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CITY OF BENICIA

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SOLANO**

13
14 WEST COAST HOME BUILDERS, INC.,

15 Petitioner and Plaintiff,

16 v.

17 CITY OF BENICIA,

18 Respondent and Defendant.
19
20

CASE NO. FCS048992

**ANSWER TO VERIFIED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE**

Action Filed: June 2, 2017

21
22 Respondent and Defendant City of Benicia (“the City”) hereby answers the Verified Complaint
23 for Declaratory and Injunctive Relief and Petition for Writ of Mandate (hereafter “the Petition”) as
24 follows:

25 1. Answering paragraph 1 of the Petition, the City admits that it has approved the Benicia
26 Industrial Park Transportation and Employment Center Plan (“the TEC Plan”) in compliance with the
27 California Environmental Quality Act (“CEQA”; Pub. Resources Code §§ 21000 *et seq.*) and all other
28

1 applicable law. Except as expressly admitted, the City denies, generally and specifically, each and every
2 allegation set forth in said paragraph.

3 2. Answering paragraph 2 of the Petition, the City admits that the property known as the
4 “Northern Gateway Property” is included within the boundaries of the area covered by the TEC Plan.
5 The City lacks information and belief sufficient to enable it to admit or deny the allegations as to
6 Petitioner’s alleged ownership of that property and, on that basis, denies those allegations. Except as
7 expressly admitted or denied for lack of information and belief, the City denies, generally and
8 specifically, each and every allegation set forth in said paragraph.

9 3. Answering paragraph 3 of the Petition, the City denies, generally and specifically, each
10 and every allegation set forth in said paragraph.

11 4. Answering paragraph 4 of the Petition, the City admits that it adopted its current General
12 Plan in June 1999; that it certified an EIR for that General Plan; that it prepared an Initial Study for the
13 TEC Plan; that the Initial Study tiered its analysis from the General Plan EIR; and that the City adopted a
14 Mitigated Negative Declaration for the TEC Plan which incorporated the Initial Study (“TEC Plan
15 IS/MND”). Except as expressly admitted, the City denies, generally and specifically, each and every
16 allegation set forth in said paragraph.

17 5. Answering paragraph 5 of the Petition, the City denies, generally and specifically, each
18 and every allegation set forth in said paragraph.

19 6. Answering paragraph 6 of the Petition, the City denies, generally and specifically, each
20 and every allegation set forth in said paragraph.

21 7. Answering paragraph 7 of the Petition, the City denies, generally and specifically, each
22 and every allegation set forth in said paragraph.

23 8. Answering paragraph 8 of the Petition, the City denies, generally and specifically, each
24 and every allegation set forth in said paragraph.

25 9. Answering paragraph 9 of the Petition, the City denies, generally and specifically, each
26 and every allegation set forth in said paragraph.

27 10. Answering paragraph 10 of the Petition, the City denies, generally and specifically, each
28 and every allegation set forth in said paragraph.

1 11. Answering paragraph 11 of the Petition, the City denies, generally and specifically, each
2 and every allegation set forth in said paragraph.

3 12. Answering paragraph 12 of the Petition, the City denies, generally and specifically, each
4 and every allegation set forth in said paragraph.

5 13. Answering paragraph 13 of the Petition, the City admits that it is located within Solano
6 County and that venue is proper in this Court.

7 14. Answering paragraph 14 of the Petition, the City denies, generally and specifically, each
8 and every allegation set forth in said paragraph.

9 15. Answering paragraph 15 of the Petition, the City lacks information and belief sufficient to
10 enable it to admit or deny the allegations therein and, on that basis, denies them.

11 16. Answering paragraph 16 of the Petition, the City admits the allegations therein.

12 17. Answering paragraph 17 of the Petition, the City denies the allegations that Petitioner will
13 be affected by any of the TEC Plan's environmental impacts and that the TEC Plan has overly
14 burdensome regulations and restrictions. The City lacks information and belief sufficient to enable it to
15 admit or deny the remaining allegations in said paragraph and, on that basis, denies them.

