RECEIVED
JUN 02 2017
CITY MANAGER'S OFFICE
CITY OF BENICIA

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

City of Benicia

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

West Coast Home Builders, Inc.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. *¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Solano County Superior Court

580 Texas Street
Fairfield, CA 94533

CASE NUMBER:
(Número del Caso): FCS048992

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Christopher D. Jensen, Hanson Bridgett LLP, 425 Market Street, 26th Floor, SF, CA 94105, (415) 777-3200

DATE: *(Fecha)* JUN 02 2017 Clerk, by *(Secretario)* G. ROBINS , Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☑ on behalf of *(specify):* the City of Benicia
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☑ other *(specify):* CCP 416.50
4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
HANSON BRIDGETT LLP Kristina D. Lawson, SBN 221131; Christopher D. Jensen, SBN 235108 Vaneeta Chintamaneni, SBN 303446 425 Market Street, 26th Floor, San Francisco, California 94105 TELEPHONE NO.: (415) 777-3200 FAX NO.: (415) 541-9366 ATTORNEY FOR (Name): Petitioner and Plaintiff West Coast Home Builders, Inc.	ENDORSED FILED Clerk of the Superior Court JUN 02 2017 By G. ROBINS DEPUTY CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO STREET ADDRESS: 580 Texas Street MAILING ADDRESS: CITY AND ZIP CODE: Fairfield, CA 94533 BRANCH NAME:	
CASE NAME: West Coast Home Builders, Inc. v. City of Benicia	

CIVIL CASE COVER SHEET	Complex Case Designation	CASE NUMBER: FCS048992
☑ Unlimited (Amount demanded exceeds $25,000) ☐ Limited (Amount demanded is $25,000 or less)	☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	JUDGE: Beeman DEPT: 1

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
- ☐ Auto (22)
- ☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- ☐ Asbestos (04)
- ☐ Product liability (24)
- ☐ Medical malpractice (45)
- ☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- ☐ Business tort/unfair business practice (07)
- ☐ Civil rights (08)
- ☐ Defamation (13)
- ☐ Fraud (16)
- ☐ Intellectual property (19)
- ☐ Professional negligence (25)
- ☐ Other non-PI/PD/WD tort (35)

Employment
- ☐ Wrongful termination (36)
- ☐ Other employment (15)

Contract
- ☐ Breach of contract/warranty (06)
- ☐ Rule 3.740 collections (09)
- ☐ Other collections (09)
- ☐ Insurance coverage (18)
- ☐ Other contract (37)

Real Property
- ☐ Eminent domain/inverse condemnation (14)
- ☐ Wrongful eviction (33)
- ☐ Other real property (26)

Unlawful Detainer
- ☐ Commercial (31)
- ☐ Residential (32)
- ☐ Drugs (38)

Judicial Review
- ☐ Asset forfeiture (05)
- ☐ Petition re: arbitration award (11)
- ☑ Writ of mandate (02)
- ☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- ☐ Antitrust/Trade regulation (03)
- ☐ Construction defect (10)
- ☐ Mass tort (40)
- ☐ Securities litigation (28)
- ☐ Environmental/Toxic tort (30)
- ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
- ☐ RICO (27)
- ☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- ☐ Partnership and corporate governance (21)
- ☐ Other petition *(not specified above)* (43)

2. This case ☐ is ☑ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☐ Large number of separately represented parties
   b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☐ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. ☑ monetary b. ☑ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action *(specify)*: Four: CEQA Writ, Writ of Mandate, Declaratory Relief, Injunctive Relief
5. This case ☐ is ☑ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: June 2, 2017

Christopher D. Jensen
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/ Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice–Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach–Seller Plaintiff *(not fraud or negligence)*
  - Negligent Breach of Contract/ Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment *(non-domestic relations)*
  - Sister State Judgment
  - Administrative Agency Award *(not unpaid taxes)*
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

ENDORSED FILED
Clerk of the Superior Court
JUN 02 2017
G. ROBINS
By DEPUTY CLERK

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Attorneys for West Coast Home Builders, Inc.

EXEMPT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO

WEST COAST HOME BUILDERS, INC., Petitioner and Plaintiff, v. CITY OF BENICIA, Respondent and Defendant.	Case No. FCS048992 **PROOF OF SERVICE OF NOTICE OF COMMENCEMENT OF ACTION AND NOTICE OF COMMENCEMENT OF ACTION** Environmental Law – CEQA (Public Resources Code § 21167.1)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO

WEST COAST HOME BUILDERS, INC., Petitioner and Plaintiff, v. CITY OF BENICIA, Respondent and Defendant.	Case No. **NOTICE OF COMMENCEMENT OF ACTION** California Environmental Quality Act [CEQA]

TO THE CITY OF BENICIA AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, that Petitioner West Coast Home Builders, Inc. intends to file a petition for writ of mandamus under the provisions of the California Environmental Quality Act, Public Resources Code section 21000 *et seq.*, against Respondent the City of Benicia ("City"), challenging its certification of an Initial Study / Mitigated Negative Declaration and approval of the Benicia Industrial Park Transportation and Employment Center Plan ("TEC Plan").

The petition will seek the following relief: an order from the Court directing the City to vacate and set aside its certification of the Initial Study / Mitigated Negative Declaration and approval of the TEC Plan; an order from the Court directing the City to comply with CEQA and prepare an environmental impact report conforming to the requirements of

CEQA before consideration of approval of the TEC Plan; and an order from the Court directing the City to comply with the public outreach and environmental review requirements of the City's Agreement with the Solano Transportation Agency related to a TEC Plan. The exact nature of the allegations and relief sought is described in a Petition for Writ of Mandate that Petitioner plans to file on June 2, 2017.

DATED: June 1, 2017

Respectfully submitted,

HANSON BRIDGETT LLP

By: _____

KRISTINA D. LAWSON
CHRISTOPHER D. JENSEN
VANEETA CHINTAMANENI
Attorneys for West Coast Home Builders, Inc.

PROOF OF SERVICE

West Coast Home Builders, Inc. v. City of Benicia
Solano County Superior Court; Case No.

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 425 Market Street, 26th Floor, San Francisco, CA 94105.

On June 1, 2017, I served true copies of the following document(s) described as

NOTICE OF COMMENCEMENT OF ACTION
California Environmental Quality Act [CEQA]

on the interested parties in this action as follows:

Lisa Wolfe, City Clerk
City of Benicia, City Hall
250 East L Street
Benicia, CA 94510

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Hanson Bridgett LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on June 1, 2017, at San Francisco, California.

Susan Christensen

ENDORSED FILED
Clerk of the Superior Court
JUN 02 2017
By G. ROBINS
DEPUTY CLERK

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Attorneys for West Coast Home Builders, Inc.

FAXED

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO

WEST COAST HOME BUILDERS, INC.,

Petitioner and Plaintiff,

v.

CITY OF BENICIA,

Respondent and Defendant.

