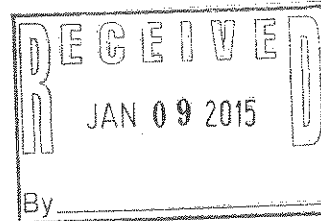


1 ANDREW S. AZARMI (SBN 241407)
aazarmi@mckennalong.com
2 FRANK R. PETRILLI (SBN 271007)
fpetrilli@mckennalong.com
3 McKENNA LONG & ALDRIDGE LLP
Spear Tower, One Market Plaza, 24th Fl.
4 San Francisco, CA 94106
Telephone: 415.267.4000
5 Facsimile: 415.267.4198

6 Attorneys for San Francisco Chamber of
Commerce, Bay Area Council, San Francisco
7 Building & Construction Trades Council, Center
for Creative Land Recycling
8



9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**

11 CORINNE WOODS, MICHAEL
THERIAULT, and TIM COLEN,

12 Petitioners and Plaintiffs,

13 v.

14 JOHN ARNTZ, in his official capacity as
Director of Elections of the City and County of
15 San Francisco and CITY AND COUNTY OF
SAN FRANCISCO,

16 Respondents and Defendants,

17 REBECCA EVANS

18 Real Party In Interest
19

20 CALIFORNIA STATE LANDS
COMMISSION,

21 Petitioner and Plaintiff,

22 v.

23 CITY AND COUNTY OF SAN
24 FRANCISCO, DOES ONE THROUGH
FIFTY,

25 Respondents and Defendants.
26
27
28

Case No. CPF-14-513503 [Woods]

Case No. CGC 14-540531 [Cal. State Lands]

[Consolidated]

**APPLICATION FOR LEAVE TO FILE
AMICUS BRIEF; AMICUS BRIEF OF
SAN FRANCISCO CHAMBER OF
COMMERCE, BAY AREA COUNCIL,
SAN FRANCISCO BUILDING &
CONSTRUCTION TRADES COUNCIL,
AND CENTER FOR CREATIVE LAND
RECYCLING IN SUPPORT OF
CALIFORNIA STATE LANDS
COMMISSION'S PETITION FOR WRIT
OF MANDATE AND IN OPPOSITION TO
CITY'S DEMURRER**

Reservation No. 100314-04

Date: January 22, 2015
Time: 9:30 a.m.
Dept.: 302

Action Filed: February 14, 2014 (Woods)
July 15, 2014 (State Lands)

Trial Date: None Set

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1 **I. APPLICATION FOR LEAVE TO FILE *AMICUS* BRIEF**

2 **A. Introduction.**

3 Pursuant to California Rules of Court, Rule 8.520(f), the San Francisco Chamber of
4 Commerce, the Bay Area Council, the Center for Creative Land Recycling, and the San Francisco
5 Building and Construction Trades Council respectfully apply for permission to file the below
6 *amicus curiae* brief in support of Petitioner the California State Lands Commission's first
7 amended petition for writ of mandate, and in opposition to Respondent the City and County of San
8 Francisco's demurrer.

9 **B. Nature of interest of *amici curiae*.**

10 Collectively, the applicants represent a broad swath of Bay Area companies, business
11 owners, residents, labor unions, and laborers. These organizations participate as *amicus curiae*
12 only in cases that significantly impact the Bay Area and its residents, employees, businesses, or
13 economy. This is one such case.

14 **1. San Francisco Chamber of Commerce.**

15 The San Francisco Chamber of Commerce is a nonprofit association which includes more
16 than 1,500 member business organizations doing business in San Francisco, representing over
17 200,000 employees. The Chamber is the largest, voluntary business association within San
18 Francisco and has been acting on behalf of the business community to improve San Francisco's
19 economic and jobs climate for more than 160 years. Chamber members include businesses of
20 every size, industry and neighborhood across the City and Bay Area region.

21 **2. Bay Area Council.**

22 The Bay Area Council is a business-sponsored, public policy advocacy organization for the
23 nine-county Bay Area. Founded in 1945, the Bay Area Council is committed to working with
24 public and civic leaders to make the Bay Area the most innovative, globally competitive, and
25 sustainable region in the world. The Council advocates for a strong economy, a vital business
26 environment, and a better quality of life for everyone who lives here.