16 18. Answering paragraph 18 of the Petition, the City admits that Kristina Lawson submitted
17 letters to the City dated April 19 and May 2, 2017, in which she stated she was representing Petitioner
18 and was commenting on its behalf regarding the TEC Plan. Except as expressly admitted, the City lacks
19 information and belief sufficient to enable it to admit or deny the remaining allegations in said paragraph
20 and, on that basis, denies them.

21 19. Answering paragraph 19 of the Petition, the City admits the allegations therein.

22 20. Answering paragraph 20 of the Petition, the City lacks information and belief sufficient to
23 enable it to admit or deny the allegations therein and, on that basis, denies them.

24 21. Answering paragraph 21 of the Petition, the City admits that the Northern Gateway
25 Property is the largest undeveloped property within the TEC Plan area, that it is located in the
26 northeastern portion of the City, west of Interstate 680, that it is bounded on the south and east by East
27 2nd Street, and that it is located south of Lake Herman Road. Except as expressly admitted, the City
28 denies, generally and specifically, each and every allegation set forth in said paragraph.

1 22. Answering paragraph 22 of the Petition, the City denies, generally and specifically, each
2 and every allegation set forth in said paragraph.

3 23. Answering paragraph 23 of the Petition, the City admits that, under cover letter dated
4 December 16, 2011, the City submitted an application to the Association of Bay Area Governments to
5 establish the Northern Gateway Benicia Industrial Park Priority Development Area under what was
6 called the FOCUS program and that, on January 17, 2012, the City Council adopted Resolution 12-2
7 Authorizing the Designation of the Northern Gateway Priority Development Area Under the FOCUS
8 Program. Except as expressly admitted, the City denies, generally and specifically, each and every
9 allegation set forth in said paragraph.

10 24. Answering paragraph 24 of the Petition, the City lacks information and belief sufficient to
11 enable it to admit or deny the allegation relating to the comment letter Petitioner alleges it sent to ABAG
12 on February 16, 2012, and on that basis, denies said allegation. Except as expressly denied for lack of
13 information and belief, the City denies, generally and specifically, each and every allegation set forth in
14 said paragraph.

15 25. Answering paragraph 25 of the Petition, the City admits that, on March 15, 2012, ABAG
16 approved the City's application to designate the TEC Plan area as the "Benicia Industrial Park
17 Employment Center-Priority Development Area," which designation will facilitate the City's efforts to
18 secure grant funding for future transportation-related infrastructure improvements within the TEC Plan
19 area. The City further admits that, in or prior to December 2014, the City conducted stakeholder
20 interviews with a variety of community and business leaders, including representatives from businesses
21 within the TEC Plan area, the Benicia Industrial Park Association, the Bicycle Advisory Committee, and
22 the Pedestrian Committee, and that, in December 2014, the City prepared a document entitled "Benicia
23 Industrial Park Transportation & Employment Center Plan Summary of Stakeholder Interviews." Except
24 as expressly admitted, the City denies, generally and specifically, each and every allegation set forth in
25 said paragraph.

26 26. Answering paragraph 26 of the Petition, the City admits that, on January 5, 2016, the City
27 Council adopted Resolution 16-2 adopting a Complete Streets policy in compliance with the Complete
28 Streets Act of 2008, as codified in Government Code sections 65040.2 and 65302, and that Resolution

1 16-2 correctly indicated that the Metropolitan Transportation Commission (MTC) required jurisdictions
2 who wish to access OneBayArea Grant Program funds to adopt a Complete Streets policy by January 31,
3 2016. Except as expressly admitted, the City denies, generally and specifically, each and every
4 allegation set forth in said paragraph.

