San Diego County
Local Agency Formation Commission
Regional Service Planning | Subdivision of the State of California

SPECIAL MEETING AGENDA
SPECIAL DISTRICTS ADVISORY COMMITTEE

Friday, December 15, 2023
10:00 A.M.

County of San Diego Administration Center
1600 Pacific Highway, **Room 302**
San Diego, California 92101

Chair Kimberly Thorner
Vice Chair Jack Bebee

Ann Baldridge RCD of Greater SDC	James Gordon Deer Springs FPD	Dave McQuead Rancho Santa Fe FPD	Mike Sims Bonita-Sunnyside FPD
Jack Bebee Fallbrook PUD	Diane Hansen Palomar Health HCD	Marty Miller Vista ID	Oliver Smith Valley Center MWD
Paul Bushee Leucadia WWD	Albert Lau Santa Fe ID	Mark Robak Otay WD	Kimberly Thorner Olivenhain MWD
Jeff Egkan North County FPD	Hector Martinez South Bay ID	Joel Scalzitti Helix WD	

The Special Districts Advisory Committee is responsible for helping to inform the Commission on all germane items relating to San Diego LAFCO's regulatory and planning responsibilities affecting special districts.

The Committee will hold the December 15, 2023 meeting in person at the County of San Diego Administration Center (1600 Pacific Highway, **Room 302**, in San Diego). Three-hour visitor parking is available using the Ash Street entrance. In person attendance by the public is welcomed. The public may also watch, listen, and otherwise participate in the meeting remotely by any of the following options.

1. The public may watch and listen to the meeting live on YouTube using the link provided on our website homepage (www.sdlafco.org).

2. The public may watch, listen, and participate in the meeting by Zoom (https://zoom.us/) or by telephone at (669) 900-9128 using Meeting/Webinar ID: 895 6767 7168 and Passcode 508649. Please use the "raise your hand" function in Zoom or push *9 by telephone if/when you wish to speak. Then wait until your name is called before speaking.

   a) The public may provide eComments on any item by emailing to erica.sellen@sdcounty.ca.gov
      - eComments received before 8:00 A.M. on Friday, December 15, 2023, will be forwarded to the Committee and posted online before the meeting. They will also be referenced during the meeting.
      - eComments received during the meeting and before the subject item is concluded will be referenced and later posted online.

1. **10:00 A.M. – CALL TO ORDER BY CHAIR**

   a) **Roll Call**
   b) **Pledge Of Allegiance**

2. **AGENDA REVIEW**

3. **OPEN EXPRESSION**
   This time is reserved for any member of the public to address the Committee on germane topics that are not directly part of the agenda. This includes requests for future Committee topics. Individuals are limited to three minutes.

4. **CONSENT ITEMS**

   a) **Approval of Meeting Minutes for September 15, 2023 (action)**
   The Committee will consider draft summary minutes prepared for the last meeting held on September 15, 2023. Staff recommends approval as presented. (Pages 5-10)

   b) **Update on Adopted Workplan (information)**
   The Committee will receive an update on LAFCO's adopted workplan for 2023-2024 and status of the 30 calendared projects. Information only. (Pages 11-14)

   c) **Report on Active Proposals and Related Activities (information)**
   The Committee will receive a report identifying current proposals on file with LAFCO and anticipated filings based on ongoing discussions with proponents. Information only.
   (Pages 15-28)

5. **BUSINESS ITEMS**

   a) **Draft Policy on Out-of-Agency Services (discussion)**
   The Committee will review the newest version of a draft policy to govern out-of-agency service activities in San Diego County. The newest version is the fourth overall and builds on feedback provided by the Committee in September 2023 (second version) and Commission in October 2023 (third version), respectively. The preparation of the draft policy itself ties to the adopted workplan and premised on providing clear rules of engagement between local agencies and LAFCO with respect to the former complying with Government Code Section 56133 and receiving LAFCO approval before providing contract out-of-agency services. Staff anticipates drawing on the Committee feedback in presenting a final draft version to the Commission for action in February 2024. (Pages 29-46)

   b) **Establishing a Fee Waiver and/or Fee Reduction for Funding Agencies (discussion)**
   The Committee will review LAFCO's existing policies involving applicant fee waivers and reductions and potential merits therein to establish a new provision specific to funding agencies. The topic was recently discussed by LAFCO and done so at the request by Commissioner Willis to explore options to establish dedicated fee relief for funding agencies in filing applications with LAFCO. The Committee's discussion and feedback – which will include screening preliminary options identified by staff – will help inform potential recommendations to the Commission for future consideration. (Pages 47-56)