27 **3. Center for Creative Land Recycling.**

28 The Center for Creative Land Recycling is a nonprofit organization focused on creating

1 sustainable communities and encouraging environmentally conscious and socially responsible
2 development through land recycling. The Center provides training, technical assistance and
3 funding for communities attempting to turn around vacant or environmentally distressed
4 properties, including properties along the San Francisco waterfront under the Port's jurisdiction.

5 **4. San Francisco Building and Construction Trades Council.**

6 The San Francisco Building and Construction Trades Council is a labor movement group
7 representing 28 construction unions with a total membership of more than 60,000 members
8 working in dozens of different trades in San Francisco.

9 While these organizations represent many different constituents, each organization shares
10 common goals: (1) promoting and protecting the Bay Area's regional economy for the betterment
11 of its residents and workers; (2) addressing the Bay Area's (and the City's) unmet, and worsening,
12 housing needs; (3) ensuring that the Port of San Francisco, and the public trust lands it manages,
13 remain sustainable and accessible in the future in light of the Port's significant capital needs; and
14 (4) ensuring that the Bay Area's regional housing, transportation, and labor needs are responsibly
15 met, and not subverted to local whim. These goals are all threatened by Proposition B.

16 **C. Issues on which the attached *amicus curiae* brief will assist the Court.**

17 *Amici Curiae* believe that their *amicus* brief will assist the Court, without duplicating the
18 State's arguments, by explaining: (1) that the plain language and legislative history of Public
19 Resources Code section 6009 provide that the use of public trust land (including that managed by
20 the Port of San Francisco) is a matter of statewide concern, which may not be subjugated to local
21 initiatives; and (2) that Proposition B is a local initiative which subjugates the statewide interest in
22 utilizing, managing, and preserving Port land to local interests, by negatively impacting the Port's
23 ability to use and preserve the land entrusted to it.

24 In accordance with California Rules of Court, Rule 8.520(f)(4), no party or counsel for
25 other party, other than counsel for the above-named *Amici Curiae*, has authored the proposed brief
26 in whole or in part, or funded the preparation of the brief.

1 **II. AMICUS BRIEF IN SUPPORT OF CALIFORNIA STATE LANDS COMMISSION**

2 **A. Introduction.**

3 Proposition B violates Public Resources Code section 6009 because it subjugates the
4 utilization, management, and preservation of the public trust land under the Port of San
5 Francisco's ("the Port") trusteeship—declared by the State Legislature to be a matter of statewide
6 concern—to much narrower local concerns. The local initiative does so by handcuffing the Port's
7 ability to meet its present and future capital needs, in turn creating significant regional and
8 statewide negative economic impacts.

9 Local initiatives which subjugate the statewide interest in the use and management of
10 public trust land are barred by the plain language of section 6009. Proposition B, by its terms,
11 only applies to Port-managed land. The initiative directly threatens the continued vitality of the
12 Port's public trust land, and the public's ability to use and enjoy that land, by hindering the Port's
13 ability to maintain and utilize the land under its management. The Port is facing \$1.5 billion in
14 needed repairs, maintenance, and improvements over the next 10 years. Many of its facilities are
15 already "red-tagged" (dilapidated and closed to the public), and many more are yellow-tagged
16 ("at-risk facilities," some on the verge of being red-tagged). Much of the public trust land under
17 the Port's management is also in need of seismic upgrades and repairs, capital needs which the
18 Port will need to implement if the land and structures on Port land are to safely withstand future
19 seismic events and sea level rise.

20 Despite its immense capital needs, the Port receives little funding from the City, and is not
21 projected to receive nearly enough funding from all internal and external sources to meet those
22 needs. To meet this shortfall, a major portion of the Port's needs are projected to be met through
23 public-private partnership developments—subject to approval of the State Lands Commission, the
24 Port of San Francisco Commission, and the State Legislature—which generate a significant
25 portion of the revenues needed to maintain and utilize the land under the Port's control. The
26 Legislature authorized these developments for this exact purpose in a series of enactments.

27 Over the next 10 years alone, the Port was expected to generate \$556.5 million in revenue
28 from public-private partnerships. That money was already slated to go towards overdue repairs

1 and upkeep of existing Port facilities, as well as much-needed capital improvements and seismic
2 upgrades. Those same partnerships were also expected to contribute thousands of affordable and
3 market-rate housing units to the City's housing stock, largely in areas which are currently
4 dilapidated and unusable, at a time when the Bay Area is facing a major housing crisis. With the
5 passage of Proposition B, much of that capital has already been lost, and much more is now in
6 jeopardy. Proposition B has had a direct adverse economic impact on the Port's ability to
7 maintain and utilize the public trust land under its control, and threatens to have an even worse
8 impact in the near future. It is plainly a local initiative which "subjugates" statewide interests.