5 27. Answering paragraph 27 of the Petition, including subparagraph 27(a) through 27(c), the
6 City admits that, in August 2016, the City released the Benicia Industrial Park Transportation &
7 Employment Center Plan Scenarios Report which was prepared for the City by Dyett & Bhatia with
8 DKS Bottomley Associates and that said report described three different potential “Land Use Scenarios,”
9 including “Minimal Intensification,” “Development of Northern Gateway Property,” and “Development
10 of Northern Gateway Property plus Land Use Intensification.” The City further avers that the discussion
11 and analysis set forth in the Scenarios Report speaks for itself. Except as expressly admitted, the City
12 denies, generally and specifically, each and every allegation set forth in said paragraph and
13 subparagraphs.

14 28. Answering paragraph 28 of the Petition, the City admits that, on September 7, 2016, the
15 City held a community workshop to inform the community about the findings of the Scenarios Report
16 and the planning process to date, and to give community members a forum to provide input on
17 alternatives for potential roadway, bike, pedestrian, and streetscape improvements in the Industrial Park;
18 that, prior to the workshop, the City circulated and posted a flyer and sent out emails inviting interested
19 members of the community to attend, and that, on September 22, 2016, the City released a document
20 entitled Community Workshop Report Bencia Industrial Park Transportation & Employment Center
21 Plan” prepared for the City by Dyett & Bhatia which documented and summarized the results of the
22 workshop. Except as expressly admitted, the City denies, generally and specifically, each and every
23 allegation set forth in said paragraph.

24 29. Answering paragraph 29 of the Petition, the City admits that, on September 7, 2016,
25 Petitioner submitted a letter to the City regarding the Scenarios Report acknowledging that it had
26 received the City’s notice of the community workshop the City held that same day. Except as expressly
27 admitted, the City denies, generally and specifically, each and every allegation set forth in said
28 paragraph.

1 30. Answering paragraph 30 of the Petition, the City admits that, in January 2017, the City
2 released the Public Review Draft of the TEC Plan, which was prepared for the City by Dyett & Bhatia
3 and DKS Bottomley Associates. Except as expressly admitted, the City denies, generally and
4 specifically, each and every allegation set forth in said paragraph.

5 31. Answering paragraph 31 of the Petition, the City admits that, on March 17, 2017, the City
6 released the TEC Plan IS/MND and issued a Notice of Intent to Adopt a Negative Declaration stating
7 that the City would adopt a Mitigated Negative Declaration for the TEC Plan and that the City would
8 accept public comments until 5 p.m. on Monday, April 19, 2017, but that the City ultimately accepted
9 comments through Wednesday, April 19, 2017. Except as expressly admitted, the City denies, generally
10 and specifically, each and every allegation set forth in said paragraph.

11 32. Answering paragraph 32 of the Petition, the City admits that the TEC Plan IS/MND states
12 that the TEC Plan Area includes over 1,300 acres of land, including over 500 acres on the Northern
13 Gateway property; and that it identifies the project as the “implementation of the TEC Plan,” which
14 “provides for roadway modifications and enhancements, and other improvements to accommodate
15 circulation and all modes of access”; and that it also states that “[t]hree plan scenarios are being
16 considered and it is expected that the final TEC Plan will assume one of those scenarios or some
17 combination thereof. For analysis purposes, it is presumed that the most development intense scenario,
18 Scenario 3, is realized.” Except as expressly admitted, the City denies, generally and specifically, each
19 and every allegation set forth in said paragraph.

20 33. Answering paragraph 33 of the Petition, the City denies, generally and specifically, each
21 and every allegation set forth in said paragraph.

22 34. Answering paragraph 34 of the Petition, the City admits that the TEC Plan IS/MND tiers
23 off of the General Plan EIR and that the paragraph accurately quotes language from page 16 of the TEC
24 Plan IS/MND. Except as expressly admitted, the City denies, generally and specifically, each and every
25 allegation set forth in said paragraph.

26 35. Answering paragraph 35 of the Petition, the City admits that the quoted language in said
27 paragraph accurately quotes language from the TEC Plan IS/MND. Except as expressly admitted, the
28 City denies, generally and specifically, each and every allegation set forth in said paragraph.

