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6 ASSISTANCE
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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR THE COUNTY OF SPOKANE

10 RESPONSIBLE GROWTH*NE WASHINGTON;
11 CITIZENS AGAINST NEWPORT SILICON
12 SMELTER; THEODORE & PHYLLIS KARDOS;
13 DENISE D. TEEPLES; GRETCHEN L. KOENIG;
14 SHERYL L. MILLER; JAMES W. &
15 ROSEMARY CHANDLER; and PAMELA
16 BYERS LUBY,

17 Petitioners-Plaintiffs,

18 v.

19 PEND OREILLE PUBLIC UTILITY DISTRICT
20 NO. 1; PEND OREILLE COUNTY; and HITEST
21 SAND, INC.,

22 Respondents-Defendants.

NO.18-2-02551-1

RESPONDENT-DEFENDANT HITEST
SAND, INC.'S ANSWER AND
AFFIRMATIVE DEFENSES

23 COMES NOW Respondent-Defendant HiTest Sand, Inc. ("HiTest"), by and through its
24 undersigned counsel, and provides the following answer and affirmative defenses to Petitioners-
25 Plaintiffs' Complaint for Declaratory Judgment, Writ of Prohibition ("Complaint"), and hereby
26 admits, denies, and alleges as follows:

27 I. INTRODUCTION

1.1 This paragraph contains a description of Petitioners-Plaintiffs' (collectively,
"Plaintiffs") claims to which no response is necessary. Plaintiffs' claims are set forth in their
Complaint, which speaks for itself. This paragraph further contains legal assertions or

RESPONDENT-DEFENDANT HITEST SAND, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES
PAGE 1

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(360) 736-5057

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1 conclusions to which no response is necessary. To the extent this paragraph requires a response,
2 HiTest admits that Pend Oreille County (the "County") sold Parcel No. 19182 to the Public
3 Utility District No. 1 of Pend Oreille County (the "PUD") and further that the PUD sold Parcel
4 Nos. 17036, 19182, 19183, and 19193) to HiTest. Except as admitted, HiTest denies all
5 remaining allegations set forth or otherwise implicit in this paragraph.

6 II. PARTIES AND STANDING

7 2.1 HiTest is without sufficient knowledge or information to admit or deny the
8 allegations set forth in this paragraph, and therefore denies the same.

9 2.2 HiTest is without sufficient knowledge or information to admit or deny the
10 allegations set forth in this paragraph, and therefore denies the same.

11 2.3 HiTest is without sufficient knowledge or information to admit or deny the
12 allegations set forth in this paragraph, and therefore denies the same.

13 2.4 HiTest is without sufficient knowledge or information to admit or deny the
14 allegations set forth in this paragraph, and therefore denies the same.

15 2.5 HiTest is without sufficient knowledge or information to admit or deny the
16 allegations set forth in this paragraph, and therefore denies the same.

17 2.6 HiTest is without sufficient knowledge or information to admit or deny the
18 allegations set forth in this paragraph, and therefore denies the same.

19 2.7 HiTest is without sufficient knowledge or information to admit or deny the
20 allegations set forth in this paragraph, and therefore denies the same.

21 2.8 HiTest is without sufficient knowledge or information to admit or deny the
22 allegations set forth in this paragraph, and therefore denies the same.

23 2.9 HiTest admits that the PUD is a municipal corporation organized under Title 54
24 RCW. This remainder of this paragraph contains legal assertions or conclusions to which no
25 response is necessary. To the extent this paragraph contains any allegations to which a response
26 is necessary, they are hereby denied.

27

1 2.10 HiTest admits that the County is a county and political subdivision of the State of
2 Washington. This remainder of this paragraph contains legal assertions or conclusions to which
3 no response is necessary. To the extent this paragraph contains any allegations to which a
4 response is necessary, they are hereby denied.

5 2.11 HiTest admits it is a Canadian corporation, registered to do business in the state of
6 Washington.

7 2.12 HiTest denies the allegations contained in this paragraph.

8 **III. JURISDICTION AND VENUE**

9 3.1 HiTest admits this Court has subject matter jurisdiction over this matter.