9 **B. The land affected by Proposition B is held in trust for all people of California.**

10 Proposition B only affects land currently under the stewardship of the Port of San
11 Francisco. (State Lands Commission's Petition for Writ of Mandate ¶¶ 15, 16; *see also* Request
12 for Judicial Notice of *Amicus* Parties¹ ("RJN") ¶ 2, Exhibit ("Ex.") B at pg. 2.)

13 The Port Lands are "public trust land," held in trust for all people of California. Public
14 Resources Code section 6009, enacted by the Legislature in 2010, explains the origin of public
15 trust land:

16 Upon admission to the United States, and as incident of its
17 sovereignty, California received title to the tidelands, submerged
18 lands, and beds of navigable lakes and rivers within its borders, **to
be held subject to the public trust for statewide public purposes,**
19 including commerce, navigation, fisheries, and other recognized
20 uses, and for preservation in their natural state.

21 Cal. Pub. Res. Code § 6009(a) (emphasis added).

22 **1. Public Resources Code section 6009 unambiguously provides that the
utilization and management of public trust land is a statewide concern.**

23 The Court's "primary aim in construing any law is to determine the legislative intent."
24 *Committee of Seven Thousand v. Superior Court of Orange County (City of Irvine)*, 45 Cal. 3d

25 ¹ This request for judicial notice was concurrently filed in support of this *amicus* brief. Its
26 complete title is "Request for Judicial Notice in Support of *Amicus* Brief of San Francisco
27 Chamber of Commerce, Bay Area Council, San Francisco Building & Construction Trades
28 Council, and Center for Creative Land Recycling." Code of Civil Procedure section 430.30(a)
authorizes the court to consider, in deciding a demurrer, matters which the court must or may
judicially notice under Evidence Code sections 451 or 452.

1 491, 501 (1988). In doing so the Court must “look first to the words of the statute, giving then
2 their usual and ordinary meaning.” *Id.*

3 Public Resources Code section 6009 plainly and unambiguously provides that the
4 utilization and management of public trust land is a statewide concern. It provides: “[t]he state
5 acts both as the trustor and the representative of the beneficiaries, **who are all of the people of**
6 **this state**, with regard to public trust lands . . .” Cal. Pub. Res. Code § 6009.1(b) (emphasis
7 added). “The purposes and uses of [public trust] lands is **a statewide concern**.” *Id.* § 6009(e)
8 (emphasis added). “[Public trust] lands granted by the Legislature to local entities remain subject
9 to the public trust, and remain subject to the oversight authority of the state by and through the
10 State Lands Commission.” *Id.* § 6009(c). “The state’s power and right to control, regulate, and
11 utilize its [public trust] lands when acting within the terms of the public trust is absolute.” *Id.*
12 § 6009(b).² “Grantees are required to manage the state’s tidelands and submerged lands consistent
13 with the terms and obligations of their grants and the public trust, **without subjugation of**
14 **statewide interests, concerns, or benefits to the inclination of local or municipal affairs,**
15 **initiatives, or excises.**” *Id.* § 6009(d) (emphasis added).

16 The Legislature could not have been clearer. The plain language of section 6009 declares
17 that the “use,” “utilization” and “management” of all public trust land—even where, as here, that
18 land has been entrusted to a local entity—remains a matter of statewide concern, and remains
19 subject to control and oversight of the State Lands Commission. The statewide interests in the
20 utilization and management of such public trust land may not be subjugated to local “initiatives.”

21 **2. The language of section 6009 is consistent with the legislative history.**

22 Although certainly not as important as the plain language of the statute itself, legislative
23 history such as legislative committee reports can be a legitimate and valuable aid in determining
24 legislative intent. *Committee of Seven Thousand*, 45 Cal. 3d at 508; *Curtis v. County of Los*
25 *Angeles*, 172 Cal. App. 3d 1243, 1250 (1985).

26 ² See also Cal. Pub. Res. Code § 6009.1(a): “Granted public trust lands remain subject to the
27 supervision of the state and the state retains its duty to protect the public interest in granted public
28 trust lands.”

