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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF CONTRA COSTA

17 CITY OF SAUSALITO,
18
19 Petitioner and Plaintiff

20 v.

21 GOLDEN GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT,
22
23 Respondent and Defendant

24 GOLDEN GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT,
25
26 Real Party In Interest

Case No. CIV MSN17-0098

**FIRST AMENDED VERIFIED PETITION
FOR WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY
RELIEF**

**[Code of Civil Procedure §§ 1060, 1085;
1094.5; Civil Code § 670; California
Environmental Quality Act (Public
Resources Code § 21001.1, 21002.1 (b), (d),
21069, 21166, 21168.5, 21168.9; CEQA
Guidelines §§ 15096 (a), (e), (f), 15162,
15381).]**

1 **INTRODUCTION**

2 1. The City of Sausalito (City or Petitioner) brings this action against the Golden Gate
3 Bridge, Highway and Transportation District (the District) in order to enforce the City’s legal
4 rights and the District’s corresponding legal obligations pursuant to California’s Environmental
5 Quality Act (CEQA), the public trust doctrine, and that certain lease Agreement between the City
6 as lessor and the District as tenant governing the District’s use and operation of the Sausalito Ferry
7 Terminal located on public tides and submerged lands owned by the City, subject to the public
8 trust.

9 This action arises from the District’s proposal to nearly triple the size of the existing ferry
10 terminal in the City (the Project) as part of its “one-size fits all” program to implement
11 standardized improvements to its three San Francisco Bay ferry terminals located in San
12 Francisco, Larkspur and the City, respectively. But the size, physical and environmental
13 conditions at the City’s waterfront bear no resemblance to the District’s much larger facilities in
14 San Francisco and Larkspur. Moreover, the parties’ lease Agreement (Lease) provides that the
15 District first must obtain the City’s written consent for the Project because it constitutes “major
16 alterations,” “improvements” and/or “additions” within the meaning of the lease Agreement,
17 which consent must not be unreasonably withheld. Because of this and other discretionary
18 approvals the Project requires from the City, the City is a “responsible agency” for the Project
19 under CEQA, imposing a duty on the City to consider whether Project changes, changed
20 circumstances or new information since the District’s adoption of a Mitigated Negative
21 Declaration (MND) for the Project in 2012 and Addendum in 2017 trigger CEQA’s requirements
22 for supplemental environmental review in the form of a subsequent MND or Environmental
23 Impact Report (EIR).

24 The District participated in the City’s public processes for reviewing the District’s
25 proposed Project, which the District has modified multiple times since 2012, to determine whether
26 to grant consent under the Lease. However, in response to the City’s notice to the District that in
27 compliance with the City’s legal duty as responsible agency, the City had retained an
28

1 State of California under uncodified statutes of 1953, chapter 534, page 1795 and statutes of 1957,
2 chapter 791, page 2002, the latter of which is set forth in its entirety in the appendix to the opinion
3 in *Zack's, Inc. v. City of Sausalito* (2008) 165 Cal. App. 4th 1163. The City also is the lessor in
4 that certain "Lease of Public Tides and Submerged Lands" agreement with the District as Tenant
5 executed as of December 1, 1995 (Lease).

6 3. Respondent, Real Party in Interest and Defendant the Golden Gate Bridge,
7 Highway and Transportation District is a local agency formed pursuant to enabling State
8 legislation enacted in 1923 by, and consisting of, six counties: Sonoma, Mendocino, Marin, Napa,
9 Del Norte and the City and County of San Francisco. The District is governed by a board of
10 directors (the "Board") consisting of representatives from each of the six counties. The District is
11 both the Project proponent and lead agency for environmental review of the Project under CEQA,
12 and therefore is named in this action both as respondent and real party in interest, as well as
13 defendant, for purposes of the claims asserted herein.

14 **JURISDICTION AND VENUE**

15 4. This Court has jurisdiction over the matters alleged in this action pursuant to Code
16 of Civil Procedure sections 1060, 1085, 1094.5, and Public Resources Code sections 21168,
17 21168.5 and 21168.9.

18 5. Venue is proper in this Court pursuant to stipulated order of the Marin County
19 Superior Court dated December 2, 2016, transferring this action to the Contra Costa County
20 Superior Court as a neutral jurisdiction pursuant to Code of Civil Procedure section 394(a).

21 6. Petitioner complied with the requirements of Public Resources Code section
22 21167.5 by serving written notice of Petitioner's intention to commence this action on
23 Respondents.

24 7. Petitioner has complied with the requirements of Public Resources Code section
25 21167.6(b) by requesting to prepare the record of proceedings..

26 8. Petitioner complied with the requirements of Public Resources Code section
27 21167.7 by sending a copy of the original Petition/Complaint and this First Amended
28 Petition/Complaint to the California Attorney General.

1 -- Arrival/Departure Pier – the District-owned structure connecting the approach
2 pier to the shore; and

3 -- Bulkhead – the seawall that lies within and adjacent to the leased Premises.

4 • Under Section 3.1, permitted uses include “[a]ctivities customarily incident or
5 convenient to operation of the District’s ferry service, including the approved improvements set
6 forth in Section 5.4 of the Lease.” Section 5.4, subsection (e) confirms the City’s approval of the
7 District’s plans at time the Lease was executed to replace the existing float with a new float the
8 same length as the existing float but twenty feet wider with the capability of docking a vessel on
9 either side. The Agreement thus makes it clear that the size of the District’s ferry terminal, and
10 any future changes and improvements to it, were materially important matters to the City in
11 executing the Agreement. The City pre-approved these specific improvements proposed by the
12 District at the time the parties executed the Agreement, while expressly conditioning any future
13 improvements proposed by the District on the City’s prior written consent, as set forth under
14 Section 5.4, subsection (a).

15 • Section 5.4, subsection (a) provides that: “[t]enant shall not, without Lessor’s prior
16 written consent, make any [1] major alterations, [2] improvements, [3] additions, or [4] utility
17 installations in, on or about the Premises, provided however that Lessor’s consent shall not be
18 unreasonably withheld, conditioned or delayed.” This provision states further that “Major
19 Alterations,” one of the four independent triggers to the City’s right of consent, mean “any
20 alteration the cost of which is estimated to exceed \$50,000, but shall not include repairs or
21 replacements in, on, or about the Premises.” Section 5.4, subsection (b) sets forth the procedures
22 the District must follow to obtain the City’s consent. The District must present the City with a
23 request for consent that includes the District’s proposed “detailed plans.” The City in response is
24 required to promptly act on the District’s request, and it must notify the District of its decision
25 within forty-five (45) days of the District’s request. Failure to respond during that time is deemed
26 to be City consent, subject to the District’s compliance with all applicable law.