10 3.2 HiTest denies the allegations contained in this paragraph.

11 **IV. FACTS**

12 4.1 HiTest is without sufficient knowledge or information to admit or deny the
13 allegations set forth in this paragraph, and therefore denies the same.

14 4.2 HiTest admits that on or about March 9, 2016, the PUD caused to be published a
15 notice of public hearing so that the Board of Commissioners could consider public comments
16 related to the surplus and sale of real property, which document speaks for itself. Except as
17 admitted, HiTest denies all remaining allegations set forth or otherwise implicit in this paragraph.

18 4.3 HiTest admits the allegations contained in this paragraph.

19 4.4 HiTest admits that on or about August 31, 2016, the PUD caused to be published a
20 notice of sale that included, without limitation, Parcel Nos. 17036, 19183, and 19193, which
21 document speaks for itself. Except as admitted, HiTest denies all remaining allegations set forth
22 or otherwise implicit in this paragraph.

23 4.5 HiTest admits the existence of a letter from HiTest to the PUD dated April 18,
24 2017 with a subject line of Request for Power Services, which document speaks for itself. HiTest
25 further admits that the County owned Parcel No. 19182 as of the date April 18, 2017. Except as
26 admitted, HiTest denies all remaining allegations set forth or otherwise implicit in this paragraph.

1 4.6 HiTest admits the existence of a letter from the PUD to HiTest dated April 25,
2 2017 with a subject line of Letter of Intent, which document speaks for itself. Except as admitted,
3 HiTest denies all remaining allegations set forth or otherwise implicit in this paragraph.
4 4.7 HiTest admits the existence of a letter from the PUD to HiTest dated April 25,
5 2017 with a subject line of Letter of Intent, which document speaks for itself. Except as admitted,
6 HiTest denies all remaining allegations set forth or otherwise implicit in this paragraph.
7 4.8 HiTest admits the existence of a letter from the PUD to HiTest dated June 13,
8 2017, with a subject line of Revised Letter of Intent, which document speaks for itself. Except as
9 admitted, HiTest denies all remaining allegations set forth or otherwise implicit in this paragraph.
10 4.9 HiTest admits the existence of a letter from the PUD Board of Commissioners to
11 Colin Willenbrock, General Manager of the PUD, dated June 20, 2017, which document speaks
12 for itself. Except as admitted, HiTest denies all remaining allegations set forth or otherwise
13 implicit in this paragraph.
14 4.10 HiTest admits the existence of Pend Oreille County Resolution No. 2017-22 dated
15 June 20, 2017, which document speaks for itself. Except as admitted, HiTest denies all remaining
16 allegations set forth or otherwise implicit in this paragraph.
17 4.11 HiTest admits the existence of Public Utility District No. 1 of Pend Oreille County
18 Resolution No. 1399 dated August 1, 2017, which document speaks for itself. Except as
19 admitted, HiTest denies all remaining allegations set forth or otherwise implicit in this paragraph.
20 4.12 HiTest is without sufficient knowledge or information to admit or deny the
21 allegations set forth in this paragraph.
22 4.13 HiTest admits the allegations contained in this paragraph.
23 4.14 HiTest admits the existence of a Real Estate Purchase and Sale Agreement made
24 and entered into on or about August 21, 2017, which document speaks for itself. Except as
25 admitted, HiTest denies all remaining allegations set forth or otherwise implicit in this paragraph.
26 4.15 Except as admitted in response to paragraph 4.14 and set forth above, HiTest
27 denies all remaining allegations set forth or otherwise implicit in this paragraph.

4.16 HiTest admits the existence of a Special Warranty Deed dated September 14, 2017, recorded September 18, 2017 under Auditor's File No. 20170329491, which document speaks for itself. Except as admitted, HiTest denies all remaining allegations set forth or otherwise implicit in this paragraph.

4.17 HiTest is without sufficient knowledge or information to admit or deny the allegations set forth in this paragraph, and therefore denies the same.

4.18 HiTest is without sufficient knowledge or information to admit or deny the allegations set forth in this paragraph, and therefore denies the same.