Case No. FCS048992

NOTICE OF ELECTION TO PREPARE ADMINISTRATIVE RECORD

Environmental Law – CEQA (Public Resources Code § 21167.1)

TO THE CITY OF BENICIA AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that pursuant to Public Resources Code section 21167.6, subdivision (b)(2), Petitioner and Plaintiff West Coast Home Builders, Inc. elects to prepare the administrative record of proceedings in this matter.

DATED: June 2, 2017

Respectfully submitted,

HANSON BRIDGETT LLP

By: _____
KRISTINA D. LAWSON
CHRISTOPHER D. JENSEN
VANEETA CHINTAMANENI
Attorneys for West Coast Home Builders, Inc.

ENDORSED FILED
Clerk of the Superior Court

JUN 02 2017

G. ROBINS

By _____ DEPUTY CLERK

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Attorneys for West Coast Home Builders, Inc.

FAXED

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO

WEST COAST HOME BUILDERS, INC., Petitioner and Plaintiff, v. CITY OF BENICIA, Respondent and Defendant.	Case No. FCS048992 **REQUEST FOR HEARING** Environmental Law – CEQA (Public Resources Code § 21167.1)

Pursuant to Public Resources Code section 21167.4, Petitioner and Plaintiff West Coast Home Builders, Inc. hereby requests a hearing in this action and gives notice of its request for a hearing.

DATED: June 2, 2017

Respectfully submitted,

HANSON BRIDGETT LLP

By: _____
KRISTINA D. LAWSON
CHRISTOPHER D. JENSEN
VANEETA CHINTAMANENI
Attorneys for West Coast Home Builders, Inc.

Local Form 3905
March 7, 2011
mod April 25, 2012

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO

CASE NAME: Plaintiff Defendant	For Court Use Only:
STIPULATION AND ORDER - ALTERNATIVE DISPUTE RESOLUTION	Case Number:

The parties and their attorneys stipulate that all claims in this action shall be submitted to:

☐ Mediation
- ☐ No Fee Mediation
- ☐ Pro Bono
- ☐ Declaration RE: No Fee/Pro Bono request attached

☐ Civil Action Mediation Program (CAMP) CCP § 1775 et seq.

☐ Arbitration
- ☐ Binding
- ☐ Non-Binding

☐ HENCE-Helpful Early Neutral Case Evaluation

☐ Other ADR Stipulations attached

Dated: _____

_____
Name of Plaintiff

_____
Signature

_____
Name of Plaintiff's Attorney

_____
Signature

Dated: _____

_____
Name of Defendant

_____
Signature

_____
Name of Defendant's Attorney

_____
Signature

It is so ordered.
It is also ordered _____

_____

Dated: _____

_____
Judge of the Superior Court

SOLANO COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

The judges of the Civil Division agree that parties should consider using Alternative Dispute Resolution (ADR) to settle their cases. To tell the court you will use ADR:

- Choose ADR on the Case Management Statement (CM-110) or
- File a Stipulation and Order - ADR or
- Agree to ADR at your first court appearance

Questions? Call (707) 207-7413 or go to *www.solano.courts.ca.gov/adr*

The following information about the ADR Programs available at the Solano Court is provided in addition to the information in the "Civil Mediation" brochure:

Pro Bono Mediation Program:

The Pro Bono Mediation panelists are the same mediators on the listing of mediators who provide their services without cost when ordered by the judge.

Request Pro Bono Mediation by entering the program name on the Case Management Statement or on the Stipulation and Order – ADR (Alternative Dispute Resolution). Attach a declaration to the Stipulation and Order – ADR describing why mediation services should be provided without costs to the parties.

Private Mediation and Arbitration:

Parties may select a mediator or arbitrator of their choice including someone not on the listings maintained by the court. If a private mediator, arbitrator or evaluator is selected who is not on the court maintained listing, your selection must be approved by the court.

Fees:

The court requires the fees for ADR to be split equally by the parties at the rate set by the mediator/arbitrator/evaluator unless otherwise ordered by the court. Fees are usually charged on an hourly basis. The court offers "no fee" mediation to parties who cannot afford to pay for mediation. A party may request "no fee mediation" at the Case Management Conference or by filing a "Stipulation and Order – Alternative Dispute Resolution" and attaching a declaration stating why mediation services should be provided at no cost to the parties.

Helpful Early Neutral Case Evaluation Program:

The Helpful Early Neutral Case Evaluation Program provides an opportunity for litigants to resolve their conflict at the early stages of their case. Litigants meet with a neutral evaluator, who as an experienced attorney with subject matter experience that relates to the specific case type, assists the litigants to reach a mutual resolution to their case.

The Helpful Early Neutral Case Evaluation Program may be appropriate when the parties want to participate in a non-adversary procedure.

Civil Mediation Center
Old Courthouse
580 Texas St.
Fairfield, CA 94533
(707) 207-7413
FAX (707) 425-4996

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO

CIVIL MEDIATION CENTER

DEDICATED TO PROVIDING ACCESS TO FAIR AND IMPARTIAL JUSTICE FOR ALL

Alternative Dispute Resolution

Introduction

Alternative Dispute Resolution (ADR) is a general term for a wide variety of dispute resolution processes that are alternative to litigation. Types of ADR processes include mediation, arbitration and settlement conferences, among other forms.

Advantages of ADR

ADR can have a number of advantages.

- ADR can save time. A dispute can be resolved in a matter of months, even weeks, while litigation can take years.
- ADR can save money. Attorney fees, court costs and expert fees can be reduced.
- ADR invites more participation. Parties have more chances to express their interest and concerns instead of focusing exclusively on legal rights.
- ADR allows more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation.
- ADR can be more satisfying. For all the above reasons, many people have reported a high degree of satisfaction with ADR.

Main Form of ADR Offered by the Court

Mediation

Mediation is an informal, confidential process in which a neutral person (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities of their dispute. The mediator helps each side to explore options and arrive at a mutual acceptable resolution. The mediator does not decide the dispute, the parties do.

Mediation may be appropriate when: The parties want a non-adversary procedure; the parties have a continuing business or personal relationship; communication problems are interfering with a resolution; there is an emotional element involved; the parties are interested in an injunction, consent decree, or other form of equitable relief.

Arbitration

Arbitration is normally an informal process in which a neutral person (the arbitrator) decides the dispute after hearing the evidence and arguments of the parties. The parties can agree to binding or non-binding arbitration. Binding arbitration is designed to give each side a resolution of their dispute when they cannot agree between themselves or with a mediator. If the arbitration is non-binding, any party can reject the arbitrator's decision and request a trial.