1 Section 6009's legislative history confirms the meaning of the plainly written statute.
2 According to the legislative report from an April 13, 2010 meeting of the Senate Committee on
3 Natural Resources and Water discussing SB 1350 (which became section 6009), one of the main
4 purposes of the new law was to "explicitly" confirm the State Land Commission's "ongoing . . .
5 jurisdiction over public trust lands." (RJN ¶ 4, Ex. D at pg. 2.)

6 The report also noted that the bill was prompted by a local initiative affecting public trust
7 land under the management of the Port of San Diego (appropriately enough also entitled
8 "Proposition B"), which sought to amend the Port of San Diego's master plan to permit
9 development of Port-managed land "in a manner inconsistent with the public trust." (*Id.*)
10 Although San Diego's Proposition B was defeated at the polls, the Legislature wanted to make it
11 clear that *any local initiative* which sought to "circumvent" the State Lands Commission's
12 jurisdiction over public trust land was invalid, since it was "possible that subsequent initiatives
13 may be attempted." (*Id.*)

14 Similarly, a legislative report from a June 21, 2010, hearing of the Assembly Committee
15 on Natural Resources on SB 1350 underscored that one of the main purposes of section 6009 was
16 to confirm the State Lands Commission's "absolute authority over public trust lands,"³ and
17 reiterated that enactment of the statute was prompted by a local initiative (San Diego's Proposition
18 B) which sought to dictate how public trust land would be used. (RJN ¶ 5, Ex. E at pgs. 2-3.)

19 These two legislative reports confirm that the Legislature's intent in enacting SB 1350
20 (section 6009) was to establish the State Lands Commission's "absolute power and authority" over
21 public trust land. (RJN ¶ 5, Ex. E at pg. 1.) These reports also confirm that it was a local
22 initiative, which sought to dictate how Port-managed public trust land would be used—exactly
23 what San Francisco's Proposition B purports to do—along with the threat of similar local
24 initiatives in the future, which prompted the Legislature to act.

25
26
27 ³ The State Lands Commission's "exclusive jurisdiction" over public trust land was conferred by
28 the Legislature. *See* Cal. Pub. Res. Code § 6301.

1 C. **Proposition B is a local initiative which subjugates the statewide interest in**
2 **public trust land to local concerns.**

3 Proposition B “subjugates” the “statewide interest” in ensuring that state lands are utilized
4 and managed in a manner which advances the public trust, to a “local . . . initiative.” Pub. Res.
5 Code § 6009(d). It handcuffs the Port’s ability to utilize and manage the public trust land under its
6 stewardship by taking away, or at least significantly reducing, a critical source of capital funding
7 needed to maintain, restore, and protect the Port’s facilities and land. According to the Port’s
8 “Ten-Year Capital Plan FY 2015-2024,” an official document which sets forth the Port’s
9 anticipated capital needs and projected sources of funding for the next 10 years, the Port is facing
10 a serious crisis. (RJN ¶ 1, Ex. A.) The “magnitude of the Port’s capital needs” is staggering, yet
11 the Port has “limited resources available to address them.” (*Id.* at pg. 5.)

12 1. **Many of the Port’s facilities are in disrepair.**

13 “The Port’s facilities are beautiful and iconic, but aging.” (*Id.* at pg. 6.) At least 14
14 facilities are “red-tagged,” meaning they are unusable by the public, and “pose a risk of failing.”
15 (*Id.* at pg. 11.) Another 35 facilities are “at-risk” “yellow-tagged” facilities, some of which are in
16 danger of being red-tagged. (*Id.* at pg. 10.) Meanwhile, the “growing cost of dredging,” necessary
17 to keep active Port berths operational, is exacerbating the problem. (*Id.* at pg. 14.) On top of this,
18 there are new challenges posed by “the seawall, tidal flooding, and sea level rise,” as well as
19 “ongoing problems posed by underpier utility infrastructure.” (*Id.* at pg. 2.)

20 2. **The funding needed to preserve the Port land is immense.**

21 The capital (money) needed to preserve the public trust land under the Port’s management
22 is staggering. Over \$1.59 billion in capital “need” is projected over the next 10 years.⁴ This is
23 “primarily for deferred maintenance and subsystem renewal work required on Port facilities,” and
24 does not even include “an additional \$464.3 million for conditional seismic work.” (*Id.* at pg. 15.)