1 36. Answering paragraph 36 of the Petition, the City admits that the TEC Plan IS/MND states
2 as follows: “The project has the potential to result in adverse impacts to humans due to air quality,
3 biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology
4 and water quality, noise, and circulation/transportation. With the mitigation measures set forth above, the
5 project will have less than significant environmental effect that would directly or indirectly impact
6 human beings onsite or in the project vicinity. Therefore, the project will have less than significant
7 impacts due to substantial adverse environmental effects.” Except as expressly admitted, the City
8 denies, generally and specifically, each and every allegation set forth in said paragraph.

9 37. Answering paragraph 37 of the Petition, the City admits that, on April 13, 2017, the
10 City’s Planning Commission conducted a public hearing on the TEC Plan and then adopted Resolution
11 No. 17-3 recommending that the City Council approve the TEC Plan IS/MND and adopt the TEC Plan
12 and that the recitals to Resolution No. 17-3 states that “interviews were conducted with key stakeholders
13 at the project outset.” Except as expressly admitted, the City denies, generally and specifically, each and
14 every allegation set forth in said paragraph.

15 38. Answering paragraph 38 of the Petition, the City admits that Petitioner submitted a letter
16 to the City dated April 19, 2017 in which it purported to identify legal flaws in the TEC Plan IS/MND.
17 Except as expressly admitted, the City denies, generally and specifically, each and every allegation set
18 forth in said paragraph.

19 39. Answering paragraph 39 of the Petition, the City admits that Petitioner submitted a letter
20 to the City dated May 2, 2017, further objecting to the TEC Plan IS/MND. Except as expressly
21 admitted, the City denies, generally and specifically, each and every allegation set forth in said
22 paragraph.

23 40. Answering paragraph 40 of the Petition, the City admits that, on May 2, 2017, the City
24 Council approved Resolution No. 17-64 approving the TEC Plan IS/MND and adopting the TEC Plan,
25 and that the recitals to Resolution No. 17-64 states that “interviews were conducted with key
26 stakeholders at the project outset.” Except as expressly admitted, the City denies, generally and
27 specifically, each and every allegation set forth in said paragraph.

28 41. Answering paragraph 41 of the Petition, the City admits the allegations therein.

1 42. Answering paragraph 42 of the Petition, the City incorporates by reference its responses
2 to each and every paragraph of the Petition set forth above.

3 43. Answering paragraph 43 of the Petition, the City admits that said paragraph accurately
4 quotes language in the TEC Plan IS/MND as well as language from section 15385 of the CEQA
5 Guidelines codified in Title 4 of the California Code of Regulations. Except as expressly admitted, the
6 City denies, generally and specifically, each and every allegation set forth in said paragraph.

7 44. Answering paragraph 44 of the Petition, the City denies, generally and specifically, each
8 and every allegation set forth in said paragraph.

9 45. Answering paragraph 45 of the Petition, the City denies, generally and specifically, each
10 and every allegation set forth in said paragraph.

11 46. Answering paragraph 46 of the Petition, the City denies, generally and specifically, each
12 and every allegation set forth in said paragraph.

13 47. Answering paragraph 47 of the Petition, the City denies, generally and specifically, each
14 and every allegation set forth in said paragraph.

15 48. Answering paragraph 48 of the Petition, the City denies, generally and specifically, each
16 and every allegation set forth in said paragraph.

17 49. Answering paragraph 49 of the Petition, the City denies, generally and specifically, each
18 and every allegation set forth in said paragraph.

19 50. Answering paragraph 50 of the Petition, the City denies, generally and specifically, each
20 and every allegation set forth in said paragraph.

21 51. Answering paragraph 51 of the Petition, the City incorporates by reference its responses
22 to each and every paragraph of the Petition set forth above.