27 • Section 3.2 states in relevant part: “[District] shall, at [District’s] expense, comply
28 promptly with all applicable and legally binding statutes, ordinances, rules, regulations, orders,

1 covenants and restrictions of record, and requirements in effect during the term or any part of the
2 term hereof, regulating the use by [District] of the Premises.....”

3 **B. The District’s Initial Proposed Project and CEQA Review**

4 14. In 2009, the District retained the engineering firm of Moffatt & Nichol to develop
5 plans and perform related environmental analysis for improvements to the District’s ferry
6 terminals located in San Francisco, Larkspur and Sausalito.

7 15. On May 3, 2011, the District presented the Sausalito City Council with its
8 “conceptual designs” regarding its proposed “Ferry Terminal Improvements.”

9 16. In September 2012, the District published its Initial Study/Mitigated Negative
10 Declaration (“MND”) for the Project pursuant to CEQA. Relevant and notable findings in that
11 analysis include the following:

12 • The MND’s Project Description explains that the proposed improvements would
13 (1) increase the size of the existing float from 110’ long x 42’ wide to 150’ long and 53’ wide; (2)
14 increase the size of the existing gangway from 70’ long x 5.9’ wide to 90’ long and 21’ feet wide;
15 and (3) increase the size of the existing access pier from 96.5’ long x 8.5’ wide to 96’ long x 25’
16 wide. (MND, p. 1-6). Additionally, the Project would require the use for approximately 6 months
17 of an approximately 6,500 square foot area for a temporary terminal that would be located outside
18 the leased Premises. (*Id.*, p. 1-9.) The Project when constructed also would include certain
19 permanent structures located outside the leased Premises. The MND thus states that “the District
20 would seek a lease amendment to include all proposed structures.” (*Ibid.*)

21 • The MND explains that the proposed Project would increase “over-water coverage”
22 of the existing ferry terminal by seventy-one (71) percent, from 8,000 square feet to 13,650 square
23 feet. (MND, p. 1-12.)

24 • The MND states that the Project’s “Objectives/Purpose and Need” are: (1)
25 improved accessibility; (2) emergency preparedness; (3) sustainability goals; (4) increased
26 operational efficiency; and (5) future flexibility. (MND, pp. 1-4-1-5.) Operational efficiency is
27 described as resulting from standardized boarding procedures and equipment that would reduce
28 staff training time, and would give the District the ability to move staff between the three Golden

1 Gate Ferry terminals located in San Francisco, Larkspur and Sausalito seamlessly as needed. (*Id.*,
2 p. 1-5.) There is no reference to any objective, purpose or need to expand the size of the terminal
3 to accommodate, encourage or facilitate projected passenger growth. Instead, the MND states that
4 the capacity of the terminal would be unaffected, the operation of the ferry terminal would be
5 similar to existing conditions, and that the Project does not “facilitate nor support” the
6 establishment or expansion of service. (MND, pp. 1-5, 1-6, 2-52-2-53.)

7 17. On December 14, 2012, the Board adopted the MND for the then-proposed Project.

8 18. On January 29, 2014, the District submitted a permit application for the then-
9 proposed Project to the San Francisco Bay Conservation and Development Commission (BCDC).
10 BCDC requested additional information from the District throughout the balance of that year.

11 19. On December 4, 2014, BCDC considered the District’s pending permit application
12 during its public hearing. The City’s Mayor and City Council members testified in opposition to
13 the District’s application based in part on the District’s failure to obtain the City’s written consent
14 for the then-proposed Project as required under Section 5.4, subsection (a) of the parties’ lease
15 Agreement. The City reiterated this position on February 4, 2015 in a letter to BCDC.

16 20. On or about February 4, 2015, the District agreed subject to its unilateral
17 “reservation of rights” to participate in the City’s process for review of the proposed Project,
18 which involved joint public hearings before the City’s Planning Commission (PC) and Historic
19 Landmark Board (HLB), whose recommendations would then be provided to the City Council for
20 its review and decision during a public hearing.

21 **C. The District’s March 2015 Modified Project**

22 21. On March 24, 2015, the District submitted to the City revised plans for the Project
23 and requested pursuant to Section 5.4, subsection (a) of the Agreement that the City decide within
24 45 days from the District’s request whether it will grant consent. The revised plans reduced the
25 width of the proposed gangway from the District’s original proposal from 21’ to 18.3’ and the
26 width of the proposed access pier from 25’ to 21.’

27
28

1 22. The City’s PC and HLB jointly considered the District’s revised Project plans
2 during public hearings on April 1, 15 and 29, 2015. The PC/HLB recommended that the City
3 Council deny consent under the lease Agreement based on the following findings:

- 4 • The planning for the waterside and landslide improvements should be in tandem;
- 5 • The overall size of the project is too large and should be reduced;
- 6 • The Project is not compatible with the City’s historic district;
- 7 • The proposed belvederes add unnecessarily to the size of the project;
- 8 • The proposed belvederes negatively impact the Sausalito Yacht Club and Inn
9 Above Tides;
- 10 • Improvements that are part of the Project are located outside the boundaries of the
11 leased area; and
- 12 • New facts and circumstances are present which could have significant
13 environmental impacts that were not addressed in the Mitigated Negative Declaration adopted by
14 the District.

15 23. The City Council then considered the District’s proposed Project during its public
16 hearing on May 5, 2015. While the District previously informed the City in written materials that
17 the Project was designed to accommodate a projected 4% annual increase in passengers through
18 2029, the District’s General Manager testified that evening before the City Council that the
19 District’s passenger growth projections “don’t affect the fundamental size of the float or
20 gangway.” He further testified that the proposed dimensions of the float and gangway are
21 “dictated by the geometry of the Americans with Disabilities Act...” and that “[i]f there was no
22 growth, or if there’s a doubling, it wouldn’t affect the fundamental size of the float and the
23 gangway.” He added: “[t]oday’s operational needs, as well as accessibility standards, indicate that
24 these dimensions are appropriate.”

25 24. At the conclusion of the public hearing, the City Council denied consent to the
26 then-proposed Project. The City Council’s Resolution denying consent adopted each of the
27 findings of the PC/HLC. The Resolution further stated that the City cannot yet determine whether
28 the Project has been adequately analyzed pursuant to CEQA’s requirements in light of evidence of

1 changed circumstances, including significant increases in passenger and bike counts. Moreover,
2 new information recently provided by the District suggests that the Project is both intended to, and
3 in fact will increase passenger use. The City provided the District with formal written notice of its
4 determination on May 6, 2015, within the 45-day review period.

