

⁸⁶ United States Census Bureau, QuickFacts, <https://www.census.gov/quickfacts/fact/table/panthersvillecdpgeorgia,fultoncountygeorgia,greshamparkcdpgeorgia,atlantacitygeorgia,dekalbcountygeorgia,US/POP010220>.

Stormwater discharged from the Atlanta Public Safety Training Center construction site harms nearby residents of Commission District 3 by causing additional impairment to Intrenchment Creek's water quality and diminishing the habitat for aquatic species that remain after historic sediment pollution displaced other species.⁸⁷ Stormwater discharged from the Atlanta Public Safety Training Center construction site harms nearby Commission District 5 residents by further delaying the time for Intrenchment Creek to be free from sediment that interferes with supporting aquatic life.⁸⁸

EPA's EJScreen, demonstrates how construction impairing Intrenchment Creek will disparately impact people of color downstream of construction. On EJScreen, Intrenchment Creek is bordered by Blockgroup 130890238022 on the east, which is 84% Black and 89% people of color; and Blockgroup 130890238023 on the west, which is 48% Black and Hispanic.⁸⁹ Blockgroup 130890234442, which contains Intrenchment Creek as it flows into the South River downstream of Blockgroups 130890238022 and 130890238023, is 89% Black.⁹⁰ Blockgroup 130890234431 contains the adjacent downstream portion of the South River and is 100% Black.⁹¹ EJScreen reports for Blockgroups further downstream continue this pattern of disparate amounts of Black and Hispanic people being impacted by construction at Intrenchment Creek.

EJScreen reports also show these areas as being in high percentiles for air pollution.⁹² These are areas where clearcutting of the forest is and will have a disparate impact on overburdened protected classes.

This policy has a disparate impact on a majority Black and Hispanic group of people. A significantly higher percentage of Black and Hispanic people, a protected class, are harmed than the white people, a non-protected class. A disproportionate amount of Black and Hispanic people are harmed by construction at Atlanta Public Safety Training Center.

Causation

There must be a causal relationship between the practice or policy and the disparate impact identified.⁹³ The City of Atlanta is identified as the site owner on the notice of intent for coverage under the Clean Water Act general permit for stormwater discharges from construction sites (General Permit No. GAR 100001).⁹⁴

⁸⁷ Complaint, *South River Watershed Alliance v. City of Atlanta*, No. 1:23-cv-03416-JPB, at 6.

⁸⁸ Id.

⁸⁹ EPA, EJScreen Community Report, Blockgroup 130890238022 available at <https://ejscreen.epa.gov/mapper/>; EPA EJScreen Community Report, Blockgroup 130890238023 available at <https://ejscreen.epa.gov/mapper/>.

⁹⁰ EPA, EJScreen Community Report, Blockgroup 130890234442 available at <https://ejscreen.epa.gov/mapper/>.

⁹¹ EPA, EJScreen Community Report, Blockgroup 130890234431 available at <https://ejscreen.epa.gov/mapper/>.

⁹² EPA, EJScreen Community Report, Blockgroup 130890238022 available at <https://ejscreen.epa.gov/mapper/>; EPA EJScreen Community Report, Blockgroup 130890238023 available at <https://ejscreen.epa.gov/mapper/>; EPA, EJScreen Community Report, Blockgroup 130890234442 available at <https://ejscreen.epa.gov/mapper/>; EPA, EJScreen Community Report, Blockgroup 130890238022 available at <https://ejscreen.epa.gov/mapper/>.

⁹³ Civil Rights Division, U.S. Department of Justice, Title VI Legal Manual Sec VII 14.

⁹⁴ Complaint, *South River Watershed Alliance v. City of Atlanta*, No. 1:23-cv-03416-JPB, at 7.

Sediment from the Atlanta Public Safety Training Center construction site is degrading the water quality and aquatic habitat on Parcel (b)(6) Privacy.⁹⁵ Surface runoff from a portion of the Atlanta Public Safety Training Center construction site is conveyed into a stream that discharges onto Parcel (b)(6) Privacy into a stream and then discharges into Intrenchment Creek. Polluted stormwater from the Atlanta Public Safety Training Center construction site then travels from Intrenchment Creek into the South River.⁹⁶ Sediment from the Atlanta Public Safety Training Center construction site is degrading the water quality and aquatic habitat on Parcel [REDACTED] (b)(6) Privacy.⁹⁷

