

Date of Hearing: July 14, 2025

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Isaac G. Bryan, Chair

SB 304 (Arreguín) – As Amended July 7, 2025

SENATE VOTE: Not relevant

SUBJECT: Public lands: City of Oakland: Port of Oakland: uses of after-acquired lands

SUMMARY: Lifts, until February 1, 2066, the use restrictions imposed by the granting statutes and the public trust doctrine for after-acquired lands in Jack London Square and authorizes the Port of Oakland (Port) to lease the after-acquired lands for any purpose subject to specified conditions.

EXISTING LAW:

- 1) Protects, pursuant to the common law doctrine of the public trust (Public Trust Doctrine), the public's right to use California's waterways for commerce, navigation, fishing, boating, natural habitat protection, and other water oriented activities. The Public Trust Doctrine provides that filled and unfilled tide and submerged lands and the beds of lakes, streams, and other navigable waterways (public trust lands) are to be held in trust by the state for the benefit of the people of California. (National Audubon Society v. Superior Court (1983) 33 Cal.3d 419)
- 2) Establishes that State Lands Commission (SLC) as the steward and manager of the state's public trust lands. SLC has direct administrative control over the state's public trust lands and oversight authority over public trust lands granted by the Legislature to local public agencies (granted lands). (Public Resources Code (PRC) 6009)
- 3) Authorizes SLC to enter into an exchange, with any person or any private or public entity, of filled or reclaimed tide and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the public trust for commerce, navigation, and fisheries, for other lands or interests in lands, if specified conditions are met. (PRC 6307)

THIS BILL:

- 1) Provides that, notwithstanding any other law, the use restrictions imposed by the granting statutes and the public trust doctrine are lifted until February 1, 2066, with respect to the after-acquired lands in Jack London Square, and authorizes the Port to lease the after-acquired lands for any purpose, subject to the conditions listed.
- 2) Requires the after-acquired lands shall remain subject to the terms and conditions of the granting statutes and the public trust doctrine.
- 3) Authorizes the Port to lease after-acquired lands in Jack London Square for a nontrust use only if it finds that all of the following conditions will be met:

- a) Port revenues derived from a nontrust use are used exclusively for trust-consistent purposes, including, but not limited to, seating, plazas, and wayfinding, and to support equitable public access and visitor-serving programming for a wide range of visitors;
 - b) Nontrust uses will not impair or harm existing public access or public trust uses and are intended to attract the statewide public to Jack London Square and the waterfront to promote increased use and enjoyment of the area;
 - c) The nontrust use lease is for fair market value;
 - d) The nontrust use lease is consistent with the terms of the granting statutes and public trust doctrine, except for use restrictions;
 - e) The nontrust use leases for each parcel are designed to result in a dynamic, well-balanced tenant mix that promotes, fosters, and enhances public trust uses in Jack London Square; and,
 - f) The term of such nontrust leases shall not extend beyond January 1, 2066.
- 4) Requires the Port to make the findings for each proposed nontrust lease at a public meeting, and prohibits the Port from delegating authority to make these findings to any other entity, including a ground lessee. Any nontrust lease or lease amendment entered into without the Port making the findings shall be void.
- 5) Requires, on February 2, 2066, the use restrictions of the granting statutes and public trust doctrine to resume for all after-acquired lands, and, as of that date the provisions of this bill become inoperative.
- 6) Requires, or before January 15, 2027, and every year thereafter until February 2, 2066, the Port to provide SLC with a detailed narrative statement including all of the following information:
- a) A list of tenants in Jack London Square, categorized as either consistent or inconsistent with the public trust use restrictions including details regarding the square footage for each tenant's lease area, lease term, and the overall square footage for each tenant-occupied structure;
 - b) A map showing the distribution and location of nontrust use leases;
 - c) The overall economic health and performance of Jack London Square;
 - d) Projections of the future economic performance of Jack London Square based on the then-current tenant mix;
 - e) A description of public access improvements at Jack London Square and how these improvements promote equitable public access to and use and enjoyment of the waterfront; and,
 - f) The use of revenue derived from nontrust use leases.