Arbitration may be appropriate when: the action is for personal injury, property damage, breach of contract; when only monetary damage is sought; witness testimony under oath is desired; an advisory opinion is sought from an experienced litigator (if non-binding arbitration)

ENDORSED FILED
Clerk of the Superior Court
JUN 02 2017
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FAXED

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO

WEST COAST HOME BUILDERS, INC., Petitioner and Plaintiff, v. CITY OF BENICIA, Respondent and Defendant.	Case No. FCS048992 **VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF (CCP §§ 526, 1109, & 1060) AND PETITION FOR WRIT OF MANDATE (PUBLIC RESOURCES CODE §§ 21167, 21168, 21168.5; CCP §§ 1085. 1094.5)** Environmental Law – CEQA (Public Resources Code § 21167.1)

By this verified complaint and petition, Petitioner and Plaintiff West Coast Home Builders, Inc. ("West Coast," "Plaintiff," or "Petitioner") alleges as follows:

INTRODUCTION

1. West Coast seeks a declaration by this Court that the City of Benicia ("City") must fully comply with the requirements of the California Environmental Quality Act ("CEQA"; Pub. Resources Code, §§ 21000 *et seq.*) in connection with its review and approval of a Benicia Industrial Park Transportation and Employment Center Plan ("TEC Plan"), and the City must complete a CEQA-compliant, public environmental review process before attempting to adopt a TEC Plan.

2. West Coast owns the largest undeveloped tract of land in the City and is the

largest property owner within the TEC Plan area. West Coast's property (referred to in the TEC Plan as the "Northern Gateway Property" and generally herein as the "West Coast Property") was included within the boundaries of the TEC Plan area without any input from West Coast whatsoever.

3. The TEC Plan purportedly implements two statewide and regional planning initiatives. First, the TEC Plan purportedly seeks to achieve the goals of the Complete Streets Act of 2008 (Assembly Bill 1358), which seeks to design transportation networks that are functional, safe, and convenient for all modes of transit, including but not limited to bicyclists, pedestrians, transit vehicles, truck drivers, and motorists. Second, the TEC Plan purportedly seeks to implement Plan Bay Area, a regional plan adopted by the Association of Bay Area Governments ("ABAG") that attempts to integrate transportation and land use, as mandated by California Senate Bill 375.

4. The Benicia City Council approved the TEC Plan without soliciting any contact or input from West Coast, the single largest property owner in the TEC Plan area, and without preparing an Environmental Impact Report ("EIR"). Instead, the City prepared and certified an Initial Study/Mitigated Negative Declaration ("TEC Plan IS/MND") that was purportedly "tiered" off of an EIR for the Benicia General Plan ("General Plan") that is almost twenty years old. The General Plan, approved in June 1999, was adopted years before the passage of the Complete Streets Act and the adoption of Plan Bay Area that the TEC Plan purports to implement. The General Plan did not envision or attempt to facilitate the "Complete Streets" that constitute "the heart of the TEC Plan" and serve to transition the Plan area into an accessible, multi-modal transportation environment, nor did the General Plan address the TEC Plan's stated goal of transforming the TEC Plan area into an "innovation park." (TEC Plan, pp. 1-3, 7-10.)

5. Further, the TEC Plan defers environmental review of critical issues, such as freeway ramp improvements and road alignments that may encroach beyond existing rights of way or into sensitive areas. Thus, the City has sought to defer analysis of site-specific impacts in a General Plan EIR, and then, almost twenty years later, has prepared

an IS/MND that purports to tier off that EIR, without addressing the site-specific impacts in either document.

6. CEQA does not authorize the use of a tiered EIR when the later project is inconsistent with or outside of the scope of the plan for which the prior EIR was prepared. (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307.) Further, tiering "is not a device for deferring identification of significant environmental impacts that the adoption of a [later] plan can be expected to cause." (*Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199.) In adopting the TEC Plan, the City abused its discretion and failed to proceed in a manner required by law by (1) improperly relying on the General Plan EIR (prepared in 1998) to evaluate the environmental impacts of a project that is inconsistent with and outside the scope of the project for which the General Plan EIR was prepared, and (2) improperly deferring analysis of known, specific impacts of the TEC Plan to an unspecified subsequent environmental review process.

7. Further, the City abused its discretion by certifying the TEC Plan IS/MND, because there is substantial evidence to support a fair argument in light of the whole record that the TEC Plan will result in potentially significant impacts to the environment that were not identified, analyzed, or mitigated in the General Plan EIR or the TEC Plan IS/MND.

8. The City also abused its discretion and failed to proceed in a manner required by law because (1) the project description in the TEC Plan is impermissibly vague and inconsistent in describing the use, intensity, and density of future development in the TEC Plan area, and (2) the City did not solicit information from or engage with West Coast, and inadequately responded to West Coast's comments to the TEC Plan IS/MND, in violation of CEQA public participation and information disclosure provisions.

9. The City also abused its discretion by failing to comply with provisions of its agreement with the Solano Transportation Authority ("STA") related to public outreach and environmental review of a TEC Plan project, by (1) repeatedly failing to provide West Coast with notice of meetings and hearings related to the project, failing to consult with

West Coast in developing a TEC Plan, and failing to respond adequately to West Coast's comments regarding the deficiencies in the TEC Plan, in violation of the agreement with the STA; and (2) by failing to perform an appropriate environmental review of a TEC Plan, as required under CEQA and by the agreement between the City and the STA.

10. Accordingly, West Coast seeks a peremptory writ of mandate pursuant to Code of Civil Procedure section 1085 and/or section 1094.5 setting aside the certification of the City's TEC Plan IS/MND and adoption of the TEC Plan, and ordering the City to prepare an EIR that fully analyzes all significant impacts, reasonable alternatives, and proposed mitigation measures before adopting a TEC Plan.

11. West Coast seeks a declaration by this Court that the City must fully comply with the requirements of CEQA in its review of the TEC Plan, and that the City must prepare a subsequent CEQA-compliant EIR before adopting a TEC Plan.

12. West Coast seeks injunctive relief by this Court enjoining the City from implementing the TEC Plan, which plan was adopted in violation of CEQA.

JURISDICTION AND VENUE

13. The City of Benicia is located within Solano County, and venue is proper in Solano County pursuant to Code of Civil Procedure section 394(a).

14. This Court has jurisdiction pursuant to CEQA, Public Resources Code sections 21167, 21168, and 21168.5 and Code of Civil Procedure sections 1085 and 1094.5.

PARTIES

15. Petitioner and Plaintiff West Coast is a California corporation with its principal place of business in Contra Costa County. West Coast owns over 500 acres of undeveloped property within the TEC Plan area and conducts business in Solano County.

16. The City of Benicia is a municipality founded in 1849 and the lead agency under CEQA for the TEC Plan. On May 2, 2017, the Benicia City Council certified the TEC Plan IS/MND and adopted the TEC Plan. On May 3, 2017, the City filed a Notice of

Determination for the TEC Plan with the County Clerk of Solano County and the State Office of Planning and Research.