25 _____
26 ⁴ For purposes of the 10-year plan, “ ‘need’ is defined as projects required to maintain Port
27 property in a state-of-good-repair for existing use over the next ten years,” but excludes amounts
28 needed for “seismic upgrades” and “capital enhancements.” (*Id.* at pg. 15.) In other words, the
\$1.59 billion is just what’s needed to keep up with repairs and maintenance of existing Port land.

1 Specifically, the \$1.59 billion in needed capital includes \$544 million for “capital renewal” (“the
2 amount needed over the next ten years to maintain facilities in a state-of-good-repair”); \$613.4
3 million for the “existing backlog for deferred maintenance”; and \$433.1 million for “one-time
4 expenses.” (*Id.* at pg. 2.)

5 3. **A significant portion of the Port’s capital needs were expected to come**
6 **from State-sanctioned public-private partnership development.**

7 “Since the 1970s, the Port’s primary tool for redeveloping property has been public-private
8 partnerships.” (RJN ¶ 1, Ex. A at pg. 29.) By entering into these partnerships, “the Port is able to
9 generate substantially more resources to address the Port’s backlog of capital investment needs.”
10 (*Id.*) Even before Proposition B, the Port was facing a capital shortfall of around \$400 million.
11 The Port’s Ten-Year Plan, prepared before the drafting and passage of Proposition B, estimates
12 that the Port was to receive only \$1.14 billion to apply toward capital needs. (*Id.* at pg. 21.) Of
13 this amount, only \$419.3 million is to come from “internally-generated funding.”⁵ (*Id.*) \$721.5
14 million was projected to come from “external-funding sources.” (*Id.* at pg. 25.) Public-private
15 partnership development was to account for \$486.4 million of the \$721.5 million in external
16 funding. (*Id.*) *That is over 67% of projected external-funding sources, and over 42% of the*
17 *Port’s entire projected capital funding.*

18 Many of these public-private partnership developments were state-sanctioned. (*Id.* at pg.
19 26.) SB 815, adopted by the Legislature in 2007, authorized the Port to lease seawall lots⁶ south
20 of Market Street (including seawall lot 337 and Pier 48) for “commercial and residential uses,” for

21 ⁵ “Internally-generated funding” includes capital held back from the Port’s operating budget, Port
22 revenue bonds, and Port tenant obligations. (RJN ¶ 1, Ex. 1 at pg. 21.)

23 ⁶ The Port has explained the nature of seawall lots: “The construction of the Seawall created
24 additional filled areas, called seawall lots, which are now separated from the water in many
25 locations by City streets. In a series of legislative acts, the State Legislature has found that many
26 of these seawall lots are cut off from the water and no longer serve trust purposes, and may be
27 developed for a variety of residential and commercial uses that typically are not allowed on public
28 trust property. Generally, the purpose of such development must generate revenues which may be
used to rehabilitate the Port’s aging infrastructure, including efforts to maintain the Seawall,
rehabilitate the Port’s historic finger Piers 1 to 48 and other historic resources housed at Pier 70.”
(RJN ¶ 2, Ex. B at pgs. 2-3.)

1 the purpose of generating revenues to fund rehabilitation of Port historic resources required by the
2 San Francisco Bay Conservation and Development Commission, a state agency. (*Id.* at pg. 26;
3 RJN ¶ 7, Ex. G.) SB 815 found and declared that that “Implementation of the port’s capital plan is
4 a matter of statewide importance and is essential to furthering the purposes of the public trust.”
5 (RJN ¶ 7, Ex. G at Sec. 2(r).)⁷

6 AB 418, adopted by the Legislature in 2011, allowed for the development of Pier 70. (RJN
7 ¶ 8, Ex. H; *see also* RJN ¶ 1, Ex. A at pg. 26.) The Legislature declared that the enactment would
8 serve the purpose of “allowing the Port to obtain a major investment in waterfront improvements
9 to address its capital needs” (RJN ¶ 8, Ex. H at Sec. 8(l).) It also found that the law was
10 “necessary for the successful revitalization of the Pier 70 area,” and that among other things it
11 would add “approximately 3,000,000 square feet of new infill development.” (*Id.* at Sec. 2(g).)
12 AB 418 supersedes any inconsistent provision of the Burton Act. (*Id.* at Sec. 14.)