BUSINESS ITEMS CONTINUED…

c) **Pending Determination | Commission's Oversight Duties and the San Diego Unified Port District (information)**
The Committee will receive an update on a pending determination regarding LAFCO's oversight duties as they relate to the Port of San Diego – formally the San Diego Unified Port District. This includes reviewing a preliminary assessment performed by staff that tentatively concludes – and based on available information – the Port is a special district subject to LAFCO oversight. It similarly concludes the Port qualifies as an "independent" special district, and accordingly eligible to seat members on the Commission and responsible for proportionally paying part of the special districts' share of the LAFCO budget. Staff's preliminary assessment is qualified pending additional discussion with the Port. The preliminary assessment is being shared with the Committee for information with an invitation to provide feedback as staff proceeds with finalizing a determination for future presentation to the Commission.
(Pages 57-136)

6. **COMMITTEE MEMBER REPORTS**

7. **EXECUTIVE OFFICER REPORT**

8. **ADJOURNMENT**

Attest to Posting:

Erica Sellen
Committee Secretary

Blank for Photocopying

4a

AGENDA REPORT
Consent | Action

December 15, 2023

TO: Special Districts Advisory Committee

FROM: Erica Sellen, Commission Clerk

SUBJECT: **Approval of Meeting Minutes for September 15, 2023**

SUMMARY

The Special Districts Advisory Committee ("Committee") will receive action minutes prepared for the last meeting held on Friday, September 15, 2023. The minutes are in draft-form and being presented for formal approval with any corrections identified by the Committee.

BACKGROUND

The Ralph M. Brown Act was enacted in 1953 and establishes standards for the public to attend and participate in meetings of local government bodies. The "Brown Act" requires – and among other items – public agencies to maintain written minutes for qualifying meetings.

DISCUSSION

This item is for the Committee to consider approving action minutes prepared by the Committee Secretary for the September 15, 2023 meeting consistent with the Brown Act.

ANALYSIS

The attached action minutes for the September 15, 2023 meeting accurately reflect the Committee's deliberations as recorded by the Committee Secretary. A video recording of the meeting has also been posted online at www.sdlafco.org/meetings.

Administration:
Keene Simonds, Executive Officer
2550 Fifth Avenue, Suite 725
San Diego, California 92103
T 619.321.3380
E lafco@sdcounty.ca.gov
www.sdlafco.org

Chair Jim Desmond
County of San Diego
Joel Anderson
County of San Diego
Nora Vargas, Alt.
County of San Diego
Krista Becker
City of Solana Beach
Dane White
City of Escondido
John McCann, Alt.
City of Chula Vista
Vice Chair Stephen Whitburn
City of San Diego
Marni von Wilpert, Alt.
City of San Diego
Jo MacKenzie
Vista Irrigation
Barry Willis
Alpine Fire Protection
David A. Drake, Alt.
Rincon del Diablo
Andy Vanderlaan
General Public
Harry Mathis, Alt.
General Public

RECOMMENDATION

It is recommended the Committee approve the draft action minutes prepared for the September 15, 2023 meeting as presented and consistent with Alternative One in the proceeding section.

ALTERNATIVES FOR ACTION

The following alternatives are available to the Committee through a single motion:

Alternative One (recommended):
Approve the draft action minutes prepared for the September 15, 2023 meeting with any desired corrections or clarifications.

Alternative Two:
Continue to the next regular meeting and provide direction to staff as needed.