5 **D. The District's March 2016 Modified Project**

6 25. On March 2, 2016, the District submitted to the City further revised plans for the
7 Project. These further revised plans reduced the length of the proposed float and the width of the
8 proposed gangway. The proposed Project still, however, would increase the size of the existing
9 float from 110' long x 42' wide to 145' long x 53' wide, and the size of the existing gangway from
10 70' long x 5'9 wide to 90' long x 16' wide – nearly tripling the width of the existing gangway.
11 The District submitted a letter to the City on March 2, 2016 accompanying these further revised
12 plans stating in part that while the Project has been downsized in many ways, “[o]ne exception is
13 the size of the float, which is mandated by ADA requirements, particularly those related to
14 providing slopes that are readily accessible....The District cannot and will not build a facility that
15 is not readily accessible by individuals with disabilities.”

16 26. On March 4, 2016, the District and the City agreed in writing that the 45-day
17 review period under the lease Agreement “will not apply to the [District's] submittal.”

18 27. The City's PC and HLB jointly held two public meetings regarding the District's
19 further revised plans on March 16 and 29, 2016 to address the eight point rationale for the City
20 Council's denial of consent in May 2015. The PC/HLB each separately determined that the
21 District's further revised plans had cured only some of the deficiencies and concerns listed in the
22 City Council's previous denial of consent.

23 **E. The City's Due Diligence Efforts And CEQA Review As Responsible Agency**

24 28. In response to the District's March 2016 proposed plans, the City retained the
25 professional planning and design firm, Environmental Vision, to peer review the District's
26 computer-generated visual simulations of the proposed Project from eight viewpoints. On June 1,
27 2016, Environmental Visions reported that several of the District's simulations were inaccurate.

28

1 Two of the viewpoints depicted the scale of the gangway and float at 75% and 80% of their correct
2 size, respectively. The District in response provided revised renderings on August 16, 2016.

3 29. The City also retained the engineering firm of COWI North America (“COWI”) to
4 peer review the District’s revised Project plans. In response to COWI’s requests for information,
5 the District explained on June 16, 2016 that its proposed new float includes a 16-foot wide central
6 walkway that is not mandated by ADA requirements, but rather by the District’s operational desire
7 that the width of the central walkway correspond to the District’s two, 8-foot wide vessel doors.
8 The District explained that the size of the proposed float and gangway is dictated by the District’s
9 desire to have the operational ability to disembark and embark, within 15 minutes, 920 passengers
10 – representing the District’s projected use during peak summer weekends in the year 2029.

11 30. On August 11, 2016, the District provided the City with actual daily ferry
12 passenger counts from 2014 to the present, as well as monthly bike counts from 2012 to the
13 present, showing the number of ferry passengers disembarking and embarking with bikes. This
14 data confirmed the existence of substantially changed circumstances since the District’s adoption
15 of the MND. In 2012, monthly bike use averaged 9,200, with a high mark of 16,469 bikes in July.
16 This figure soared in 2014 to a monthly average of 16,007 bikes, with a high mark of 29,796 in
17 August. The District’s August 11, 2016 letter further stated, contrary to the statements contained
18 in the MND, that the Project’s design is dictated in part by the District’s operational desire and
19 mission to facilitate and increase ferry ridership, drawing regionally from traffic along the
20 Highway 101 corridor through Marin County.

21 31. On August 15, 2016, in order to fulfill its duties as responsible agency under
22 CEQA, the City retained LSA Associates, Inc., an environmental consulting firm to analyze
23 whether any Project changes, changed circumstances or new information triggered any obligations
24 for supplemental environmental review under CEQA Guidelines section 15162.

25 **F. The District’s Repudiation of The City’s Legal Authority**

26 32. On August 18, 2016, the District submitted to the City supplemental plans further
27 modifying the proposed Project and requested that the City consent to or deny such plans within
28 the 45-day period under the lease Agreement.

1 33. On August 22, 2016, the City acknowledged receipt of the District’s August 18,
2 2016 letter, informed the District of the City’s retention of LSA, and requested that the District
3 agree to extend the 45-day review period under the lease Agreement by two weeks, to October 14,
4 2016, so that the City Council may make its decision with the benefit of all information it requires
5 to fulfill its separate responsibilities as landlord under the lease Agreement and responsible agency
6 under CEQA.

7 34. On September 2, 2016, the District responded in writing to the City’s two-week
8 extension request by withdrawing its Project submittal for the City’s consent under the lease
9 Agreement. The District reversed course and asserted that the proposed Project is a “replacement”
10 and therefore not subject to the City’s consent under Section 5.4, subsection (a) of the lease
11 Agreement. The District stated further that the City previously granted its consent for the Project
12 during the City Council’s hearing on May 3, 2011 (the date that the District presented “conceptual
13 designs” regarding its proposed “Ferry Terminal Improvements.”) The District further asserted
14 that because the Project is regional, the City has no land use authority over it, and has no legal
15 authority to limit or control its size. The District’s action compelled the City to file the present
16 action on September 13, 2016.

17 **G. The District’s Further Modifications To The Project, Approval Of An**
18 **Addendum To The MND, And Authorization To Proceed With**
19 **Implementation Of The Further Modified Project**

20 35. Following the District’s repudiation of the City’s legal authority, the District
21 proceeded with the Project. On or about November 17, 2016, the District approved a Fifth
22 Amendment to the Professional Services Agreement with Moffatt and Nichol, authorizing a
23 \$3,354,000 budget increase to support completion of the remaining work for the Project, including
24 assisting in obtaining all required permits, finalizing designs, preparing bid documents for
25 construction contracts and other associated services.

26 36. On or about May 19, 2017, the District notified the City of its intention to approve
27 an Addendum to the 2012 MND and authorize implementation of a modified Project.

28

1 37. The Addendum and District staff report identified several Project modifications,
2 including the identification of the specific location within the City’s Municipal Parking lot
3 adjacent to the ferry terminal for an 8,000 square foot construction and staging area to be utilized
4 for approximately 6 months, and the statement that the District would no longer seek a lease
5 amendment for the temporary and permanent Project components located outside the Leased
6 premises.

7 38. The Addendum and modified Project as detailed in the District’s staff report came
8 before the District’s Building and Operating Committee during its public hearing on May 25,
9 2017. The City submitted written comments to the Committee in opposition to the Addendum and
10 modified Project on May 24, 2017. The City’s letter identified, among many other legal
11 deficiencies in the Addendum and modified Project, the District’s failure to analyze the numerous
12 potential environmental impacts resulting from the newly identified construction/staging area to be
13 located within the City’s heavily trafficked Municipal Parking lot adjacent to the ferry terminal.
14 The District’s response was to sweep these environmental concerns under the rug. During the
15 public hearing, District Manager Denis Mulligan recommended that the District simply “delete”
16 the construction/staging area from the Addendum. He represented that doing so would enable the
17 District to avoid the need to analyze the environmental consequences of this aspect of the Project.
18 The Building and Operating Committee therefore approved a recommendation to adopt the
19 Addendum, with the exception of the selection of the construction staging area, and to authorize
20 proceeding with implementation of the modified Project.

