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December 7, 2018

The Honorable Chief Justice Tani Cantil-Sakauye and
Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

**RE: *California Coastal Commission v. San Diego Unified Port District*, No. S252474:
Letter of the League of California Cities in Support of Petition for Review (Cal.
Rules of Court, rule 8.500(g))**

Honorable Chief Justice Cantil-Sakauye and Associate Justices:

The League of California Cities (“League”) respectfully submits this letter in support of the petition for review filed by the San Diego Unified Port District. The League urges this Court to grant review to determine the extent of the California Coastal Commission’s (“Commission”) authority to direct land use policy for those League member cities that rely on California’s 11 commercial ports.

This case resulted from the Port’s attempt to amend its certified Port Master Plan to allow construction of a 175-room mid-market hotel on San Diego Bay’s Harbor Island. The Commission refused to certify the Port’s proposed amendment, declaring the Port must instead pursue development of low-cost overnight accommodations like campgrounds, yurts, hostels, and budget motels on a site that has been unable to attract private investment for an upper-market hotel for many years. The trial court issued a writ directing the Commission to vacate its denial of certification, and the Commission appealed. The Court of Appeal reversed, directing judgment for the Commission, finding it acted within its statutory authority to deny certification and to direct the Port to pursue low-cost accommodations.

The Court should grant review of the Court of Appeal’s decision because:

- It expands the scope of the Commission’s authority to dictate land use decisions beyond the Legislature’s intent, thus invading the fundamental right of cities to choose appropriate land uses.
- It arbitrarily distinguishes four cities with ports governed by Port Master Plans from seven with ports governed by cities’ and counties’ Local Coastal Programs.

A. Interest of Amicus Curiae.

The League is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League's membership includes dozens of cities which are either within the coastal zone and therefore within the Coastal Commission's jurisdiction, or which are affected by activities within the coastal zone and the Commission's oversight. Some League member cities manage public ports, and some of those ports must develop Port Master Plans. This decision limits those cities' ability to develop and implement Port Master Plans and Local Coastal Programs that respond to the concerns of residents near California's coast.

B. Argument.

1. The Commission exceeded its statutory authority by conditioning approval of the Port's master plan amendment on a specific policy the Commission preferred.

The Commission is an executive agency with executive, quasi-legislative, and quasi-judicial authority. (*Marine Forests Society v. California Coastal Commission* (2005) 36 Cal.4th 1, 25.) Its authority to review local land use plans is limited to certifying compliance with the California Coastal Act ("Act"). (*Douda v. California Coastal Comm'n* (2008) 159 Cal.App.4th 1181, 1199 [Commission "has no power to force a local government to select one use that conforms to the policies of the Act over other uses that also conform"]; Pub. Resources Code, § 30714 ["The commission may not modify the [Port Master Plan] submitted as a condition of certification"]; Pub. Resources Code, § 30512.2, subd. (a) ["The commission's review of a land use plan shall be limited to its administrative determination that the land use plan submitted by the local government does, or does not, conform with the requirements of Chapter 3"].) The Commission interprets the Legislature's policy preference to the extent necessary to certify compliance, but there its quasi-legislative authority ends. (Pub. Resources Code, § 30714, subd. (b) ["The commission shall certify the [Port Master Plan] ... if the commission finds the developments are in conformity with all of the policies of Chapter 3"].)

Authority to direct land use policies lies with local government. (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 747.) Despite this black-letter rule, the Court of Appeal gave the Act "an 'expansive interpretation'" (Slip Op., p. 32) and found its provisions limiting Commission review of land use decisions do not apply to the Port because the Port is not a local government as defined in the Act (*id.* at p. 29). Instead, the Court of Appeal held a "master plan is precisely the sort of tool that requires the Commission's input and expertise for enforcing and furthering coastal policies" (*id.* at p. 34), contrary to the decisions holding the Commission does not have such power over other local governments.

This broad reading of the Act usurps the authority of coastal cities — especially the seven cities which own and operate ports — to set land use policy for the thousands of acres they manage and conflicts with the Act’s unambiguous prohibitions against the Commission imposing policy choices on local government. The Court should grant review to determine the reach of the Commission’s land use power over coastal cities — especially those which own and operate ports — or other dependent special districts charged with land management. This expansion of power affects both cities with ports and those near them, all of which rely on those ports and the trade they enable to provide jobs for residents and revenues to fund public services.