PROCEDURES

This item has been placed on the Committee's agenda as part of the consent calendar. A successful motion to approve the consent calendar will include taking affirmative action on the staff recommendation as provided unless otherwise specified by the Committee.

Respectfully,

Erica A. Sellen

Erica Sellen
Commission Clerk

Attachment: as stated

DRAFT
SAN DIEGO COUNTY LOCAL AGENCY FORMATION COMMISSION
SPECIAL DISTRICTS ADVISORY COMMITTEE
SPECIAL MEETING
September 15, 2023

San Diego County Administration Center
1600 Pacific Highway, Room 402
San Diego, California 92101

1. 9:30 A.M. – CALL TO ORDER BY CHAIR

Chair Kimberly Thorner called the in-person meeting to order at 9:34 a.m.

Item 1a
ROLL CALL

Chair Kimberly Thorner requested a roll call from the Committee Secretary.

Committee Members Present:
Chair Kimberly Thorner (Olivenhain MWD)
Ann Baldridge (RCD of Greater San Diego County)
Paul Bushee (Leucadia WWD)
James Gordon (Deer Springs FPD)
Diane Hansen (Palomar Health HCD)
Tom Kennedy (Rainbow MWD)
Albert Lau (Santa Fe ID)
Hector Martinez (South Bay ID)
Dave McQuead (Rancho Santa Fe FPD)
Mark Robak (Otay WD)
Joel Scalzitti (Helix WD)
Mike Sims (Bonita-Sunnyside FPD)
Oliver Smith (Valley Center MWD)

Committee Members Absent:
Vice Chair Jack Bebee (Fallbrook PUD)
Jeff Egkan (North County FPD)
Marty Miller (Vista ID)

The Committee Secretary confirmed a quorum with thirteen members present. The following members of San Diego LAFCO staff were present at roll call: Executive Officer Keene Simonds; Legal Counsel Aleks Giragosian; Assistant Executive Officer Priscilla Mumpower; Local Government Analyst II Carolanne Ieromnimon; Local Government Analyst I Michaela Peters; GIS Analyst Dieu Ngu; Consultant Adam Wilson; and Executive Assistant Erica Sellen serving as Committee Secretary.

Item 1b
PLEDGE OF ALLEGIANCE

Tom Kennedy (Rainbow MWD) led the Pledge of Allegiance.

2. AGENDA REVIEW

Chair Kimberly Thorner asked the Executive Officer if there were requests to remove or rearrange items on the agenda. The Executive Officer stated Item 5c will be taken out of order and proceed ahead of Item 5b.

3. OPEN EXPRESSION

Chair Kimberly Thorner asked if there were any members of the public who wished to address the Committee on a germane topic that is not directly part of the agenda.

No comments or announcements were made by the Committee members present.

The Committee Secretary confirmed there were no pre-registered speakers and no live email comments.

4. CONSENT ITEMS

a) Approval of Meeting Minutes for March 17, 2023 (action)
The Committee considered draft summary minutes prepared for the last meeting held on March 17, 2023. Staff recommends approval as presented.

**

On motion by Paul Bushee and seconded by Tom Kennedy, the Committee unanimously approved the minutes for the March 17, 2023 meeting.

b) Update on Adopted Workplan for FY2024 (information)
The Committee received an update on LAFCO's adopted workplan for 2023-2024 and status of the 30 calendared projects. Information only.

c) Current Proposals and Related Items (information)
The Committee received a report identifying current proposals on file with LAFCO and pending submittals anticipated in the near-term. Information only.

5. BUSINESS ITEMS

a) SALC 1.0 Review: Agricultural Trends and Related Policy Opportunities (discussion)
The Committee received a final report tied to LAFCO's two-year $250,000 planning grant from the State of California and its Sustainable Agricultural Lands Conservation (SALC) program. The final report and its recommendations – will be presented by co-applicant Resource Conservation District (RCD) of Greater San Diego County. Discussion and feedback.

Staff presentation provided by Local Government Analyst I Michaela Peters along with Joel Kramer, RCD of Greater San Diego County.