STANDING

17. Petitioner and Plaintiff West Coast has standing to bring this petition and complaint because it is the owner of nearly all undeveloped real property located within the TEC Plan area, including over 500 acres of vacant land between East 2nd Street and Lake Herman Road referred to in the TEC Plan as the Northern Gateway Property. Therefore, West Coast has a geographical nexus to the TEC Plan and will be affected by the TEC Plan's environmental impacts, and the TEC Plan's overly burdensome regulations and restrictions.

18. West Coast further has exhausted its administrative remedies, by objections interposed in writing during the administrative proceedings leading to the adoption of the TEC Plan, including without limitation written comments submitted to the City's Community Development Department on West Coast's behalf by Kristina Lawson, Esq., on April 19, 2017 and to the City on May 2, 2017.

19. West Coast has complied with Public Resources Code section 21167.5 by previously serving by mail a Notice of Commencement of Action described in California Public Resources Code section 21167 upon the City. The Notice and Proof of Service of the Notice have been filed with this petition.

FACTUAL AND PROCEDURAL BACKGROUND

20. The West Coast Property covers approximately 528 contiguous acres of vacant land within the TEC Plan area. West Coast and affiliated companies have owned the Property since 1979. Specifically, Albert D. Seeno Construction Co. ("ADSCO") purchased the West Coast Property on October 29, 1979. The Property was transferred from ADSCO to an affiliated entity, North State Development Co. ("North State") on December 28, 1995, and from North State to West Coast, also an affiliated entity, on February 1, 1996.

21. The West Coast Property comprises nearly 50% of the TEC Plan area and

a vast majority of the undeveloped property within the TEC Plan area. The West Coast Property is located in the northeastern portion of the City, west of Interstate 680. It is bounded on the south and east by East 2nd Street. The western boundary generally parallels the alignments of West Channel Road and Industrial Way. The northern property line is bounded in part by the City of Benicia Water Treatment Plant and by Lake Herman Road.

22. Since 1979, West Coast and others have presented the City with various development proposals for the West Coast Property, and has studied the feasibility of development of the property. Despite West Coast's long-time ownership of the West Coast Property, and its extensive knowledge of its property and the surrounding area, the City has repeatedly failed to solicit input from or meaningfully engage with West Coast or affiliated companies about the impacts of proposed plans on the West Coast Property.

23. On December 16, 2011, the City submitted an application to ABAG requesting that it recognize the Benicia Industrial Park (which includes the West Coast Property) as a Priority Development Area for investment and job growth ("PDA Application"). On January 17, 2012, the City Council adopted Resolution 12-2 supporting the PDA Application. Though West Coast owned over 500 acres of property in the Priority Development Area, the City never notified West Coast of its intent to pursue the PDA Application, and West Coast did not discover this fact until after the City's approval of the PDA application.

24. By letter dated February 16, 2012, West Coast submitted comments to ABAG identifying erroneous and misleading information contained in the PDA Application and requesting that ABAG disqualify the PDA Application from the selection process. In its letter, West Coast identified internal discrepancies in the PDA Application between the narrative and exhibits, including a discrepancy as to whether the area proposed for designation as a Priority Development Area included the West Coast Property. In one example, the narrative contained in the PDA Application described the area to be comprised of as 925 acres, but a boundary calculation by a registered civil engineer

showed that the area depicted in the PDA Application was 1,447 acres. West Coast strenuously objected to the preparation and imposition of specific or precise plans for its property, or the creation of supporting environmental reports regarding the development of its property, particularly without any input from the property owner.

25. At its meeting held on March 15, 2012, ABAG approved the PDA Application and the designation of the general TEC Plan area as the "Benicia Industrial Park Employment Center-Priority Development Area." ABAG's designation of the area as a Priority Development Area allows the City access to potential grant funding to develop a plan for an integrated transportation system, and for future transportation infrastructure improvements within the TEC Plan area. In or around December 2014, the City prepared a Summary of Stakeholder Interviews in connection with its anticipated development of the TEC Plan. The City did not contact West Coast—the largest property owner in the Plan area—to discuss, or seek West Coast's input on, the City's development of a vision or plan for the West Coast Property.

26. On January 11, 2016, the City Council adopted a Complete Streets Policy through Resolution No. 16-2, in accordance with the Complete Streets Act of 2008. Beginning January 1, 2011, the Complete Streets Act required that cities and counties, upon any substantive revision of the circulation element of a general plan, make modifications to "plan for a balanced, multimodal transportation network that meets the needs of all users of streets, roads, and highways for safe and convenient travel in a manner that is suitable to the rural, suburban, or urban context of the general plan." As indicated by recitals in Resolution No. 16-2, the Metropolitan Transportation Commission ("MTC") requires jurisdictions who wish to access "OneBayArea" Grant Program transportation funds during an upcoming five-year grant cycle to adopt a Complete Streets Resolution incorporating nine required Complete Streets elements by January 31, 2016.

27. In August 2016, the City released the Benicia Industrial Park TEC Plan Scenarios Report ("Scenarios Report") prepared for the City by Dyett & Bhatia and KDP

Bottomley Associates. The Scenarios Report describes three potential land use scenarios for consideration and inclusion in the TEC Plan:

a. Scenario 1 contemplates minimal intensification and assumes no significant future changes in land use in the TEC Plan area. The TEC Plan states that the recommendations therein are intended to improve upon existing conditions and introduce Complete Streets at a basic level under this Scenario;

b. Scenario 2 assumes development of the West Coast Property, which is described as 528 acres of undeveloped land, and indicates that while the "mix and distribution of future land uses on the property has not yet been determined and will be defined through a Specific Plan at a future date, this Scenario assumes predominantly light industrial development, potentially with some office or other commercial uses, consistent with the Light Industrial and General Commercial districts." Under Scenario 2, East 2nd Street "becomes the center spine running through the Park, and recommendations promote connection to and through this corridor"; and

c. Scenario 3 assumes some intensification of the existing industrial park area in addition to development of the West Coast Property as described under Scenario 2. The TEC Plan recommendations would promote improved connectivity in the central/west area under Scenario 3.

28. On September 7, 2016, the City held a community workshop, the stated purpose of which was to inform the community about the findings of the Scenarios Report and the planning process to date, and to provide a forum for community members to provide input on alternatives for potential roadway, bike, pedestrian, and streetscape improvements in the Benicia Industrial Park. A Community Workshop Report dated September 22, 2016 and prepared by Dyett & Bhatia and KDP Bottomley Associates

reports that City staff "sent out a flyer and email blast to Benicia residents and other interested parties." The City did not provide notice of the community workshop to West Coast.

29. By letter to the City dated September 7, 2016, West Coast submitted comments to the City regarding the Scenarios Report and objected to the City's continued failure to provide notice or otherwise involve West Coast in the development of a TEC Plan, which will critically impact the future development of the West Coast Property.