13 AB 1273, adopted in 2013, allowed for the development of Piers 30-32 as a multi-purpose
14 event facility for the Golden State Warriors, and authorized the State Lands Commission to find
15 that the final proposed project was in the best interests of the state. (RJN ¶ 9, Ex. I; *see also* RJN ¶
16 1, Ex. A at pg. 27.) In enacting AB 1273, the Legislature made numerous findings including that
17 Piers 30-32 were dilapidated; that the cost of removing the enormous structures would exceed \$45
18 million; that the cost of making them suitable for new development would exceed \$120 million;
19 that the Port does not have the money to rehabilitate the piers, nor to meet its other capital needs;
20 and that the development of the piers through public-private partnership would be in the best
21 interests of the state. (RJN ¶ 9, Ex. I at Secs. 4, 5.)

22 ⁷ SB 815 also discussed the Port’s capital needs, which were at that time “approximately 1.4
23 billion dollars,” the fact that the Port’s existing revenue sources were insufficient to meet its
24 capital needs, and declared that “[f]uture revenues from the development and leasing of the
25 designated seawall lots are an essential source of funds to preserve historic piers and historic
26 structures and construct and maintain waterfront plazas and open space,” and that the revenues
27 generated by these developments would “serve the public trust and the Burton Act trust and will
28 improve access to the waterfront for visitors and residents.” (RJN ¶ 7, Ex. G at Sec. 2(s)-(w).) The stated “intent of the Legislature” in enacting SB 850 was to ensure that this land would be developed so as to maximize revenues for the Port, to ensure the Port could fulfill its mission to protect and preserve the public trust land under its stewardship. (*Id.*)

1 Consistent with the Legislature's directives, "development projects" were "forecast to be
2 the largest financial source to address both state-of-good-repair . . . and enhancement . . . in the
3 [Port's capital] plan." (RJN ¶ 1, Ex. A at pg. 29.)

4 4. **Proposition B subjugates the statewide interest in utilizing and**
5 **managing Port land by reducing its funding to preserve that land.**

6 Local initiative Proposition B poses a grave threat to the Port's ability to utilize and
7 maintain the public trust lands under its management. As explained above, the Port's most
8 important external funding source is revenue generated by public-private partnership
9 developments. Without this funding, implementation of the Port's capital plan is in jeopardy. The
10 Legislature has declared that implementation of the Port's capital plan is a matter of statewide
11 importance, and has declared the importance of revenues generated by public-private partner
12 developments to the Port's ability to carry out its mandate. (*See, e.g.*, RJN ¶ 7, Ex. G at Sec. 2(s)-
13 (w).) Proposition B threatens this vital source of capital, which in turn threatens the Port's ability
14 to preserve the public trust land it manages for "all of the people of this state." Cal. Pub. Res.
15 Code § 6009.1(b).

16 a. **Proposition B has cost the Port hundreds of millions of dollars.**

17 Proposition B has already cost the Port hundreds of millions dollars in lost revenue;
18 revenue which had been slated to repair, restore, and maintain existing facilities (i.e. public trust
19 land). A glaring example is the Golden State Warriors' multi-use venue, which was originally
20 planned to be built on Piers 30-32. As explained above, in 2013, the Legislature passed AB 1273,
21 which allowed Piers 30-32 and Seawall Lot 330 to be developed to include a multi-use sports
22 venue, hotel, and mixed use development. (RJN ¶ 9, Ex. I; RJN ¶ 1, Ex. A at pg. 27.) With
23 Proposition B on the horizon, however, the group putting together the Piers 30-32 development
24 plan decided to move to non-Port waterfront property in Mission Bay, land not subject to
25 Proposition B. (RJN ¶ 9, Ex. J.) According to an April 30, 2014, analysis of the impacts of
26 Proposition B on the 10-year capital plan, prepared by the Port and sent to the Mayor, the loss of
27 the Golden State Warriors venue at Piers 30-32 cost the Port *approximately \$164 million* of the
28 public-private partnership development revenues it had been projected to receive. (RJN ¶ 6, Ex. F

1 at pg. 3.)