V. CAUSES OF ACTION

A. FIRST CAUSE OF ACTION: UNIFORM DECLARATORY JUDGMENT ACT

5.1 This paragraph does not contain any allegations of material fact to which a response is required. To the extent this paragraph contains any allegations to which a response is necessary, HiTest incorporates all preceding paragraphs, including all answers, as if fully set forth herein.

5.2 This paragraph contains legal assertions or conclusions to which no response is necessary. To the extent this paragraph contains any allegations to which a response is necessary, they are hereby denied.

5.3 This paragraph contains legal assertions or conclusions to which no response is necessary. To the extent this paragraph contains any allegations to which a response is necessary, they are hereby denied.

5.4 This paragraph contains legal assertions or conclusions to which no response is necessary. To the extent this paragraph contains any allegations to which a response is necessary, they are hereby denied.

5.5 This paragraph contains a prayer for relief and legal assertions or conclusions to which no response is necessary. To the extent this paragraph contains any allegations to which a response is necessary, they are hereby denied.

1 5.6 This paragraph contains a prayer for relief and legal assertions or conclusions to
2 which no response is necessary. To the extent this paragraph contains any allegations to which a
3 response is necessary, they are hereby denied.

4 5.7 This paragraph contains a prayer for relief and legal assertions or conclusions to
5 which no response is necessary. To the extent this paragraph contains any allegations to which a
6 response is necessary, they are hereby denied.

7 5.8 This paragraph contains a prayer for relief and legal assertions or conclusions to
8 which no response is necessary. To the extent this paragraph contains any allegations to which a
9 response is necessary, they are hereby denied.

10 **B. SECOND CAUSE OF ACTION: WRIT OF PROHIBITION**

11 5.9 This paragraph does not contain any allegations of material fact to which a
12 response is required. To the extent this paragraph contains any allegations to which a response is
13 necessary, HiTest incorporates all preceding paragraphs, including all answers, as if fully set forth
14 herein.

15 5.10 This paragraph contains legal assertions or conclusions to which no response is
16 necessary. To the extent this paragraph contains any allegations to which a response is necessary,
17 they are hereby denied.

18 5.11 This paragraph contains legal assertions or conclusions to which no response is
19 necessary. To the extent this paragraph contains any allegations to which a response is necessary,
20 they are hereby denied.

21 5.12 This paragraph contains legal assertions or conclusions to which no response is
22 necessary. To the extent this paragraph contains any allegations to which a response is necessary,
23 they are hereby denied.

24 5.13 This paragraph contains a prayer for relief and legal assertions or conclusions to
25 which no response is necessary. To the extent this paragraph contains any allegations to which a
26 response is necessary, they are hereby denied.

27

5.14 This paragraph contains a prayer for relief and legal assertions or conclusions to which no response is necessary. To the extent this paragraph contains any allegations to which a response is necessary, they are hereby denied.

The remainder of Plaintiffs' Complaint consists of its prayer for relief to which no response is necessary. To the extent the remainder of Plaintiffs' Complaint could be construed to contain any allegations or averments of material fact to which a response is necessary, they are hereby denied. HiTest denies that Plaintiffs are entitled to the relief requested, or any relief whatsoever.

All allegations and averments of material fact set forth in Plaintiffs' Complaint not expressly admitted herein are hereby denied.

AFFIRMATIVE DEFENSES

Having fully answered Plaintiffs' Complaint, HiTest further responds to Plaintiffs' claims by alleging the following affirmative and other defenses:

1. Venue is improper.
2. Plaintiffs have failed, in whole or in part, to state a claim upon which relief can be granted.
3. Plaintiffs lack standing to assert the claims set forth in the Complaint.
4. Plaintiffs' claims involve real property of which HiTest was a bona fide purchaser for value and without knowledge of defects in title, if any.
5. Plaintiffs' claims, in whole or in part, are barred by the doctrine of laches.
6. Plaintiffs' claims, in whole or in part, are moot and not actionable.
7. Plaintiffs' claims, in whole or in part, are frivolous and advanced without reasonable cause under RCW 4.84.185.