21 39. The Addendum and modified Project next came before the District’s Board of
22 Directors during its public hearing on May 26, 2017. On May 25, 2017, the City submitted
23 additional written comments objecting to the Addendum and modified Project, including the
24 expert opinion of a traffic engineer who concluded that the modified Project’s proposed 6-month
25 construction staging area was never previously analyzed, and may cause significant traffic
26 circulation and other environmental impacts . However, once again, District Manager Mulligan
27 urged the District’s Board to turn a blind eye to these potentially significant environmental
28 impacts that may occur in the midst of the heavily trafficked ferry terminal plaza and parking lot,

1 located in the heart of the City’s historic downtown waterfront held in the public trust. The
2 District’s Board accepted this recommendation to not analyze and instead ignore the Project’s
3 potentially significant environmental and public safety impacts to and within the City. The
4 District’s Board accepted the Building and Operating Committee’s recommendation to approve
5 the Addendum, with the exception of the selection of the construction staging area, and authorize
6 proceeding with implementation of the modified Project.

7 **FIRST CAUSE OF ACTION**

8 **(Violation of CEQA)**

9 40. The City hereby incorporates the allegations set forth in paragraphs 2 through 34
10 above.

11 41. Public agencies carry out their CEQA obligations in three distinct capacities: as
12 “lead agencies,” as “responsible agencies,” and as “trustee agencies,” the latter of which is not
13 relevant to this action. The District is both the Project sponsor and the lead agency under CEQA.
14 It therefore was responsible for analyzing the Project’s environmental impacts and ultimately
15 approving it. “Responsible agencies” under CEQA are those public agencies, other than the lead
16 agency, which have responsibility for carrying out or approving a project, or which have
17 discretionary approval power over a project for which the lead agency has prepared an EIR or
18 negative declaration. (Pub. Res. Code § 21069; CEQA Guidelines, § 15381.) CEQA broadly
19 defines the term “project” to include the “whole of the action, which has the potential for resulting
20 in physical change in the environment, directly or ultimately.” (CEQA Guidelines, § 15002(d).)
21 CEQA defines “discretionary” decisions as those requiring the “exercise of judgment or
22 deliberation when the public agency or body decides to approve or disapprove a particular activity,
23 as distinguished from situations where the public agency or body merely has to determine whether
24 there has been conformity with applicable statutes, ordinances, or regulations. (CEQA Guidelines,
25 § 15357.) Any public agency whose approval is both discretionary and required for any “activity”
26 “integral to the project” constitutes a responsible agency under CEQA. (*Lexington Hills Assn. v.*
27 *State of California* (1988) 200 Cal. App. 3d 415, 431.)

28

1 42. Under CEQA, the City is a responsible agency for the District’s Project because it’s
2 discretionary approvals are required for activities that are integral to the Project in three
3 independent respects.

4 First, because the proposed Project undeniably constitutes and involves “major
5 alterations,” or “improvements,” or “additions” or utility installations in, on or about the Premises,
6 the District must obtain the City’s written consent to the Project pursuant to Section 5.4,
7 subdivision (a) of the parties’ lease Agreement. Section 5.4, subdivision (a) provides that the
8 City’s consent shall not be unreasonably withheld, conditioned or delayed. The City’s consent
9 determination under the lease Agreement clearly is a discretionary determination that involves the
10 exercise of judgment. A lessor’s exercise of that discretion is reviewed for reasonableness under
11 California law on a case by case basis in light of numerous factors and considerations. (*Kendall*
12 *v. Ernest Pestana, Inc.* (1985) 40 Cal. 3d 488, 501.)

13 Second, the MND states that the Project would require the use for approximately 6 months
14 of an approximately 6,500 square foot area for a temporary terminal that would be located outside
15 the leased Premises, and that it would include certain permanent structures also located outside the
16 leased Premises. The MND thus concludes that “the District would seek a lease amendment to
17 include all proposed structures.” (MND, p. 1-9.) Here too, the City has discretionary approval
18 authority regarding the lease amendment required for the Project. The City therefore clearly is a
19 responsible agency under CEQA for this separate and independent reason.

20 Finally, as discussed below (*infra* at ¶¶ 43-47) and incorporated herein, the City maintains
21 discretionary approval authority over the Project under the public trust doctrine in its capacity as
22 trustee for the public trust governing uses for the Premises at issue.

23 Applying what courts have described as the “functional test” for distinguishing ministerial
24 from discretionary decisions, each of the foregoing City-required approvals are discretionary
25 because the City may deny or approve the Project subject to conditions on the basis of
26 environmental or any other concerns. Alternatively, it is equally true that the District may not
27 legally compel the City to provide any of the foregoing approvals. Moreover, California law
28 clearly provides that “where there are doubts whether a project [approval] is ministerial or

1 discretionary, they should be resolved in favor of the latter characterization.” (*Friends of Juana*
2 *Briones Houses v. City of Palo Alto* (2010) 190 Cal. App. 4th 286, 301-302.)

3 43. CEQA mandates that the City as responsible agency consider the environmental
4 effects of the Project as shown in the MND prior to reaching its discretionary decisions on the
5 Project. (Pub. Res. Code § 21002.1(d); CEQA Guidelines, § 15096(f).) Additional
6 environmental review is required only where substantial Project changes or changed
7 circumstances under which the Project is undertaken subsequent to the District’s adoption of the
8 MND require major revisions to the MND. Additional environmental review also is required
9 where new information of substantial importance, which was not known and could not have been
10 known with the exercise of reasonable diligence at the time of the District’s adoption of the MND
11 shows, among other things, that the Project will have one or more significant effects not discussed
12 in the MND. (Pub. Res. Code § 21166; CEQA Guidelines, § 15162.) An addendum to the MND
13 may be prepared if none of the conditions described in Section 15162 have occurred. (CEQA
14 Guidelines, § 15164(b).) A responsible agency’s determination regarding whether supplemental
15 environmental review is warranted must be supported by substantial evidence. (*American Canyon*
16 *Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal. App. 4th
17 1062, 1083.)