2 Another example of lost revenue to the Port is Pier 70. The Legislature authorized the Port
3 to develop this site in 2011, under AB 418. (RJN ¶ 8, Ex. H.) Prior to the passage of Proposition
4 B, the Port was in negotiations with a developer to build a large mixed-use development on Pier
5 70 which was projected to generate \$162 million for the Port. (RJN ¶ 6, Ex. F at pg. 6 & at
6 “Exhibit 1,” pg. 1.) The project would have also added up to 2,000 housing units at a time when
7 the Bay Area is facing a serious housing crisis, as well as 7 acres of new publicly accessible parks
8 and open space to Port land, largely on land that is currently uninhabitable and unusable. (*Id.*)
9 This project was significantly downsized after the passage of Proposition B. (RJN ¶ 11, Ex. K.)
10 This will naturally reduce the amount of revenue the Port may expect to receive from this project.⁸

11 Seawall lot 337 and Pier 48, under development per SB 815 (2007), had planned up to
12 1,300 new residential units which included “two, tall, slender towers, with one tower up to 380,’
13 and mid-rise development on a total of 11 parcels,” as well as a “historic rehabilitation of Pier 48.”
14 (RJN ¶ 2, Ex. B at pgs. 6, 8.) This project is obviously in jeopardy if no building over 40 feet—
15 the height of the dilapidated buildings currently onsite—can be built without the approval of the
16 local electorate. Early Port analysis reveals that the cost created by the difficulty of building on
17 much of the Port land would make low-rise buildings economically infeasible. (*Id.* at pg. 9; *see*
18 *also* RJN ¶ 6, Ex. F at pg. 7 [“4”].)

19 It is difficult to put a dollar figure on other losses Proposition B has caused. As the Port’s
20 analysis explains, there is no question that “one immediate effect” of the local initiative is to
21 “override years of public planning,” causing delays to existing projects, adding to predevelopment
22 expenses, and making many projects simply unfeasible, all of which in turn inhibits the Port’s

24 ⁸ This is true in part because the Port captures a large part of the revenue it receives from the
25 public-private partnership developments it is authorized to undertake through “Infrastructure
26 Finance Districts” (IFDs), which allow a portion of new property tax revenues from new
27 development projects to be captured by the Port to finance improvements of its own public trust
28 facilities. These “IFDs” were expressly authorized on Port land by the Legislature under SB 1085
(2005). The Port was permitted to establish Pier 70 as an IFD by AB 1199 (2010) (*See generally*
RJN ¶ 1, Ex. A at pg. 26; RJN ¶ 6, Ex. F at pg. 6.)

1 ability to fulfill its mission to utilize, manage, protect, and preserve its public trust land.

2 b. Proposition B handcuffs the Port's future ability to sustain its land.

3 As for future lost capital, the sky is the limit. The Port's land is especially challenging to
4 build on due to the nature of the reclaimed land (landfill). According to a Port analysis of
5 Proposition B's effects on the projects previously planned for seawall lot 337, Pier 70, Piers 30-
6 32, and seawall lot 330 projects, all of which were specifically authorized by the Legislature:

7 Early planning at these sites indicated that it will be very expensive
8 to build at these locations for a variety of reasons, including the lack
9 of traditional infrastructure, such as utilities and the historic fill
10 nature of the sites, sea level rise, seismic risk and related factors.
The ability to build taller structures allows these costs to be spread
over a greater density of development, while preserving sizeable
portions of the site for open space.

11 (RJN ¶ 2, Ex. 2 at pg. 8.)

12 Proposition B's restriction on raising current building heights threatens the economic
13 feasibility of these Legislature-authorized projects. But even beyond these projects, early analysis
14 indicates that the cost created by the difficulty of building on much of the Port's other land will
15 make low-rise buildings economically infeasible. (*Id.* at pg. 9; see also RJN ¶ 6, Ex. F at pg. 7
16 ["4"].) The long-term impact of Proposition B on the Port's ability to manage its public trust
17 lands will therefore be staggering, as many of the future public-private partnership developments
18 which the Port would have depended on to meet its capital needs will be economically infeasible.
19 Requiring a local election as a condition precedent to moving forward with these Legislature-
20 sanctioned developments is no mere procedural hurdle; it is a costly, risky proposition that
21 materially impacts the economic feasibility of redeveloping Port lands.