By stating and asserting the above affirmative and other defenses, HiTest does not concede that HiTest bears the burden of proof as to the defenses raised.

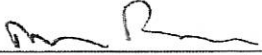
1 PRAYER FOR RELIEF

2 WHEREFORE, having fully answered Petitioners-Plaintiffs' Complaint, and having plead
3 the above affirmative and other defenses, Respondent-Defendant HiTest Sand, Inc. prays for
4 judgment in its favor as follows:

- 5 A. For judgment dismissing Plaintiffs' Complaint, in its entirety, with prejudice;
6 B. For an award of reasonable attorneys' fees and costs pursuant to RCW 4.84.185,
7 and as otherwise may be allowable pursuant to law or equity; and
8 C. For such other and further relief as the Court deems just and equitable.

9
10 DATED this 19th day of July, 2018.

11
12 CASCADIA LAW GROUP PLLC

13 
14 _____
15 Joseph A. Rehberger, WSBA No. 35556
16 Stephen J. Tan, WSBA No. 22756

17 *Attorneys for Respondent-Defendant HiTest Sand,*
18 *Inc.*

VI. DECLARATION OF SERVICE

I am employed with the law firm of Cascadia Law Group PLLC, whose address is 606 Columbia Street NW, Suite 212, Olympia, WA 98501; I am not a party to the above-captioned cause, and I am over the age of 18 years. I declare that on this date I caused to be served a true and correct copy of the foregoing **Respondent-Defendant HiTest Sand, Inc.'s Answer and Affirmative Defenses** on the following parties, in the manner indicated:

Richard K. Eichstaedt
University Legal Assistance
721 North Cincinnati Street
PO Box 3528
Spokane, WA 99220-3528

- ☐ Via facsimile
☐ Via overnight courier
☐ Via hand delivery
☒ Via first-class U.S. mail
☐ Via email

*Attorneys for Petitioners-Plaintiffs Responsible
Growth*NE Washington and Theodore & Phyllis
Kardos*

Dylan A. Eaton
Norman M. Semanko
Parsons Behle & Latimer
800 West Main Street, Suite 1300
Boise, ID 83702

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☐ Via overnight courier
☐ Via hand delivery
☒ Via first-class U.S. mail
☐ Via email:

*Attorneys for Petitioners-Plaintiffs Citizens
Against Newport Silicon Smelter, Denise D.
Teeple, Gretchen L. Koenig, Sheryl L. Miller,
James W. & Rosemary Chandler, and
Pamela Byers Luby*

Nathan G. Smith
Brian E. Kistler
Kutak Rock, LLP
510 W. Riverside, Ste. 800
Spokane, WA 99201

- ☐ Via facsimile
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☒ Via first-class U.S. mail
☐ Via email:

*Attorneys for Respondent-Defendant Pend Oreille
County*

1 John R. Nelson
2 Foster Pepper PLLC
3 618 W. Riverside, Suite 300
4 Spokane, WA 99201-5102

☐ Via facsimile
☐ Via overnight courier
☐ Via hand delivery
☒ Via first-class U.S. mail
☐ Via email:

4 Tyler R. Whitney
5 Public Utility District No. 1 of Pend Oreille County
6 130 N. Washington
7 PO Box 190
8 Newport, WA 99156

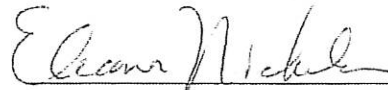
☐ Via facsimile
☐ Via overnight courier
☐ Via hand delivery
☒ Via first-class U.S. mail
☐ Via email:

8 *Attorneys for Respondent-Defendant Pend Oreille*
9 *Public Utility District No. 1*

10 I certify under penalty of perjury under the laws of the State of Washington that the
11 foregoing is true and correct.

12 DATED this 19th day of July, 2018, at Olympia, Washington.

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Eleanor Nickelson
Legal Assistant

Cascadia
Law
Group
ENVIRONMENTAL ATTORNEYS

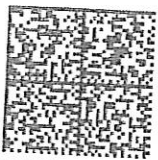
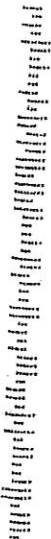
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