18 44. In compliance with the City’s obligations as responsible agency for the Project
19 under CEQA, the City retained LSA Associates, Inc. to analyze whether any changes to the
20 proposed Project, changed circumstances or new information triggered any obligations for
21 supplemental environmental review under CEQA Guidelines section 15162. On August 22, 2016,
22 the City requested that the District agree to extend the 45-day review period under the lease
23 Agreement by two weeks, to October 14, 2016, so that the City may complete its obligations under
24 CEQA prior to deciding whether to grant the required discretionary approvals for the Project.
25 However, on September 2, 2016, the District rejected the City’s request, repudiated the City’s
26 right of consent under the lease Agreement and rejected the City’s position that it is a responsible
27 agency under CEQA. The District asserted in its letter to the City that in its opinion, there is no
28

1 basis for supplemental environmental review of the Project. The District further asserted that:
2 “[a]s the District is seeking no discretionary action by the City the City is “no longer” a
3 responsible agency under the terms of CEQA and should “halt any environmental review process.”

4 45. The District’s actions are unlawful in at least two respects. First, the District’s
5 opinion as lead agency that there is no basis for supplemental environmental review under CEQA
6 Guidelines section 15162 is irrelevant as a matter of law. Under CEQA, the City as responsible
7 agency is legally required to independently consider the environmental effects of the Project as
8 shown in the MND prior to reaching its subsequent discretionary decisions on the Project. (Pub.
9 Res. Code § 21002.1(d); CEQA Guidelines, § 15096(f).) Second, the District does not have the
10 legal authority to unilaterally revoke the City’s responsible agency status under CEQA. The
11 District may not circumvent CEQA’s requirements nor impede the City’s legal obligations as
12 responsible agency by simply “withdrawing” its request for the City’s consent under the lease
13 Agreement. The City remains a responsible agency for the Project as a matter of law – rather than
14 the District’s choosing – because the District remains legally required to obtain the City’s consent
15 for the Project pursuant to the parties’ lease Agreement, and further requires the City’s
16 discretionary approval of a lease amendment and public trust approval in order to implement the
17 Project.

18 46. The District’s actions are arbitrary, capricious and violate CEQA. The District has
19 failed to proceed in the manner required by law, as it has violated its clear and present duty to
20 allow the City to complete its duties as responsible agency under CEQA. A writ of mandate is
21 necessary to compel the District to comply with CEQA’s mandates. Additionally, a temporary
22 and permanent injunction should issue, precluding the District from proceeding with the Project,
23 including without limitation, from seeking any further approvals from any other agency, pending
24 compliance with CEQA’s mandates as set forth herein.

25 **SECOND CAUSE OF ACTION**

26 **(Violation of the Public Trust Doctrine)**

27 47. The City hereby incorporates the allegations set forth in paragraphs 1 through 39
28 above.

1 48. In 1850, when California was admitted to the Union, it acquired ownership of all
2 tidelands and the beds of inland navigable waters within its borders. (*Zacks, supra*, 165 Cal. App.
3 4th at 1175; Civ. Code § 670.) “Such tidelands and submerged lands ‘belong to the state in its
4 sovereign character and are held in trust for the public purpose of navigation and fisheries.’”
5 (*Ibid.*) The trust powers of the state ‘may for a limited period be delegated to a municipality or
6 other body, but there always remains with the state the right to revoke those powers and exercise
7 them in a more direct manner, and one more favorable to its wishes.’ (*Id.* at 1177.) With respect
8 to the tidelands and submerged lands at issue here, the Legislature delegated the state’s trust power
9 to the City by means of the uncodified 1957 statute. That statute provides that the City is granted
10 all of the right, title, and interest of the State of California, held by virtue of its sovereignty, in all
11 of tidelands and submerged lands of the San Francisco Bay, whether filled or unfilled, situated and
12 lying within the boundaries of the incorporated area of the City, to be forever held by the City and
13 its successors in interest in trust for certain specified uses and purposes.

14 49. “While the public trust doctrine has evolved primarily around the rights of the
15 public with respect to tidelands and navigable waters, the doctrine is not so limited...The range of
16 public trust use is broad, encompassing not just navigation, commerce and fishing, but also the
17 public right to hunt, bathe or swim.” (*San Francisco Baykeeper, Inc. v. California State Lands*
18 (2015) 242 Cal. App. 4th 202, 233.) “Recreation and environmental preservation are also
19 permissible public trust uses.” (*Citizens for East Bay Shore Parks v. California State Lands Com.*
20 (2011) 202 Cal. App. 4th 549, 571.) Here, the trust granted to the City in 1957 expressly provides
21 that the specified allowable uses include “construction, maintenance and operation thereon of
22 public buildings and public parks and playgrounds, and for public recreational purposes....”

23 50. The state or trustee has an “affirmative duty to take the public trust into account in
24 the planning and allocation of [trust] resources, and to protect public trust uses whenever feasible.”
25 (*San Francisco Baykeeper, supra*, at pp. 233-234.) “There is no set ‘procedural matrix’ for
26 determining state compliance with the public trust doctrine...However, ‘any action which will
27 adversely affect traditional public rights in trust lands is a matter of general public interest and
28 should therefore be made only if there has been full consideration of the state’s public interest in

1 the matter....” (*Ibid.*) Moreover, “such actions should not be taken in some fragmentary and
2 publicly invisible way. Only with such safeguards can there be any assurance that the public
3 interest will get adequate public attention.” (*Ibid.*, citing *Zack’s, supra*, at pp. 1188-1189.)

4 51. California courts have held that evaluating project impacts within a regulatory
5 scheme like CEQA is sufficient ‘consideration’ for public trust purposes. (*Citizens for East Shore,*
6 *supra*, at p. 576.) Here, however, while the MND explains that the Project would increase “over-
7 water coverage” of the existing ferry terminal by seventy-one (71) percent, from 8,000 square feet
8 to 13,650 square feet (MND, p. 1-12), the MND provides no impact analysis relevant to public
9 trust uses, nor any analysis regarding project alternatives or the feasibility of mitigation measures
10 that might reduce or minimize adverse impacts on the City’s public trust.

11 52. The District’s actions in unilaterally declaring that the City has no land use
12 authority over the Project, and no ability to control the size of the Project, impede, materially
13 interfere and violate the City’s rights and duties as trustee under the public trust doctrine. The
14 District’s actions, among other things, have precluded the City from completing its “affirmative
15 duty to take the public trust into account in the planning and allocation of [trust] resources, and to
16 protect public trust uses whenever feasible,” through further CEQA analysis or other format of its
17 choosing. The District has failed to proceed in the manner required by law as it has a duty
18 pursuant to the public trust doctrine and the parties’ lease Agreement, which itself states that all
19 uses are subject to the public trust, to neither impede nor interfere with the City’s rights and duties
20 as trustee under the public trust doctrine to consider the Project’s impacts on the public trust, and
21 to deny or condition approval on feasible alternatives or mitigation measures as necessary to
22 preserve and protect the public trust. A writ of mandate is necessary to compel the District to
23 comply with the foregoing legal mandates. Additionally, a temporary and permanent injunction
24 should issue, precluding the District from proceeding with the Project, including without
25 limitation, from seeking any further approvals from any other agency, pending compliance with
26 the legal requirements of the public trust as alleged herein.