30. In January 2017, the City released the public review draft of the TEC Plan prepared by Dyett & Bhatia and KDP Bottomley Associates. The TEC Plan relies on one of West Coast's previous development proposals, to estimate that the development of 280 acres for "Limited Industrial" uses (approximately 4.4 million square feet of new building space) and 35 acres for "Commercial" uses (approximately 857,000 square feet of building space) could be reasonably supported on the West Coast Property.

31. On March 17, 2017, the City issued a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration for the TEC Plan and released the TEC Plan IS/MND. The Notice of Intent described the comment period to begin on Monday, March 20, 2017, with written comments on the proposed negative declaration accepted until 5 p.m. on Monday, April 19, 2017. The City's website listed the closing date for the comment period as Wednesday, April 19, 2017. The City accepted comments through April 19, 2017.

32. The TEC Plan IS/MND states that the TEC Plan area includes over 1,300 acres of land, with the West Coast Property encompassing over 500 acres. The project, as described in the TEC Plan IS/MND, is "implementation of the TEC Plan and provides for roadway modifications and enhancements, and other improvements to accommodate circulation and all modes of access." The TEC Plan IS/MND states that "[t]hree plan scenarios are being considered and it is expected that the final TEC Plan will assume one of those scenarios or some combination thereof. For analysis purposes, it is

presumed that the most development intense scenario, Scenario 3, is realized." The TEC Plan itself makes no specific reference to Scenario 3, and the improvements identified in the TEC Plan do not mirror the improvements associated with Scenario 3 in the Scenarios Report. For example, the TEC Plan does not include as part of the proposed pavement maintenance the section of Park Road north of Industrial Way to south of Stone Street, and it adds four roadway segments that are not included in the Scenarios Report.

33. The TEC Plan IS/MND includes specific roadway improvements, freeway ramp improvements, bicycle improvements, pedestrian improvements, signage and wayfinding, demolition and tree removal, landscaping and lighting, and construction activities as project components.

34. The TEC Plan IS/MND is purportedly "tiered" off of the General Plan EIR that was certified in 1998. In support of this purported tiering of the environmental impact analysis, the TEC Plan IS/MND states the following:

> The General Plan EIR reviewed potentially significant environmental effects resulting from plan implementation and developed measures and policies to mitigate impacts. The General Plan EIR identified significant impacts related to community services, transportation and circulation, air quality, and hazardous materials. Implementation of mitigation measures identified in the General Plan EIR reduced impacts to less-than-significant levels.
>
> This environmental document tiers off of the General Plan EIR (SCH NO.: 97122023), which was certified on April 1998, to examine site-specific impacts of the proposed project, as described below. A copy of the City of Benicia's General Plan and EIR are available at the Community Development Department, 250 East L Street, Benicia, CA 94510, during normal business hours and online http://www.ci.benicia.ca.us/generalplan.

35. The TEC Plan IS/MND states that all General Plan policies adopted as mitigation in the General Plan EIR apply to the TEC Plan. With respect to certain TEC Plan components, the TEC Plan IS/MND purports to provide a programmatic analysis or otherwise require subsequent environmental review. For example, the TEC Plan IS/MND states that "improvements that would substantially modify roadway alignment, encroach

beyond the right of way or into sensitive areas such as wetland, marsh or natural communities would be subject to subsequent environmental review." With respect to freeway ramp improvements proposed in the TEC Plan, the TEC Plan IS/MND states that the locations for the freeway ramp improvements will be studied further to determine how best to improve or reconstruct the ramps and that "[b]ecause there are no details regarding the freeway ramp improvements at this time, this IS/MND recognizes that future development of the freeway ramp improvements would be required to undergo subsequent environmental review in accordance with CEQA regulations." Similarly, the TEC Plan IS/MND opines that pedestrian facilities along East 2nd Street would be constructed as part of a "Northern Gateway Mixed-Use Development Project" and may occur outside of the existing limit of pavement for East 2nd Street. As a result, the TEC Plan IS/MND includes a "programmatic analysis for this component of the TEC Plan. Future construction of pedestrian facilities may be required to undergo subsequent environmental review according to CEQA regulations."

36. The TEC Plan IS/MND concludes that although the TEC Plan could have a significant effect on the environment in the areas of Air Quality, Biological Resources, Cultural Resources, Hazards and Hazardous Materials and Hydrology/Water Quality, with the implementation of mitigation measures, all impacts will be reduced to less than significant levels.

37. On April 13, 2017, the City's Planning Commission conducted a public hearing and passed Resolution No. 17-3, recommending that the City Council certify the TEC Plan IS/MND and adopt the TEC Plan. Resolution No. 17-3 states in its recitals that "interviews were conducted with key stakeholders at the project outset." However, the City did not conduct interviews with any West Coast representatives and to date, has not solicited input from West Coast, or taken into account comments submitted by West Coast in connection with the development of the TEC Plan and associated environmental documents.

38. By letter dated April 19, 2017, West Coast timely submitted detailed

comments to the City describing the legal inadequacy of the TEC Plan IS/MND. In its letter, West Coast asserted that the TEC IS/MND cannot tier from the General Plan EIR because the TEC Plan is not within the scope of the General Plan EIR and because the General Plan EIR retains no informational value. West Coast also observed that potentially significant effects of the TEC Plan were not identified and analyzed in the General Plan EIR. More specifically, West Coast commented that the General Plan EIR did not evaluate project-specific, potentially significant impacts in the areas of Aesthetics, Air Quality/Greenhouse Gas Emissions, Noise, and Population and Housing. Additional comments questioned whether the TEC Plan IS/MND adequately evaluated potentially significant off-site impacts and cumulative impacts. West Coast's comments also urged against deferring the analysis of impacts of transportation/traffic impacts, including roadway and freeway ramp improvements, bike lanes, and pedestrian facilities. Pointing out inconsistencies in the TEC Plan and TEC Plan IS/MND as to what exactly the TEC Plan MND evaluated, West Coast's comment letter concluded the TEC Plan IS/MND failed to provide an adequate project description, thereby precluding meaningful public review and improperly segmenting the analysis of the environmental impact of the TEC Plan.

39. By letter dated May 2, 2017, West Coast submitted a supplemental letter reiterating its objections to the TEC Plan IS/MND and the proposed TEC Plan. West Coast observed that while the City was aware that West Coast had unique knowledge of the West Coast Property, the City had never solicited or engaged West Coast in developing the TEC Plan or in considering the environmental implications of adopting the TEC Plan. West Coast also objected to the City's cursory and inadequate responses to the comments set forth in West Coast's April 19, 2017 letter.

40. On May 2, 2017, the Benicia City Council approved Resolution No. 17-64, certifying the TEC Plan IS/MND and adopting the TEC Plan. Like Planning Commission Resolution No. 17-3, Resolution No. 17-64's recitals state that "interviews were conducted with key stakeholders at the project outset." However, as stated above, the

City did not conduct interviews with any West Coast representatives and to date, has not solicited input from West Coast, or taken into account comments submitted by West Coast in connection with the development of the TEC Plan and associated environmental documents.