The Committee Secretary confirmed there were no pre-registered speakers and no live email comments.

Committee discussion followed.

BUSINESS ITEMS CONTINUED…

b) **SALC 2.0 Preview: Greening Agriculture: Market Analysis to Inform and Support Economically Sustainable Small Farming in San Diego County (discussion)**
The Committee received a preview of LAFCO's new two-year $500,000 planning grant from the State of California and its Sustainable Agricultural Lands Conservation (SALC) program. Work was initiated in July 2023 and involves performing market analysis for existing and emerging crops – with focus on small-farms – while also identifying government opportunities to help bridge economic gaps. Discussion and feedback.

Staff presentation provided by Local Government Analyst I Micheal Peters along with Assistant Executive Officer Priscilla Mumpower.

The Committee Secretary confirmed there were no pre-registered speakers and no live email comments.

Committee discussion followed.

c) **Draft Policy Establishment on Out-of-Agency Services (discussion and possible action)**
The Committee continued its review of a draft policy to govern outside service requests for cities and special districts under Government Code Section 56133. The draft policy has been prepared as part of LAFCO's adopted workplan and responds to growing attention towards out-of-agency services and related local controversies. The draft has been further refined based on Committee input provided at the December 2022 meeting. The item is being presented for discussion and possible action with respect to making recommendations to the Commission.

Staff presentation provided by Local Government Analyst II Carolanne Ieromnimon along with Executive Officer Keene Simonds highlighting key provisions.

Committee discussion followed with a focus on the proposed provisions identified as 3A of the draft policy to make explicit the Commission determines exemption eligibility.

The Committee Secretary confirmed there were no pre-registered speakers and no live email comments.

**

On motion by Paul Bushee and seconded by Oliver Smith, the Committee unanimously approved to make a formal recommendation to offer its qualified support for the proposed draft with the removal of 3A as well as adding training and legal to the local exempted activities.

d) **LAFCO Performance Measurements: Financial Standing (discussion)**
Due to time constraints, Chair Thorner pulled this agenda item to a future date and was not heard by the Committee.

e) **Update on Fallbrook-Rainbow Reorganizations (discussion)**
The Committee received an update on the status of the coordinated reorganization proposals filed by Fallbrook Public Utility District and Rainbow Municipal Water District to detach from the County Water Authority and annex to Eastern Municipal Water District.

BUSINESS ITEMS CONTINUED…

Item 5e Continued
The update follows the Committee's advisory review of the proposals in March 2023 and subsequent actions by the Commission in July 2023. Discussion only. No staff report.

Assistant Executive Officer Priscilla Mumpower provided an update to the Committee.

Committee discussion followed.

The Committee Secretary confirmed there were no pre-registered speakers and no live email comments.

6. COMMITTEE MEMBER REPORTS

Joel Scalzitti, Tom Kennedy, Mark Robak, and Mike Sims provided reports to the Committee.

Chair Thorner congratulated Mr. Kennedy on his upcoming retirement and thanked him for his service on the Committee.

7. LAFCO EXECUTIVE OFFICER REPORT

None

8. ADJOURNMENT

With no further business, the Special Districts Advisory Committee meeting was adjourned at 11:36 a.m.

Attest:

Erica Sellen
Committee Secretary

4b

AGENDA REPORT
Consent Item | Information

December 15, 2023

TO: Special Districts Advisory Committee

FROM: Carolanne Ieromnimon, Analyst II

SUBJECT: **Update on Adopted Workplan**

SUMMARY

The Special Districts Advisory Committee ("Committee") will receive a progress report on accomplishing the 30 priority projects set in the adopted workplan for 2023-2024. More than one half – 16 of 30 – of all priority projects have been substantively initiated through the first four full months with six either complete or nearing completion. The item is provided to the Committee for information only.

BACKGROUND

San Diego LAFCO's current fiscal year workplan was adopted at a noticed hearing held in May 2023. The workplan is a multi-year planning tool that is developed and updated annually. The current workplan includes 30 projects and is divided into two distinct categories – statutory and administrative – along with priority assignments set by the Commission. Internal amendments to reset priorities and advance the placement of municipal service reviews on the San Diego County Water Authority and healthcare districts were approved in August.