No other land disturbing activity is discharging sediment into the perennial tributary that originates on the Atlanta Public Safety Training Center site.⁹⁸ The perennial tributary didn't convey visibly polluted water into Intrenchment Creek before the site was cleared for the Atlanta Public Safety Training Center.⁹⁹ The site was mostly forested before being cleared for the Atlanta Public Safety Training Center.¹⁰⁰ Id. Clearcutting of the South River Forest will negatively impact property values in nearby Commissioner District 5. Clearcutting of the South River Forest will negatively impact air quality in Commissioner District 5.¹⁰¹

Justification

An agency has discretion to gather and evaluate evidence of “substantial legitimate justification” as part of its initial investigation, or to make a preliminary finding and require recipients to articulate their defenses as a next step.¹⁰² The record does establish a substantial legitimate justification for the policy or practice. City of Atlanta has a legitimate need for police training.

Less Discriminatory Alternative

If a substantial legitimate justification for the recipient's discriminatory policy or practice is identified, the investigating agency must also determine whether there are alternative practices that may be comparably effective with less disparate impact.¹⁰³ Title VI requires recipients to implement a “less discriminatory alternative” if it is feasible and meets their legitimate objectives.¹⁰⁴ Even if the recipient demonstrates a substantial legitimate justification, the challenged policy will nevertheless violate Title VI if the evidence establishes an alternative that meets this test.¹⁰⁵

There must be some commonsense less discriminatory alternatives to the Atlanta Public Safety Training Center Project than its current location, DeKalb County Parcel (b)(6) Privacy where there

⁹⁵ Id. at 5.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Id. at 26

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ Nowak et al, Tree and forest effects on air quality and human health in the United States, Scientific Journal 2014, <https://www.fs.usda.gov/research/treesearch/46102>.

¹⁰² Civil Rights Division, U.S. Department of Justice, Title VI Legal Manual Sec VII 23.

¹⁰³ Civil Rights Division, U.S. Department of Justice, Title VI Legal Manual Sec VII 37.

¹⁰⁴ Elston v. Talladega Cty. Bd. of Educ., 997 F.2d 1394, 1407, 1413 (11th Cir. 1993); Georgia State Conf. v. Georgia, 775 F.2d 1403, 1417 (11th Cir. 1985).

¹⁰⁵ Civil Rights Division, U.S. Department of Justice, Title VI Legal Manual Sec VII 37.

is a forest widely enjoyed by nearby residents. There must be an area outside of Commission District 5 that is not disproportionately Black and Hispanic that Atlanta police could use as a training facility. There must be an area outside of Commission District 3 that is not 74% Black and Hispanic and only 19% white. There must be a parcel besides DeKalb County Parcel (b)(6) Privacy where Atlanta Public Safety Training Center construction could put illegal amounts of sediment into a river, if indeed, Atlanta Public Safety Training Center construction must put illegal amounts of sediment into a river, that is not disproportionately Black and Hispanic.

Chicago recently built a police and fire training facility on a 30.4-acre former rail yard that had been vacant for more than 40 years before the city bought it in 2017.¹⁰⁶ New York City has a thirty acre facility for a force fifteen times the size of the Atlanta Police Department.¹⁰⁷ City of Atlanta could pick a smaller site.

VI: Conclusion and Relief

For the reasons set above, we believe City of Atlanta has violated its duty under Title VI of the Civil Rights Act of 1964 by discriminating against the Black and Hispanic community of DeKalb County impacted by the construction.

South River Watershed Alliance respectfully asks that EPA utilize all applicable authority and leverage its federal funding to provide the following relief.

1. Conduct a thorough investigation of the clearcutting of the South River Forest's impact on the neighboring Black and Hispanic community.
2. Conduct a thorough investigation of the Atlanta Public Safety Training Facility's dumping of illegal levels of sediment into the South River.
3. Require City of Atlanta to choose a different site for its Atlanta Public Safety Training Facility that does not have a disparate impact on protected classes of people.
4. Condition all future grants and monetary awards to City of Atlanta on its assurance that it will comply with Title VI and implement environmental justice throughout its programs and activities.

¹⁰⁶ Heather Cherone, Lightfoot Celebrates Opening of New Police, Fire Training Academy She Once Opposed | Chicago News, WTTW (Jan 25, 2023).

¹⁰⁷ Charles Bethea, The New Fight Over An Old Forest in Atlanta, New Yorker (Aug 3, 2022).

VII Signatures

Below are the signatures of complainants and witnesses.

Sincerely,

Complainants

(b)(6) Privacy

South River Watershed Alliance
southernriverwatershedalliance@gmail.com

(b)(6) Privacy

Witnesses

(b)(6) Privacy

(b)(6) Privacy