41. On May 3, 2017, the City filed a Notice of Determination for the City's approval of the TEC Plan pursuant to Public Resources Code Section 21152.

FIRST CAUSE OF ACTION

[Writ of Mandate – Violation of CEQA]

A. The City Improperly Tiered the TEC Plan MND Off of the 1998 General Plan EIR.

42. West Coast refers to and herein incorporates by reference Paragraphs 1 through 41, as if stated in full herein.

43. The TEC Plan IS/MND states that "[t]his document tiers off of the General Plan EIR (SCH NO.: 97122023), which was certified on April 1998, to examine site-specific impacts of the proposed project." Under CEQA,

> "Tiering" refers to the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site-specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared. Tiering is appropriate when the sequence of EIRs is:
>
> (a) From a general plan, policy, or program EIR to a program, plan, or policy EIR of lesser scope or to a site-specific EIR;
>
> (b) From an EIR on a specific action at an early stage to a subsequent EIR or a supplement to an EIR at a later stage. Tiering in such cases is appropriate when it helps the Lead Agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

(Cal. Code Regs., tit. 14, § 15385.)

44. CEQA contemplates the use of the tiering process to allow for the analysis of general matters contained in a broader EIR to be incorporated into subsequent EIRs or Negative Declarations for specific projects. (*Id.* § 15152(a).) However, tiering is only

appropriate if the "sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration." (*Id.*) "Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration." (*Id.*) An EIR is required for a new project if "the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR." (*Id.*) Moreover, the use of a tiered EIR is not permitted by CEQA if the later project is inconsistent with or outside of the scope of the plan for which the prior EIR was prepared. (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307.)

45. The City's proposed tiering process violates CEQA because the TEC Plan is inconsistent with the scope of the 1999 General Plan EIR. For instance, the TEC Plan's proposed roadway improvements and development are inconsistent with the General Plan EIR, and the City must therefore treat the TEC Plan as a separate project outside the scope of the General Plan EIR. (*See* General Plan at p. 52, Fig. 2-5; TEC Plan, Figs. 2-2 and 2-4.)

46. The proposed tiering also violates CEQA because the TEC Plan is outside the scope of the General Plan. The TEC Plan seeks to implement Complete Streets in the Benicia Industrial Park, pursuant to (1) Assembly Bill 1358, which requires relevant plans to be identified in general plan updates or revisions to circulation elements, and which was signed into law in 2008, and (2) ABAG's designation of the Benicia Industrial Park as a Priority Development Area and the grant received by the City in 2013. The TEC Plan calls for various circulation-based improvements, including but not limited to widening of streets, installation of traffic signals, and bicycle and pedestrian improvements. The General Plan, on the other hand, did not contemplate Complete Streets that form the core of the TEC Plan, because the General Plan was certified roughly a decade prior to adoption of Assembly Bill 1538.

47. Additionally, tiering off the General Plan EIR violates CEQA because the General Plan is outdated. As stated above, the General Plan was certified roughly ten years before Assembly Bill 1358 prescribed the incorporation of Complete Streets in plans. The General Plan lacks informational value because it was certified roughly eighteen years ago, prior to significant changes to the City's transportation and circulation systems.

48. The City also abused its discretion, and failed to proceed as required by law, by adopting the TEC Plan IS/MND using tiering, because the General Plan EIR did not adequately examine potentially significant environmental impacts of the TEC Plan. The TEC Plan IS/MND identifies potentially significant impacts to Air Quality, Biological Resources, Cultural Resources, Hazards and Hazardous Materials, and Hydrology/Water Quality. (TEC Plan IS/MND, p. 39.) The General Plan EIR identified potentially significant impacts to Community Services, Transportation and Circulation, Air Quality, and Hazardous Materials. (General Plan EIR, pp. 7-12.) Although the General Plan EIR did describe certain of these impact areas generally, it did not adequately examine potentially significant impacts that may be caused by the TEC Plan, including but not limited to impacts to areas of Aesthetics, Air Quality/Greenhouse Gas Emissions, Transportation/Traffic, Noise, and Population and Housing.

49. In addition, the City abused its discretion, and failed to proceed as required by law, in failing to evaluate the environmental impacts of transportation improvements included in the TEC Plan, including improvements to roads, freeway access, and bicycle lanes. The City has unlawfully deferred analysis of site-specific impacts in its General Plan EIR, and then in the TEC Plan IS/MND. (*See Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th at 199.)

50. In addition, the City abused its discretion, and failed to proceed as required by law, because it failed to comply with CEQA procedural requirements for tiering. Although the City asserts the General Plan EIR was a program EIR, and the TEC Plan is a policy document that implements the General Plan, the City has not followed

procedures for tiering pursuant to California Code Regulations, title 14, sections 15162, 15163, 15164, and 15168. Among other things, the City has failed to examine the TEC Plan in light of the General Plan EIR to determine whether additional environmental documents must be prepared pursuant to Section 15168(c), and the City has failed to present evidence of such analysis to the public.

B. The City Failed to Adequately Examine Potentially Significant Impacts of the Project Despite a Fair Argument, Based on Substantial Evidence, That the TEC Plan May Have Significant Impacts.

51. West Coast refers to and herein incorporates by reference Paragraphs 1 through 50, as if stated in full herein.

52. Pursuant to CEQA, if an agency determines there is substantial evidence that any aspect of the project, individually or cumulatively, may cause a significant effect on the environment, the lead agency must (1) prepare an EIR, (2) use a previously prepared EIR which adequately analyzes the relevant project, or (3) determine which effects were adequately examined by an earlier EIR or negative declaration pursuant to an appropriate CEQA process, and which effects must be analyzed in a subsequent EIR or negative declaration. (Cal. Code Regs., tit. 14, § 15063(b)(1).) Substantial evidence means there is enough relevant information and reasonable inferences from the information presented to the agency that a fair argument can be made to support a conclusion. (*Id.* § 15384.) An EIR is required whenever "substantial evidence in the record supports a 'fair argument' that significant impacts or effects may occur." (*City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, 1421.)

53. A "mitigated negative declaration" is permissible only in certain limited circumstances: (1) if the initial study shows there is no substantial evidence the project may have a significant effect on the environment, or (2) the initial study identifies potentially significant effects—as here—but (a) revisions can be made to the project before public release of the negative declaration and initial study which avoid or mitigate the potentially significant effects, and (b) there is no substantial evidence in light of the whole record that the project may have a significant effect on the environment. (Pub.

Resources Code, § 21064.5; Cal. Code Regs., tit. 14, § 15070.) The City's certification of the TEC Plan IS/MND was an impermissible abuse of discretion, because there was substantial evidence to support a fair argument, based on the entire record, that the TEC Plan may have significant environmental effects. (*See Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123.)