DISCUSSION

This item provides the Committee with an update on LAFCO's activities for the current fiscal year. This includes staff assigning one of four status categories to projects ranging from pending to complete and detailed in Attachment One.

Administration:
Keene Simonds, Executive Officer
2550 Fifth Avenue, Suite 725
San Diego, California 92103
T 619.321.3380
E lafco@sdcounty.ca.gov
www.sdlafco.org

Chair Jim Desmond
County of San Diego
Joel Anderson
County of San Diego
Nora Vargas, Alt.
County of San Diego
Kristi Becker
City of Solana Beach
Dane White
City of Escondido
John McCann, Alt.
City of Chula Vista
Vice Chair Stephen Whitburn
City of San Diego
Marni von Wilpert, Alt.
City of San Diego
Jo MacKenzie
Vista Irrigation
Barry Willis
Alpine Fire Protection
David A. Drake, Alt.
Rincon del Diablo
Andy Vanderlaan
General Public
Harry Mathis, Alt.
General Public

ANALYSIS

None.

RECOMMENDATION

This item is presented to the Committee for information only.

ALTERNATIVES FOR ACTION

None.

PROCEDURES

This item has been placed on the Committee's agenda as part of the consent calendar. A successful motion to approve the consent calendar will include taking affirmative action on the staff recommendation unless otherwise specified by the Committee.

Respectfully,



Carolanne Ieromnimon
Analyst II

Attachment:

1) 2022-2023 Workplan with Status Notations

ADOPTED WORKPLAN FOR FY2023-2024

As Amended

Priority	Level	Type	Project	Description	Status
Ongoing	...	Statutory	Applicant Proposals and Requests	Prioritize resources to address all applicant proposals and related requests	
Ongoing	...	Administrative	Targeted LAFCO Presentations	Coordinate timely public outreach; emphasis on informing stakeholders ahead of MSR work	
Ongoing	...	Statutory	Workplan and Budget Management	Actively manage the workplan and budget resources with quarterly updates to the Commission	
1	High	Statutory	MSR | CWA-MET	Initiate scheduled review of wholesale water suppliers – CWA (comprehensive) and MET (abbreviated)	
2	High	Statutory	MSR | Healthcare Districts	Initiate a comprehensive study of the four healthcare districts in San Diego County	
3	High	Administrative	Recruit, Hire + Support Staff	Ensure all 9.0 budgeted positions are filled in a timely manner with ongoing resource support	
4	High	Administrative	Commissioner Onboarding	Create onboarding resources and related training for new and continuing Commissioners	
5	High	Administrative	Online Accounting	Transition QuickBooks accounting from desktop to online platform + make use of public-facing features	
6	High	Administrative	Policy | Personnel: Part I	Develop and approve a scope of work to guide update to personnel policies to reflect best practices	
7	High	Administrative	Policy | Personnel: Part II	Complete a comprehensive update to LAFCO's personnel policies	
8	High	Statutory	MSR | Oceanside Region	Complete the scheduled reviews of the City of Oceanside, Oceanside SC Harbor District, and Moreno Hills CSD	
9	High	Statutory	MSR | Carlsbad Region	Complete the scheduled reviews of the City of Carlsbad, Carlsbad MWD, and Leucadia WWD	
10	High	Administrative	SALC Planning Grant 2.0	Initiate two-year grant (contracts, etc.) to expand SALC 1.0 to establish ag costs/revenues with gap analysis	
11	Medium	Administrative	RCD Ad Hoc Committee: Year Two	Approve scope of work for Year Two activities and proceed accordingly towards completion	
12	Medium	Statutory	Policy | Out-of-Agency Services	Complete policy establishment to guide approval process for out-of-agency services (G.C. 56133)	
13	Medium	Statutory	MSR | San Marcos Region	Complete the scheduled reviews of the City of San Marcos, Marcos FPD, & Vallecitos WD	
14	Medium	Statutory	MSR | Vista Region	Complete the scheduled reviews of the City of Vista, Vista ID, Vista FPD, & Buena SD	
15	Medium	Administrative	White Paper | Public Recreation Opportunities	Evaluate potential governance models involving San Diego-owned reservoirs in unincorporated areas	
16	Medium	Administrative	White Paper | Growth Management + Housing	Evaluate growth management policies + connectivity between LAFCO, County, and SANDAG	
17	Medium	Administrative	Special Districts Advisory Committee	Provide administrative support to Advisory Committee and hold no less than three formal meetings in FY	
18	Medium	Administrative	Cities Advisory Committee	Provide administrative support to Advisory Committee and hold no less than two formal meetings in FY	
19	Medium	Administrative	Website Content Expansion	Proceed with content expansion for newly redesigned LAFCO website with multi-media enhancements	
20	Medium	Administrative	2022-2023 Audit	Complete outside audit of financial statements for FY2023	