23 52. Answering paragraph 52 of the Petition, the City denies, generally and specifically, each
24 and every allegation set forth in said paragraph.

25 53. Answering paragraph 53 of the Petition, the City denies, generally and specifically, each
26 and every allegation set forth in said paragraph.

27 54. Answering paragraph 54 of the Petition, the City denies, generally and specifically, each
28 and every allegation set forth in said paragraph.

1 55. Answering paragraph 55 of the Petition, including subparagraphs 55(a) through 55(f), the
2 City denies, generally and specifically, each and every allegation set forth in said paragraph and
3 subparagraphs.

4 56. Answering paragraph 56 of the Petition, the City denies, generally and specifically, each
5 and every allegation set forth in said paragraph.

6 57. Answering paragraph 57 of the Petition, the City admits that said paragraph accurately
7 quotes language from a response to comments prepared by the City. Except as expressly admitted, the
8 City denies, generally and specifically, each and every allegation set forth in said paragraph.

9 58. Answering paragraph 58 of the Petition, the City admits that said paragraph accurately
10 quotes language from a response to comments prepared by the City. Except as expressly admitted, the
11 City denies, generally and specifically, each and every allegation set forth in said paragraph.

12 59. Answering paragraph 59 of the Petition, the City admits that said paragraph accurately
13 quotes language from a response to comments prepared by the City. Except as expressly admitted, the
14 City denies, generally and specifically, each and every allegation set forth in said paragraph.

15 60. Answering paragraph 60 of the Petition, the City denies, generally and specifically, each
16 and every allegation set forth in said paragraph.

17 61. Answering paragraph 61 of the Petition, the City incorporates by reference its responses
18 to each and every paragraph of the Petition set forth above.

19 62. Answering paragraph 62 of the Petition, the City admits that said paragraph accurately
20 quotes language from sections 15002(j) and 15003(d) of the CEQA Guidelines codified in Title 4 of the
21 California Code of Regulations. Except as expressly admitted, the City denies, generally and
22 specifically, each and every allegation set forth in said paragraph.

23 63. Answering paragraph 63 of the Petition, the City denies, generally and specifically, each
24 and every allegation set forth in said paragraph.

25 64. Answering paragraph 64 of the Petition, the City denies, generally and specifically, each
26 and every allegation set forth in said paragraph.

27 65. Answering paragraph 65 of the Petition, the City denies, generally and specifically, each
28 and every allegation set forth in said paragraph.

1 66. Answering paragraph 66 of the Petition, the City incorporates by reference its responses
2 to each and every paragraph of the Petition set forth above.

3 67. Answering paragraph 67 of the Petition, the City admits that said paragraph accurately
4 quotes language from section the CEQA Guidelines codified in Title 4 of the California Code of
5 Regulations. Except as expressly admitted, the City denies, generally and specifically, each and every
6 allegation set forth in said paragraph.

7 68. Answering paragraph 68 of the Petition, the City denies, generally and specifically, each
8 and every allegation set forth in said paragraph.

9 69. Answering paragraph 69 of the Petition, the City denies, generally and specifically, each
10 and every allegation set forth in said paragraph.

11 70. Answering paragraph 70 of the Petition, the City denies, generally and specifically, each
12 and every allegation set forth in said paragraph.

13 71. Answering paragraph 71 of the Petition, the City incorporates by reference its responses
14 to each and every paragraph of the Petition set forth above.

15 72. Answering paragraph 72 of the Petition, the City admits that, on January 7, 2014, the City
16 Council adopted Resolution 14-03 approving an agreement with the Solano Transportation Authority
17 (STA) to develop a transportation plan for the Benicia Industrial Park Employment Center Priority
18 Development Area. Except as expressly admitted, the City denies, generally and specifically, each and
19 every allegation set forth in said paragraph.

20 73. Answering paragraph 73 of the Petition, the City denies, generally and specifically, each
21 and every allegation set forth in said paragraph.