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1 **THIRD CAUSE OF ACTION**

2 **(Declaratory Relief)**

3 53. The City hereby incorporates the allegations set forth in paragraphs 1 through 39
4 above.

5 54. Section 5.4, subdivision (a) of the Lease provides as follows:

6 Tenant shall not, without Lessor’s prior written consent, make any major
7 alternations, improvements, additions, or utility installations in, on or about the
8 Premises, provided however, that Lessor’s consent shall not be unreasonably
9 withheld, conditioned or delayed. “Major Alterations” mean any alteration the cost
10 of which is estimated to exceed \$50,000, but shall not include repairs or
11 replacements, in, on, or about the Premises. As used in this section 5.4, “cost” shall
12 mean the costs and expense incurred by the Tenant as a result of employing or
13 contracting with others to do the work and any cost and expense to the Tenant in
14 labor and materials expended making the alteration, improvement, addition, or
15 utility installation by use of its own employees and materials.

12 55. A genuine and justiciable controversy now exists between the City and the District
13 in that the District contends that the Project is a “replacement” and therefore the District has no
14 obligation under the Lease to obtain the City’s prior written consent for the Project.

15 56. The City disputes the District’s interpretation and alleges as follows:

16 a. The District’s interpretation does not withstand scrutiny applying
17 California’s well settled rules regarding the interpretation of contracts. The Court in *Ticor Ins.*
18 *Co. v. Rancho Santa Fe Assn.*, (1986) 177 Cal. App. 3d 726, 730 summarized these legal
19 principles as follows:

20 The fundamental canon of interpreting written instruments is the ascertainment of
21 the intent of the parties. (Civ. Code, § 1636 [citations]) As a rule, the language of
22 an instrument must govern its interpretation if the language is clear and explicit.
23 (Civ. Code § 1638; [citations]). A court must view the language in light of the
24 instrument as a whole and not use a ‘disjointed, single-paragraph, strict
25 construction approach.’ [citations] If possible, the court should give effect to every
26 provision. (Civ. Code § 1641; [citations]). An interpretation which renders part of
27 the instrument to be surplusage should be avoided. [citations].

25 When an instrument is susceptible to two interpretations, the court should give the
26 construction that will make the instrument lawful, operative, definite, reasonable
27 and capable of being carried into effect and avoid an interpretation which will make
28 the instrument extraordinary, harsh, unjust, inequitable or which would result in an
absurdity. [citations].

1 b. The District’s interpretation of Section 5.4 subsection (a) of the Lease fails
2 under the foregoing legal principles.

3 (i) The District relies solely on the term “replacement” in isolation and
4 without consideration of either the language of Section 5.4 subsection (a) in its entirety or the
5 lease Agreement as whole. The term “replacement” solely modifies the definition of “Major
6 Alterations” under Section 5.4, subsection (a). Thus, even accepting the District’s assertion that
7 the Project constitutes a “replacement,” at most this means that the City’s right of consent is not
8 triggered because it constitutes “Major Alterations” as defined under the Lease. Section 5.4
9 subsection (a), however, provides three separate and additional triggers for the City’s right to
10 consent: “improvements, additions or utility installations,” none of which are limited or modified
11 by any exclusion for “replacements.”

12 (ii) The City’s consent is required because the Project constitutes
13 “improvements” and/or “additions” within the plain meaning of Section 5.4 subsection (a).

14 **Improvements:** “In common parlance, an improvement to real property is something that
15 enhances the property’s value or desirability.” (*People v. Acosta* (2014) 226 Cal. App. 4th 108,
16 121.) Here, the District repeatedly represented to the City that the Project would enhance the
17 value, desirability and functionality of the Ferry Terminal and leased Premises. Moreover, in the
18 MND and as well as numerous presentations and written submissions to the City, the District
19 referred and described the Project as the Ferry Terminal Improvements project. Thus, by its own
20 description, the proposed Project requires the City’s consent.

21 **Additions:** Courts often turn to dictionary definitions to determine the plain,
22 unambiguous, and common meaning of terms. (*U.S. Wealth and Tax Advisory Services, Inc.*
23 (2008) 526 F.3d 528, 530 (9th Cir. 2008). Merriam-Webster’s Dictionary defines “addition” as
24 “the act or process of joining something to something else: the act or process of adding
25 something.” (www.merriam-webster.com/dictionary/addition). Here, the District’s proposed
26 improvements will be joined with and added to City-owned portions of the leased Premises. The
27 District’s proposed improvements also would add approximately 70% of over water coverage on
28

1 the lease Premises. In both respects, among others, the Project involves additions that trigger the
2 City's right of consent.

3 (iii) The term "replacement" in Section 5.4 subsection (a), when properly
4 read in context with the language of Section 5.4 subsection (a) as whole, reveals that the term
5 "replacement" can only mean "like for like" exchange, and therefore it does not apply to the
6 Project, which does not "replace" the existing terminal, but instead substantially expands its size
7 by approximately 70%. According to the District's unsupportable interpretation, the Project is
8 not subject to the City's consent regardless of how much it improves or adds to the size of the
9 existing Ferry Terminal so long as the "improvements" and "additions" are part of a
10 "replacement." This interpretation, however, renders the terms "improvements" and "additions"
11 mere surplusage in violation of fundamental principles of contract interpretation. The District's
12 interpretation additionally results in an absurdity in that the District is required to obtain the City's
13 consent to minor modifications, additions or improvements costing as low as \$50,000, but it has
14 no obligation to obtain the City's consent for massive improvements and additions costing tens of
15 millions of dollars as part of a "replacement."

16 (iv) The District's interpretation also means the City has no ability to control the
17 size of the Ferry Terminal so long as the District expands, improves and/or adds to the Ferry
18 Terminal as part of a purported "replacement." That interpretation would effectively deliver full
19 control over the Premises held in public trust to the District, which violates the terms of the City's
20 public trust grant, the public trust doctrine, and therefore also is prohibited by Section 1.1 and
21 other provisions of the Lease which expressly provides that all uses are subject to the public trust.
22 The City's interpretation, however, renders the Lease lawful and enforceable.