- 7) Authorizes the Port to apply to SLC to categorize additional buildings in Jack London Square as after-acquired lands. Authorizes SLC to categorize a building in Jack London Square as after-acquired, if it finds all of the following:
 - a) A single building occupies both original tidelands and submerged lands and after-acquired lands;
 - b) Fifty percent or more of the building occupies after-acquired lands;
 - c) The building was built before January 1, 2025; and,
 - d) The after-acquired portion of the parcel on which the building is located was acquired by the Port using public trust funds on or before January 1, 2025.
- 8) Requires, upon approval by SLC, effective on the date of SLC's finding, that building to be considered after-acquired land unless and until the building's footprint as it existed on January 1, 2025, is altered to encompass additional original tidelands and submerged lands.
- 9) Provides that, to the extent that this bill conflicts with the Stipulated Judgment, the Stipulated Judgment shall control, as applicable.
- 10) States the intent of the Legislature that SLC and the Port use best efforts with relevant parties to lift the use restrictions imposed by the Stipulated Judgment and to hold those restrictions in abeyance for after-acquired lands until February 1, 2066, after which the Stipulated Judgment applies in full force and effect.
- 11) States the intent of the Legislature that the provisions of this bill as designed to address the unique and limited circumstances of Jack London Square and that this act sets no precedent for any other granted lands or other public trust lands in the state.
- 12) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of the California Constitution because of the findings and declarations set forth in Section 1.
- 13) Provides that if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made.

FISCAL EFFECT: Due to substantial amendments made in the Assembly, costs are unknown.

COMMENTS:

1) Author's statement:

SB 304 addresses the critical need to modernize the Port of Oakland's public trust lands. By expanding flexibility in permitted uses in consultation with the State Lands Commission, this bill will revitalize the waterfront, promote business investment, enhance community programming, and ensure public access. The bill

reflects the Port's evolving land use goals and commitment to equitable waterfront revitalization.

- 2) **Public Trust.** The foundational principle of the common law Public Trust Doctrine is that it is an affirmative duty of the state to protect the people's common heritage in navigable waters for their common use. The traditional uses allowed under the Public Trust Doctrine were described as water-related commerce, navigation, and fisheries. As a common law doctrine, the courts have significantly shaped the Public Trust Doctrine in a number of important ways. Courts have found that the public uses to which sovereign lands are subject are sufficiently flexible to encompass changing public needs. The courts have also found that preservation of these lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments that provide food and habitat for birds and marine life, are appropriate uses under the common law Public Trust Doctrine. Courts have also made clear that sovereign lands subject to the Public Trust Doctrine cannot be sold into private ownership.

For more than 100 years, the Legislature has granted public trust lands to local governments so the lands can be managed locally for the benefit of the people of California. There are more than 70 local trustees in the state, including the ports of Los Angeles, Long Beach, San Diego, San Francisco, Oakland, Richmond, Benicia, and Eureka. While these trust lands are managed locally, SLC has oversight authority to ensure those local trustees are complying with the Public Trust Doctrine and the applicable granting statutes.

Every local jurisdiction that manages granted public trust lands must adhere to the Public Trust Doctrine. That's the seminal foundation and way that the state preserves public access and use of public lands.

- 3) **City of Oakland.** Beginning in 1852 and through a series of legislative grants from the state, the City was granted, in trust, sovereign tide and submerged lands located within its boundaries. Through the City's charter, portions of these public trust lands are within the Port and are managed by the City acting by and through its Board of Port Commissioners. The Port manages the granted public trust lands, which are the properties this bill addresses.
- 4) **Updates to Jack London Square.** The Port is seeking to promote the development, improvement, and economic revitalization of its public trust lands at Jack London Square. Jack London Square is a historic, mixed-use waterfront district within the Port that includes pedestrian-oriented retail, dining, and entertainment uses and a ferry terminal that reinforces the waterfront connection.

The Port explains that its ability to attract and retain public trust-consistent tenants at Jack London Square has been significantly impaired by external factors beyond its control, including the sharp decline in the tourism and hospitality sectors following the COVID-19 pandemic and the departure of all three of Oakland's professional sports teams—the Warriors, Raiders, and Athletics—which has diminished regional visitation and economic activity.

- 5) **Hitting pause.** The Legislature, under rare and unique circumstances, has provided a statutory framework for the leasing of granted public trust lands for non-trust uses by the

trustees grounded on findings that the lands are not required for and will not interfere with the uses and purposes of the granting statutes and public trust doctrine.