2. The Decision arbitrarily distinguishes cities with independent ports, which are governed by Port Master Plans, from city- or county-managed ports governed by city or county Local Coastal Plans.

Chapter Eight of the Coastal Act requires the ports of San Diego, Hueneme, Long Beach, and Los Angeles to adopt Port Master Plans. (Pub. Resources Code, § 30700.) Thus, the Court of Appeal’s decision gives the Commission more land use authority over these four ports and their cities and counties than the seven commercial ports not listed — Humboldt Bay, Oakland, Redwood City, Richmond, San Francisco, Stockton, and West Sacramento. These ports are governed by their parent city’s or county’s Local Coastal Plans and are therefore subject to more deferential Commission review. (Slip Op., p. 29.)

The seven communities that own and operate their ports thus enjoy greater land use autonomy than the four with independent ports. (Slip Op., pp. 25–27 [distinguishing authorities limiting Commission review of local coastal programs]; *id.* at p. 26 [“once an LCP has been approved by the Commission, a local government has discretion to choose what action to take to implement its LCP”].) But the Court of Appeal identifies no rational basis to distinguish these ports; ports and their associated activities affect the health of our ocean, coast and economy similarly throughout California. The Court of Appeal recognized the Legislature’s intent to give the Commission broad authority to fulfill its purpose — conservation of one of our most valuable public resources — but gives no reason for this arbitrary and unnecessary distinction the Legislature cannot have intended. The Court should grant review to reconcile cities’ and counties’ authority over their ports with Commission authority over port master plans.

C. Conclusion.

The Opinion unconstitutionally and needlessly conferred new legislative authority on the Commission, which infringes on the power this Court has preserved for cities and counties. The Port was established to manage San Diego Bay tidelands and determine appropriate land uses on behalf of its five member cities and the people of California. The Port and its member cities are best able to determine coastal policy within their respective jurisdictions. While the Commission

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may review such decisions, it may not direct local land use policy. The League believes the people of California are best served by preserving local government autonomy over their ports, a view the Legislature articulated in the Coastal Act. The Opinion errs to shift power over land use to the Commission, and the League therefore respectfully requests this Court to grant the Port's petition for review to determine the appropriate balance between Commission oversight of land uses near our coast and cities' power to control land uses that best reflect the needs and desires of the surrounding community.

Respectfully submitted,

THE LEAGUE OF CALIFORNIA CITIES®

By: /s/ Alison E. Leary
Alison E. Leary, SBN 305215
Deputy General Counsel

PROOF OF SERVICE

(Code Civ. Proc., §§ 1013a, 1013b, 2015.5)

STATE OF CALIFORNIA - COUNTY OF SACRAMENTO

I, the undersigned, declare that I am a citizen of the United States and am employed in the City and County of Sacramento, State of California. I am over the age of 18 and not a party to this action; my business address is: 1400 K Street, Suite 400, Sacramento, CA 95814.

On December 7, 2018, I served the document(s) described as: **LETTER OF THE LEAGUE OF CALIFORNIA CITIES® IN SUPPORT OF PETITION FOR REVIEW** in this action by the following methods addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

[X] (BY MAIL) I enclosed the above-referenced document(s) in a sealed envelope or package and placed the envelope for collection and mailing, following our ordinary business practices. I am “readily familiar” with the firm’s practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Sacramento, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[X] (BY ELECTRONIC SERVICE) By submitting an electronic version of the above-referenced document(s) to the Court's electronic filing system, TrueFiling, who provides electronic service to all parties and counsel of record who are registered with the Court's TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

Executed on December 7, 2018 at Sacramento, California.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

I declare that I am employed in an office of a member of the bar of the court at whose direction the service was made.

/s/ Janet M. Leonard
Janet M. Leonard

San Diego Unified Port District v. California Coastal Commission (Sunroad Marina Partners)
 California Supreme Court - Case Number S242474
 Fourth District, Division 1 - Case Number D072954

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<p>San Diego County Superior Court - Main Case Number: 37-2015-00034288-CU-WM-CTL</p> <p><i>Served by mail via U.S. Postal Service</i></p>	<p>Hon. Ronald Styn, Judge Presiding Clerk of the Superior Court Central Division — Hall of Justice 330 W. Broadway San Diego, CA 92101</p>
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