23 57. The City requests a declaratory judgment that: (1) the District must obtain the
24 City's written consent in order to proceed with additional permitting and construction for the
25 proposed Project pursuant to Section 5.4 subsection (a) of the Lease because the Project
26 constitutes a "Major Alteration," and it is not a "replacement" within the meaning of that
27 provision in that it substantially improves, adds and increases the size of the existing Ferry
28 Terminal; (2) Alternatively, and/or additionally, the District must obtain the City's written consent

1 in order to proceed with additional permitting and construction for the Project pursuant to Section
2 5.4 subsection (a) because the Project constitutes “improvements” and/or “additions” within the
3 meaning of Section 5.4, subsection (a) of the Lease; and (3) Alternatively, if the Court concludes
4 that the District has no obligation to obtain the City’s consent to the proposed Project because it is
5 a “replacement,” and not a “major alteration,” “improvement” or “addition,” within the meaning
6 of Section 5.4 subsection (a), the term “replacement” must be severed pursuant to Section 18.8 of
7 the Lease because it is *ultra vires*, ceding full control of the public trust to the District in violation
8 of the City’s trust grant and the Public Trust Doctrine.

9 **FOURTH CAUSE OF ACTION**

10 **(Declaratory Relief)**

11 58. The City hereby incorporates the allegations set forth in paragraphs 1 through 39
12 above.

13 59. A genuine and justiciable controversy now exists between the City and the District
14 in that the District alleges that the Sausalito City Council provided consent to the Project pursuant
15 to Section 5.4 subsection (a) of the Lease on May 3, 2011 (at which time the District presented
16 conceptual designs for a proposed Project that has subsequently been modified in material
17 respects.)

18 60. The City disputes this contention and alleges as follows:

19 a. At no time prior to May 3, 2011 did the District either submit to the City
20 proposed “detailed plans” nor request that the City consent or deny the then-proposed Project
21 within 45 days as required under Section 5.4 subsection (b) of the Lease, and as the District later
22 did on March 24, 2015 and August 18, 2016, respectively.

23 b. By the District’s own admissions, the District did not provide the City with
24 detailed plans on or before May 3, 2011, but rather presented only its “conceptual designs.”

25 c. Any alleged “consent” to the Project provided by the City on May 3, 2011
26 was nullified and superseded by the District’s subsequent substantial modifications to the Project
27 in 2015 and 2016, and subsequent submissions to the City of detailed plans and requests for the
28 City’s consent on March 24, 2015 and August 18, 2016, respectively. Moreover, no alleged prior

1 City consent could serve to waive the City’s subsequent consent rights under Section 5.4
2 subsection (a) because under Section 14.1 of the Lease: “[e]ither party’s consent to or approval of
3 any act by the other party requiring such consent or approval shall not be deemed to waive or
4 render unnecessary the consenting party’s consent to or approval of any subsequent act by the
5 other party.”

6 61. The City requests a declaratory judgment that it did not provide consent to the
7 District’s Project pursuant to Section 5.4 subsection (a) of the Lease on May 3, 2011.
8 Alternatively, pursuant to Section 14.1 of the Lease, any such consent the City provided on May 3,
9 2011 “shall not be deemed to waive or render unnecessary the [City’s] consent to or approval of
10 any subsequent act by the [District].”

11 **FIFTH CAUSE OF ACTION**

12 **(Declaratory Relief)**

13 62. The City hereby incorporates the allegations set forth in paragraphs 1 through 39
14 above.

15 63. A genuine and justiciable controversy now exists between the City and the District
16 in that the District alleges that the City is not a responsible agency for the Project under CEQA.

17 64. The City disputes this contention and alleges that City is a responsible agency for
18 the District’s Project because, as alleged herein above, the City’s discretionary approvals are
19 required for activities that are integral to the Project in three independent respects. First, the
20 District requires the City’s discretionary consent to the Project pursuant to Section 5.4 subsection
21 (a) of the Lease. Second, the Project requires the City’s discretionary approval of a lease
22 amendment to allow for the temporary ferry terminal and for other temporary and permanent
23 components of the Project that will be located outside of the leased Premises. Finally, the District
24 requires the City’s discretionary approvals in connection with the City’s affirmative duties as
25 trustee under the public trust doctrine.

26 65. The City requests a declaratory judgement that it is a responsible agency for the
27 Project under CEQA, and that the District as lead agency may not interfere nor impede the City
28 from performing its duties as responsible agency.

1 **SIXTH CAUSE OF ACTION**

2 **(Violation of CEQA –Addendum to MND)**

3 66. The City hereby incorporates the allegations set forth in paragraphs 1 through 39
4 above.

5 67. The District’s approval of the Addendum and authorization to implement the
6 modified Project violates CEQA’s requirements in several respects, including *inter alia*:

7 a. The Addendum fails to identify the City as a responsible agency for the
8 Project.

9 b. The District violated CEQA’s requirement to consult with the City as a
10 responsible agency;

11 c. The District failed to provide adequate notice and opportunity to comment
12 on the Addendum and proposed modified Project in violation of CEQA Guideline section 15203;

13 d. The Addendum does not accurately nor adequately describe the changes to
14 the Project. For example, the Addendum does not disclose nor analyze the substantial
15 reorientation and movement of the proposed permanent float. The Addendum states the District
16 previously intended to request a lease amendment from the City for the temporary and permanent
17 structures, but then fails to explain this Project modification, including how the District intends to
18 obtain the legal entitlements necessary for the temporary and permanent components of the
19 modified Project that remain outside of the leased premises.

20 e. The District’s approval of the Addendum rather than a subsequent MND or
21 EIR was unlawful because the modifications to the Project are not minor or technical changes.

22 f. The District’s determination that a subsequent MND or EIR is not required
23 under Public Resources Code section 21166 and CEQA Guidelines section 15162 is not supported
24 by substantial evidence. The Addendum failed to analyze the potential Aesthetic and other
25 impacts resulting from the substantial reorientation and movement of the permanent float. The
26 Addendum also failed to analyze potential impacts from the newly identified and located 8,000
27 square foot construction/staging area, the significantly longer utility trench, and the impacts from
28 the temporary and permanent components of the Project now sought without a lease amendment

1 or City consent. Project changes, changed circumstances and new information trigger CEQA's
2 requirement that the District prepare a subsequent MND or EIR to analyze the modified Project's
3 potential impacts. Changed circumstances include, without limitation, the exponential increase in
4 the number of ferry passengers, and ferry passengers with bicycles at the Project site. New
5 information includes, without limitation, the District's identification of the size and location for
6 the temporary construction/staging area in the midst of the high density and heavily trafficked
7 Project site.

8 g. The District's approval of the Addendum was further unlawful because
9 there is evidence supporting a fair argument that Project changes not analyzed in the original
10 MND may cause significant environmental impacts, including significant traffic, traffic
11 circulation, parking, air quality, noise, land use/planning and growth inducing impacts.