22 Even in the near-term, however, the negative economic impact on the Port's capital needs
23 funding is significant. Proposition B poses these immediate, "near-term" negative impacts:

- 24 • "\$8.46 billion in delayed, reduced or lost revenues to the Port Harbor Fund
25 (equivalent to \$286 million today)"; (RJN ¶ 2, Ex. B at pgs. 1-2.)
- 26 • "\$163 million in delayed, reduced or lost capital investment for standard repair &
27 replacement of aging facilities"; (*Id.*)
- 28 • "\$243 million in delayed, reduced or lost capital enhancement and seismic

improvement to Port assets”; (*Id.*)

- “\$124 million in affordable housing development fees delayed, reduced or forgone”; (*Id.*)
- “23 acres of new open space delayed, reduced, or abandoned”; (*Id.*)
- “268-596 affordable housing units delayed, reduced, or abandoned”; (*Id.*)
- “1,990-3,690 total new housing units delayed, reduced or abandoned” – much of which would be built on land that is currently dilapidated and unusable; (*Id.*)
- “Preservation and rehabilitation of 3 historic facilities – Pier 48 and Buildings 2 and 12 at Pier 70 – delayed, reduced or abandoned”; (*Id.*)
- “5 maritime berths delayed or abandoned affecting the needs for a new, state of the art fire boat facility, tertiary cruise ship berth, harbor services berthing, water taxi landing and recreational boating including kayaking”; (*Id.*) and
- “29,000 construction jobs and 32,000 permanent jobs” lost. (*Id.* at pg. 10.)⁹

The Legislature has declared that “Implementation of the port’s capital plan is a matter of statewide importance and is essential to furthering the purposes of the public trust.” (RJN ¶ 7, Ex. G at Sec. 2(r).) The Legislature has also made it clear that “statewide interests” are not to be subjugated to local “initiatives.” Cal. Pub. Res. Code § 6009(d). Proposition B subjugates the statewide interest in ensuring the Port is able to implement its capital plan, by handcuffing the Port’s ability to maximize the returns it receives from the parcels the Legislature already authorized it to develop, and by making development in the future economically infeasible. Simply put, it is a game-changer which hinders the Port’s ability to generate revenue at a time when the Port is in dire need of capital for overdue repairs, maintenance, and seismic upgrades.

⁹ Proposition B also has less tangible negative effects. For example, the City’s Planning Department, in a February 20, 2014 memo to the Department of Elections, explained that the initiative may interfere with—or displace altogether—the CEQA environmental review that development projects typically undergo, as well as the Planning Department’s flexibility to review and impose requirements on new projects as a condition of approval. (RJN ¶ 3, Ex. C at pgs. 2-3.) It also pointed out that some of the Port’s land is not in fact on the waterfront, and that some of the City’s waterfront land is non-Port property not subject to Proposition B. (*Id.* at pg. 4.)

1 Proposition B therefore violates the language and intent of section 6009.

2 5. **Proposition B subjects Port land to a more stringent approval process**
3 **than privately held waterfront land.**

4 Another problem with Proposition B is that it imposes requirements on Port land that non-
5 Port waterfront land is not subject to.¹⁰ Proposition B only applies to Port-land. (State Lands
6 Commission's Writ Petition at Ex. A, § 3(c).) It does not place any restrictions (height or
7 otherwise) on the use of waterfront land not under the Port's management. It also restricts
8 development of non-waterfront land managed by the Port, even though similarly situated non-Port
9 land is not subject to the same restrictions. In short, Proposition B discriminates against land
10 under the Port's stewardship by curtailing the uses to which it may be put, without placing any
11 similar restrictions on non-Port land. This is further evidence that the initiative "subjugates" the
12 statewide interest in ensuring that the Port's public trust land is properly utilized and preserved.

13 **III. CONCLUSION**

14 Proposition B subjugates the legislatively-declared statewide interest in the effective
15 management, use, and preservation of public trust land to local interests. It therefore violates the
16 plain language of Public Resources Code section 6009. For this reason, the Court should deny the
17 City's demurrer. It should also grant the State Lands Commission's petition for writ of mandate.

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25 ¹⁰ "Not all of the eastern San Francisco Bay shoreline is owned by the Port. There is a significant
26 stretch of non-Port property between 22nd Street and 24th Street, most of which is occupied by the
27 former Potrero Power Plant, which is privately-owned, as well as other privately held parcels.
28 There also are significant undeveloped, privately-owned sites in Mission Bay adjacent to the Bay
shoreline, including a 14 acre site between 3rd Street and Terry Francois Boulevard." (RJN ¶ 2,
Ex. B at pg. 3 [Port's February 20, 2014, analysis].)

1 DATED: January 8, 2014

McKENNA LONG & ALDRIDGE LLP

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By: /s/ Andrew S. Azarmi

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Andrew S. Azarmi

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Attorneys for San Francisco Chamber of

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Commerce, Bay Area Council, San Francisco

Building & Construction Trades Council, Center for
Creative Land Recycling

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