22 74. Answering paragraph 74 of the Petition, the City denies, generally and specifically, each
23 and every allegation set forth in said paragraph.

24 75. Answering paragraph 75 of the Petition, the City incorporates by reference its responses
25 to each and every paragraph of the Petition set forth above.

26 76. Answering paragraph 76 of the Petition, the City denies, generally and specifically, each
27 and every allegation set forth in said paragraph.

28 77. Answering paragraph 77 of the Petition, the City denies, generally and specifically, each

1 and every allegation set forth in said paragraph.

2 78. Answering paragraph 78 of the Petition, the City denies, generally and specifically, each
3 and every allegation set forth in said paragraph.

4 79. Answering paragraph 79 of the Petition, the City incorporates by reference its responses
5 to each and every paragraph of the Petition set forth above.

6 80. Answering paragraph 80 of the Petition, the City denies, generally and specifically, each
7 and every allegation set forth in said paragraph.

8 81. Answering paragraph 81 of the Petition, the City denies, generally and specifically, each
9 and every allegation set forth in said paragraph.

10 82. Answering paragraph 82 of the Petition, the City denies, generally and specifically, each
11 and every allegation set forth in said paragraph.

12 83. Answering paragraph 83 of the Petition, the City denies, generally and specifically, each
13 and every allegation set forth in said paragraph.

14 **AFFIRMATIVE DEFENSES**

15 Without admitting it carries the burden of proof as to any of the issues listed below, the City
16 alleges the following separate and independent affirmative defenses:

17 1. The Petition and each and every cause of action therein fail to state a cause of action,
18 either in total or in part, against the City or at all.

19 2. Petitioner has failed to exhaust its administrative remedies as to any claim or legal theory
20 that was not presented to the City during the course of its administrative proceedings below, pursuant to
21 Public Resources Code section 21177, subdivision (a); Government Code section 65009, subdivision
22 (b), and the common law doctrine requiring exhaustion of administrative remedies.

23 3. Petitioner is not a third party beneficiary of the alleged STA Agreement and lacks
24 standing to enforce it.

25 4. The City reserves its right to amend this answer to allege additional affirmative defenses.

26 **PRAYER FOR RELIEF**

27 The City prays as follows:

28 1. That the Court deny all relief sought by Petitioner and Plaintiff ;

1 **DECLARATION OF SERVICE**

2 I, the undersigned, declare as follows:

3 I am a citizen of the United States and employed in the County of Alameda; I am over the age of
4 eighteen years and not a party to the within entitled action; my business address is Jarvis, Fay, Doporto &
5 Gibson, LLP, 492 Ninth Street, Suite 310, Oakland, California 94607.

6 On July 3, 2017, I served the within:

7 **ANSWER TO VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE
8 RELIEF AND PETITION FOR WRIT OF MANDATE**

9 on the parties in this action, by placing a true copy thereof in a sealed envelope(s), each envelope
10 addressed as follows:

11 Kristina D. Lawson
klawson@hansobridgett.com
12 Christopher D. Jensen
cjensen@hansonbridgett.com
13 Vaneeta Chintamaneni
vchintamaneni@hansonbridgett.com
14 Hanson Bridgett LLP
425 Market Street, 26th Floor
15 San Francisco, CA 94105

*Attorneys for Petitioner and Plaintiff
WEST COAST HOME BUILDERS, INC.*

- 16 (X) (By First Class Mail) I caused each such envelope, with postage thereon fully prepaid, to be
- 17 placed in the United States mail to be mailed by First Class mail at Oakland, California.
- 18 () (By Hand) I personally delivered each such envelope to the offices of each addressee above.
- 19 () (By Federal Express) I caused each such envelope to be sent by Federal Express to the offices of
- 20 each addressee above.
- 21 () (By Email) I cause each such document to be emailed the addressee(s) above.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
23 and correct.

24 Executed on July 3, 2017, at Oakland, California.

25 
26 _____
Jennifer Dent