12 h. The District's decision to "delete" the identified construction/staging area
13 from the Addendum in an attempt to avoid environmental analysis of potentially significant
14 environmental and public safety impacts in the heart of the City's historic downtown and
15 waterfront held in public trust violates CEQA's most fundamental procedural and substantive
16 mandates designed to prevent public agencies from sweeping stubborn environmental problems
17 and concerns under the rug. The District's action, among other things, unlawfully deferred
18 review of potential impacts until after the modified Project is approved, foreclosed proper
19 consideration of alternatives and mitigation measures in violation of CEQA Guidelines section
20 15004(b)(2)(B), and rendered the Project's description vague and unstable. Moreover, the
21 District's deletion of the construction and staging area from the Addendum did not remove or
22 delete this Project change from the Modified Project nor eliminate this new information as detailed
23 in the staff report and approved.

24 68. The District's actions therefore were arbitrary and capricious and in violation of
25 CEQAs requirements. The District has failed to proceed in the manner required by law, and its
26 determinations are not supported by substantial evidence. A writ of mandate is necessary to set
27 aside the District's approval of the Addendum and modified Project, and to compel the District to
28 comply with CEQA's mandates prior to proceeding with the Project. Additionally, a temporary

1 and permanent injunction must issue to prevent the District from implementing the Project, or
2 from seeking further approvals for the Project from any other agency pending compliance with
3 CEQA's mandates.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the City prays for Judgment against the District as follows:

6 1. As to the First Cause of Action: for a writ of mandate directing the District to set
7 aside, void or annul its September 2, 2016 determination, finding and/or decision repudiating the
8 City's status as responsible agency for the Project under CEQA, confirming the City's status as
9 responsible agency for the Project, directing the District to comply with CEQA's mandates and to
10 cease and desist from interference with the City's performance of its duties under CEQA as
11 responsible agency for the Project.

12 2. As to the Second Cause of Action: for a writ of mandate directing the District to
13 cease and desist from interfering with the City's rights and obligations as trustee under the Public
14 Trust Doctrine, confirming that the City has the right and duty under the Public Trust Doctrine to
15 consider the Project's consistency with and potential adverse effects to the public trust, as well as
16 the feasibility of alternatives and mitigation measures to mitigate any such adverse effects, and
17 may in turn approve, deny or condition approval on modifications to the Project.

18 3. As to the Third Cause of Action: for a declaratory judgment that: (1) the District
19 must obtain the City's written consent in order to proceed with additional permitting and
20 construction for the Project pursuant to Section 5.4 subsection (a) of the Lease because the Project
21 constitutes a "major alteration," and it is not a "replacement" within the meaning of that provision
22 in that it substantially improves, adds and increases the size of the existing Ferry Terminal; (2)
23 Alternatively, and/or additionally, the District must obtain the City's written consent in order to
24 proceed with additional permitting and construction for the Project pursuant to Section 5.4
25 subsection (a) because the Project constitutes "improvements" and/or "additions" within the
26 meaning of Section 5.4, subsection (a); and (3) Alternatively, if the Court concludes that the
27 District has no obligation to obtain the City's consent to the Project because it is a "replacement,"
28 and not a "major alteration," "improvement" or "addition" within the meaning of Section 5.4

1 subsection (a), the term “replacement” must be severed pursuant to Section 18.8 of the lease
2 Agreement because it is *ultra vires*, ceding full control of the public trust to the District in
3 violation of the City’s trust grant and the Public Trust Doctrine.

4 4. As to the Fourth Cause of Action: a declaratory judgment that the City did not
5 provide consent to the District’s Project pursuant to Section 5.4 subsection (a) of the Lease on
6 May 3, 2011. Alternatively, pursuant to Section 14.1 of the Lease, any such consent the City
7 provided on May 3, 2011 “shall not be deemed to waive or render unnecessary the [City’s]
8 consent to or approval of any subsequent act by the [District].”

9 5. As to the Fifth Cause of Action; a declaratory judgement that the City is a
10 responsible agency for the Project under CEQA, and that the District as lead agency must comply
11 with CEQA’s mandates and cease and desist from further interference with the City performance
12 of its duties as a responsible agency.

13 6. As to the Sixth Cause of Action, for writ of mandate directing the District to set
14 aside its approvals on May 26, 2017 of the Addendum and authorization to proceed with
15 implementation of the modified Project, and further directing the District to comply with CEQA’s
16 mandates as directed by this Court prior to proceeding with the Project.

17 6. For a stay, and preliminary and permanent injunction restraining the District and its
18 agents, employees, officers, and representatives from undertaking any activity to apply for, seek or
19 obtain additional permits or approvals for the Project from any agency, and further staying and
20 enjoining efforts to implement the Project in any way pending full compliance with the
21 requirements of CEQA, the Public Trust Doctrine and the Lease.

22 7. For costs of the suit;

23 8. For attorneys’ fees as authorized by Code of Civil Procedure section 1021.5,
24 Section 15.1 of the Lease and other provisions of law.

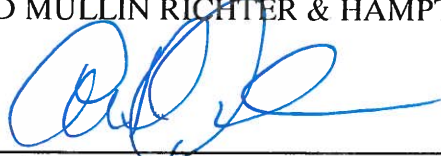
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1 9. For such other relief as the Court deems just and proper.

2 Dated: June 5, 2017

3 SHEPPARD MULLIN RICHTER & HAMPTON LLP

4
5 By:



6 _____
7 Arthur J. Friedman
8 Attorneys for Petitioner and Plaintiff
9 THE CITY OF SAUSALITO

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VERIFICATION

I, Adam Politzer, declare as follows:

I am the City Manager for the City of Sausalito.

I have read the foregoing **FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF** and I know the contents thereof. I am informed and believe that the matters stated therein are true and, on that ground, I allege that the matters stated therein are true.

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

Executed this 5th day of June, 2017, in Sausalito, California.


Adam W. Politzer

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PROOF OF SERVICE

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 Four Embarcadero Center, 17th Floor, San Francisco, CA 94111-4109.

On June __, 2017, I served true copies of the following document(s) described as **FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF** on the interested parties in this action as follows:

Kimon Manolius
Christopher D. Jensen
HANSON BRIDGETT LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Attorneys for GOLDEN GATE BRIDGE,
HIGHWAY AND TRANSPORTATION
DISTRICT

BY ELECTRONIC SERVICE: I electronically served the document(s) described above via File & ServeXpress, on the recipients designated on the Transaction Receipt located on the File & ServeXpress website (<https://secure.fileandservexpress.com>) pursuant to the Court Order establishing the case website and authorizing service of documents.

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

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

Alexander L. Merritt