54. The City abused its discretion, and failed to proceed as required by law, by failing to recognize substantial evidence that there are fair arguments the TEC Plan may cause potentially significant impacts to the environment. The TEC Plan IS/MND identifies numerous potentially significant impacts in the areas of Air Quality, Biological Resources, Cultural Resources, Hazards and Hazardous materials, and Hydrology/Water Quality. (TEC Plan MND, p. 39.) Despite this, and without substantial evidence to support its conclusion, the City found that potentially significant impacts were mitigated by project revisions and adopted the TEC Plan IS/MND.

55. West Coast presented substantial evidence that the TEC Plan will cause potentially significant impacts, contrary to the often unsupported and conclusory findings made by the City. In its April 19, 2017 letter to the City's Community Development Department, West Coast presented a fair argument based on substantial evidence that the TEC Plan may cause significant effects on the environment. These effects include, but are not limited to, the following:

a. Aesthetic impacts: The TEC Plan's construction and expansion of transit and circulation systems, as well as the installation of new streetscape elements and signage, will impact scenic vistas, resources, and the visual character and quality of the TEC Plan area.

b. Air quality/greenhouse gas emissions: The TEC Plan IS/MND lacked any study of air quality or greenhouse gas emissions impacts, and there is no evidence or modeling to support the City's conclusion the TEC Plan will have a less than significant impact on air quality. Moreover, the City did not make a good faith effort to describe,

calculate, or estimate the amount of greenhouse gas emissions resulting from the TEC Plan, in violation of Cal. Code Regs., tit. 14, 15064.4.

c. Transportation/traffic: The TEC Plan IS/MND fails to evaluate the transportation and traffic impacts of the TEC Plan, despite the fact that the TEC Plan calls for numerous circulation-based improvements that will impact traffic, including the widening of streets, installation of traffic signals, and modifications to bicycle and pedestrian systems.

d. Noise: The TEC Plan IS/MND's conclusions regarding noise impacts are incorrect. The TEC Plan will result in temporary, periodic, and/or permanent increases in ambient noise, because the TEC Plan calls for alterations and expansions to transit pathways as well as changes in circulation infrastructure. Additionally, the City is not excused from conducting a noise analysis on the basis that such ambient noise increases are temporary or periodic, and compliance with the City's Municipal Code does not support a finding of less than significant impact.

e. Population and housing: Contrary to the TEC Plan IS/MND's conclusory and unsupported analysis that the proposed improvements will not substantially impact population growth and housing, employment growth as a result of the TEC Plan is reasonably foreseeable because the Plan seeks to attract new businesses while maintaining existing businesses. The conclusory analysis of population and housing impacts does not include facts or analysis in support of the City's findings and is therefore inadequate under CEQA.

f. Cumulative impacts: The TEC Plan IS/MND inadequately evaluated

cumulative impacts because the City's finding lacks supporting facts or analysis.

56. In addition to the specific, potentially significant environmental effects identified above, the TEC Plan IS/MND improperly limits the "impact area" to the TEC Plan area, although transportation and circulation improvements called for by the TEC Plan may have potentially significant impacts outside the boundaries of the TEC Plan area.

57. In response to West Coast's arguments that the TEC Plan may cause potentially significant impacts, the City responded, without further analysis, that "[t]he environmental analysis performed for the TEC Plan does not identify potentially significant impacts that were not analyzed in the General Plan EIR. There are no changes in land use or zoning to the Industrial park area under the TEC Plan." (City's Response to Comments on TEC Plan at ¶ 27.) .

58. Similarly, in response to West Coast's arguments that the TEC Plan IS/MND did not adequately address cumulative impacts, the City responded, again without further analysis, that "[t]he IS/MND tiers off of the General Plan EIR, which fully considered the cumulative impacts, associated with buildout of the General Plan throughout the planning area." (City's Response to Comments on TEC Plan at ¶ 28.) Without further analysis, the City concluded that there were no cumulative impacts associated with the TEC Plan that differed from cumulative impacts examined in the General Plan EIR.

59. Further, in response to West Coast's arguments that the TEC Plan IS/MND's project description is inadequate, the City responded, again without further analysis, that the project description in the IS/MND is adequate and that "future improvements" contemplated by the TEC Plan "would be required to undergo subsequent environmental review." (City's Response to Comments on TEC Plan at ¶ 29.) The City made no attempt to address discrepancies between the Scenarios Report, the TEC Plan itself, and TEC Plan IS/MND identified in West Coast's comments.

60. Because substantial evidence in the record supports a fair argument that the TEC Plan may have significant environmental impacts or effects, as described above, the City abused its discretion in approving the TEC Plan without preparing an EIR.

C. The City Failed to Comply With the Public Participation and Information Disclosure Provisions of CEQA.

61. West Coast refers to and herein incorporates by reference Paragraphs 1 through 60, as if stated in full herein.

62. CEQA mandates that agencies "solicit and respond to comments from the public and from other agencies concerned with the project." (Cal. Code Regs., tit. 14, § 15002(j).) The policy purpose of environmental review under CEQA is to demonstrate to the public that an agency has analyzed and considered the environmental implications of its action. (*Id.* § 15003(d).)

63. The City has failed to solicit input from and respond to comments made by West Coast, even though West Coast has contacted the City multiple times regarding the TEC Plan and TEC Plan IS/MND. While West Coast owns roughly 500 acres of vacant land within the TEC Plan area, has conducted extensive analyses of this property, and could assist the City in identifying and analyzing potentially significant impacts in the TEC Plan area, neither the City nor its environmental consultants contacted West Coast about these issues prior to certification of the TEC Plan IS/MND and adoption of the TEC Plan.

64. The City further failed to satisfy CEQA's informational disclosure requirements because it inadequately responded to West Coast's comments to the TEC Plan IS/MND. As detailed above, West Coast sent ten pages of comments on the TEC Plan IS/MND to the City's Community Development Department on April 19, 2017. The City's responses mischaracterized and oversimplified West Coast's comments, and ignored many of West Coast's arguments. West Coast sent a subsequent letter to the City on May 2, 2017, reiterating its comments and objections to the TEC Plan and TEC Plan IS/MND.

65. The City prejudicially abused its discretion and failed to act in a manner

required by law by failing to solicit information regarding the TEC Plan area from West Coast, and insufficiently responding to West Coast's comments and objections to the TEC Plan and TEC Plan IS/MND.

D. The TEC Plan IS/MND's Project Description Is Inadequate and Unclear.

66. West Coast refers to and herein incorporates by reference Paragraphs 1 through 65, as if stated in full herein.

67. CEQA requires initial studies, negative declarations, and notices of intent to contain an accurate description of the project. (Cal. Code Regs., tit. 14, §§ 15063(d)(1), 15071(a), 15063(f)(1).) A "project" is the "whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (*Id.* § 15378(a).)

68. The TEC Plan IS/MND fails to comply with the requirements set forth in Paragraph 67, above, because the project description is impermissibly vague with regards to use, intensity, and density of future development in the TEC Plan area.