Portions of Jack London Square consist of property that is not original tide and submerged lands, title to which was not derived from the granting statutes, but were acquired with public trust funds derived from Port operations. These lands, known as after acquired lands, are held by the Port as assets of the statutory trust and accordingly are subject to the granting statute use restrictions, which incorporate public trust use restrictions, but they can be sold into private ownership for fair market value if they are no longer useful or needed for trust purposes.

The findings in the bill state, “Temporarily lifting the public trust use restrictions imposed by the granting statutes, including public trust doctrine use restrictions, on Jack London Square parcels that are wholly located on after acquired lands for a period of time, without removing the land from statutory trust ownership, has the potential to activate Jack London Square.

“Temporarily lifting the trust use restrictions on those buildings, including the portion located on granted tidelands and submerged lands, has the potential to further support the revitalization of Jack London Square and the incidental non-trust use of such lands will not interfere with public trust uses on the remainder of the granted lands at Jack London Square.”

The granted lands at Jack London Square constitute approximately 0.5% of the Port’s granted lands.

- 6) **Stipulated Judgement.** In 2002, the Port and developers entered into a development deal in the Jack London District. This included leases to construct a mixed-use commercial development, including the expansion of existing structures and construction of new structures, including infrastructure, on public trust parcels in the Jack London District. At least part of Jack London District – including along the waterfront – was rezoned to “community shopping commercial.”

The state argued that these parcels and development upon them were all subject to the public trust and could only be used consistent with the public trust – including on the after acquired lands to the extent that they remain held by the Port. The public trust does not include general commercial office space, non-visitor serving retail, movie theaters, or parking that does not primarily serve public trust uses. The Port disagreed.

Ultimately, the California Attorney General’s Office, SLC, the Port, and two developers reached an agreement that became a stipulated judgment filed with the Superior Court in Alameda County in February 2005 (Stipulated Judgment). According to the Stipulated Judgment, it “will have numerous benefits for the public trust, including, but not limited to – development of public trust lands in the Jack London Square District for public trust uses such as public walkways, view corridors, restaurants, small-scale retail shops serving visitors, hotels, and a public market featuring goods from California ports.” Commitments were also made to phase-out over time certain, presumably non-public trust consistent, uses of some of the parcels.

The Stipulated Judgment set out the agreed upon uses of the parcels going forward. In general, on the ground floor small scale (less than 5,000 square feet) of visitor-serving retail

is acceptable as are restaurants. Large-scale retail had to be connected with or serving the public trust for water-oriented commerce, navigation, and fisheries. In some locations, if, after a solid effort, an appropriate public trust-consistent tenant could not be found, a lease for general office space on the second floor could be entered into so long as it was for a limited period of time (15 – 25 years depending upon the location) and efforts were made, upon termination of the lease, to lease to a public trust-consistent use. In no instance could the lease extend longer than the 66 year maximum lease length. In some locations, the ground floor and upper floors were required to revert entirely to public trust uses upon the completion of the lease. The Stipulated Judgment allows for temporary non-public-trust-consistent uses for limited periods that were negotiated as part of the settlement.

Approximately 50% of the ground floor space in the Jack London District is currently vacant, which presents challenges to the vibrancy and economic development of the area. The Port has recently proposed allowing much more non-public trust consistent uses – particularly on the ground floor – including uses specifically excluded in the Stipulated Judgment.

- 7) **This bill.** SB 304 represents an agreement between the SLC and the Port to lift the use restrictions imposed by the granting statutes and Public Trust Doctrine until February 1, 2066, and authorizes the Port to lease after-acquired lands in Jack London Square for a non-trust use subject to the bill's specified conditions (see #5 under the 'This Bill' section).

The bill is not consistent with the Stipulated Judgment. It states that to the extent the bill conflicts with the Stipulated Judgment, the Stipulated Judgment shall control. The SLC prefers the applicable Stipulated Judgment provisions be held in abeyance for after-acquired lands while the trust use restrictions are lifted, and the bill requires all parties' best efforts to do so until February 1, 2066, after which the Stipulated Judgment applies in full force and effect.

REGISTERED SUPPORT / OPPOSITION:

Support

East Bay Economic Development Alliance
 City of Oakland
 County of Alameda
 Oakland Latino Chamber of Commerce
 Oakland Metropolitan Chamber of Commerce
 San Francisco Bay Area Water Emergency Transportation Authority

Opposition

None on file

Analysis Prepared by: Paige Brokaw / NAT. RES. /