69. The TEC Plan IS/MND further fails to comply with project description requirements because it is unclear which of the three scenarios examined in the 2016 Scenarios Report the TEC Plan IS/MND analyzes. Although the TEC Plan IS/MND states that "[f]or analysis purposes, it is presumed that the most development intense scenario, Scenario 3, is realized," the TEC Plan itself makes no mention of Scenario 3. (TEC Plan IS/MND, p. 7.) Additionally, the TEC Plan calls for roadway improvements not identified in the Scenarios Report, including but not limited to the following: (1) Goodyear Road north of Lake Herman Road to 6800 Goodyear Road; (2) East 2nd Street north of Rose Drive to 800 feet north of Wanger Street; (3) East Channel Road; and (4) Reservoir Road north of East 2nd Street to south of Lake Herman Road. The TEC Plan IS/MND also identifies two areas for potential freeway improvements not contained in the Scenarios Report. Therefore, the project description in the TEC Plan IS/MND does not provide the public with information about what, specifically, implementation of the TEC Plan will entail, and the project description is therefore inadequate to facilitate meaningful public participation

in the environmental review process.

70. Accordingly, the City abused its discretion and failed to proceed in a manner required by law by failing to provide an adequate project description of the TEC Plan in the TEC Plan IS/MND.

SECOND CAUSE OF ACTION

[Writ of Mandate – Failure to Comply with STA Agreement]

71. West Coast refers to and herein incorporates by reference Paragraphs 1 through 70, as if stated in full herein.

72. On January 7, 2014, the City adopted Resolution 14-03 approving an agreement with the STA related to the development of a PDA Plan for the Benicia Industrial Park ("STA Agreement"). The STA Agreement between the City and STA requires the City to comply with the public outreach requirements associated with the federal fund source for a TEC Plan project, and with MTC Resolution 4035. In addition, the STA Agreement requires the City to "[p]erform all appropriate environmental review, and ensure that the required procedures are complied with for analysis, public notice, hearings, findings and filings."

73. The City abused its discretion by failing to comply with the public outreach requirements associated with the federal fund source for the TEC Plan project and MTC Resolution 4035 by repeatedly failing to provide West Coast, the largest property owner in the TEC Plan area, with notice of meetings and hearings related to the project, failing to consult with West Coast in developing a TEC Plan, and failing to respond adequately to West Coast's comments regarding the deficiencies in the TEC Plan, in violation of the STA Agreement.

74. The City further abused its discretion by failing to perform an appropriate environmental review, as required under CEQA, in violation of the STA Agreement.

THIRD CAUSE OF ACTION

[Declaratory Relief]

75. West Coast refers to and herein incorporates by reference Paragraphs 1

through 74, as if stated in full herein.

76. An actual controversy exists between West Coast and the City in that West Coast contends that the City did not prepare and certify the TEC Plan IS/MND in compliance with CEQA, and that an EIR is required to evaluate potentially significant environmental impacts of the TEC Plan, whereas the City contends it met its legal obligations pursuant to CEQA.

77. West Coast desires a declaration from this Court pursuant to California Code of Civil Procedure section 1060 *et seq.* that the City must comply with all requirements of CEQA, Public Resources Code section 21000 *et seq.*, and related regulations, and must conduct a subsequent EIR for the TEC Plan in compliance with all requirements of CEQA before adopting the TEC Plan.

78. Such a declaration is necessary and appropriate at this time in order for West Coast to ascertain its rights, and the City's obligations, duties, and legal responsibilities, with respect to its CEQA obligations for the TEC Plan.

FOURTH CAUSE OF ACTION

[Injunctive Relief]

79. West Coast refers to and herein incorporates by reference Paragraphs 1 through 78, as if stated in full herein.

80. West Coast owns a significant amount of undeveloped land in the area covered by the TEC Plan, including roughly 500 acres of vacant land. West Coast's property within the TEC Plan area will be adversely affected due to the environmental impacts of the TEC Plan as a direct result of the City's acts, omissions, and failures to comply with CEQA as alleged herein, including but not limited to the City's failure to adequately examine potentially significant impacts of the TEC Plan.

81. Such conduct by the City is wrongful and violates California law as previously alleged herein.

82. Unless and until enjoined from violating CEQA and implementing the approved TEC Plan, the City will continue its wrongful and harmful conduct and will

cause West Coast irreparable injury.

83. Monetary compensation alone would not provide adequate relief, and West Coast has no adequate remedy at law for the damages to be sustained if the City continues its wrongful act of implementing the TEC Plan.

PRAYER FOR RELIEF

WHEREFORE, West Coast prays for relief as follows:

A. For a stay order pursuant to Code of Civil Procedure section 1094.5(g) restraining the City, and its agents, employees, officers, and representatives from taking any action, or authorizing any action, to implement the TEC Plan pending a decision by this Court on the merits.

B. For a peremptory writ of mandate directing the City to set aside and vacate its certification of the TEC Plan IS/MND and approval of the TEC Plan.

C. For a peremptory writ of mandate directing the City to comply with CEQA, to take any other action as required by Public Resources Code section 21168.9, and to prepare an EIR conforming to the requirements of CEQA before consideration of approving the TEC Plan.

D. For a peremptory writ of mandate directing the City to comply with the public outreach and environmental review requirements of the STA Agreement.

E. For a declaratory judgment that the City must comply with all requirements of CEQA, Public Resources Code section 21000 *et seq.*, and its implementing regulations, including but not limited to the requirement to prepare a CEQA-compliant EIR before approving the TEC Plan.

F. For the issuance of preliminary and permanent injunctions in favor of West Coast restraining the City, and its agents, employees, officers, and representatives from taking any action, or authorizing any action, to implement the TEC Plan pending full compliance with CEQA.

G. For judgment in favor of West Coast and against the City, enjoining the City and its agents, employees, officers, and representatives, preliminarily and permanently,

from implementing any TEC Plan that is legally insufficient and inadequate pursuant to CEQA.

H. For attorneys' fees, reasonable expert witness fees, and costs of suit herein, pursuant to Code of Civil Procedure section 1021.5 and/or any other applicable provision of law.

I. For such other and future relief as the Court deems just and proper.

DATED: June 2, 2017

Respectfully submitted,

HANSON BRIDGETT LLP

By: _____

KRISTINA D. LAWSON
CHRISTOPHER D. JENSEN
VANEETA CHINTAMANENI
Attorneys for West Coast Home Builders, Inc.

VERIFICATION

I am the Authorized Agent of the Petitioner, West Coast Home Builders, Inc., and am authorized to execute this verification on Petitioner's behalf. I have read the foregoing Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate and am familiar with its contents. The facts recited in the petition are true to my knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: June 2, 2017

WEST COAST HOME BUILDERS, INC.

By: _____

Louis Parsons
Authorized Agent of West Coast Home Builders, Inc.