Priority	Level	Type	Project	Description	Status
21	Low	Statutory	Legislative Proposal | G.C. 56133	Continue work to support amendment clarifying authority to determine out-of-agency service exemptions	
22	Low	Statutory	Policy | Applicant Procedures	Update and streamline application materials and establish protocols in terminating proposals	
23	Low	Statutory	MSR | Encinitas Region	Initiate a regional study covering the City of Encinitas + San Dieguito WD et al.	
24	Low	Statutory	MSR | Del Mar-Solana Beach Region	Initiate a regional study covering the Cities of Del Mar and Solana Beach + Santa Fe ID et al.	
25	Low	Statutory	Legislative Proposal | G.C. 56430	Sponsor and/or facilitate amendment establishing community engagement enhancements in MSR statute	
26	Low	Administrative	Service + Fiscal Indicators	Develop online browser feature to depict service + fiscal indicators among local agencies in San Diego County	
27	Low	Administrative	White Paper | School Districts	Evaluate scope and scale of school districts + their baseline capacities for reference in MSRs	
28	Low	Administrative	Liaison with Local Tribes	Establish communication protocols with local tribes with respect to shared interests in regional services	
29	Low	Administrative	Annual Local Agency Directory	Update and publish an annual local agency directory subject to LAFCO oversight	
30	Low	Administrative	White Paper | Community Choice Aggregations	Evaluate scope and scale of CCAs and their operations in San Diego County and connectivity to LAFCO	
	Bullpen	Statutory	Policy Review | Island Annexations	Consider options to define "substantially surrounded" and provide related mapping services	
	Bullpen	Administrative	White Paper | Garbage Services	Evaluate the scope and scale of garbage collection services and possible governance alternatives	
	Bullpen	Administrative	White Paper | Homeless Services	Evaluate the scope and scale of homeless services and possible governance alternatives	
	Bullpen	Administrative	LAFCO Workshop	Organize a Commission Workshop to discuss core responsibilities + powers and implementing preferences	
	Bullpen	Administrative	Public Access Television	Broadcast LAFCO meetings on local government channels	
	Bullpen	Statutory	MSR | Pauma Valley Region	Initiate a regional study covering the north county special districts in the Pauma/Rincon communities	
	Bullpen	Administrative	SOI/MSR Annual Report	Update and publish an annual report documenting all recorded municipal service review and sphere of influence actions	
	Bullpen	Statutory	Policy | Fee Schedule	Review and update fee schedule to sync with current costs and related considerations	
	Bullpen	Statutory	Policy | CEQA Guidelines	Review and update existing implementing guidelines relative to current statute and best practices	
	Bullpen	Administrative	County Planning Groups	Monitor regular meetings of the County's 28 Planning and or Sponsor Groups and directly engage as appropriate	
	Bullpen	Statutory	Disadvantaged Unincorporated Communities	Update DUC mapping designations (DUC) in San Diego County based on current census information	
	Bullpen	Administrative	Local Agency Finder Tool	Develop online feature for users to enter address to identify all overlapping local jurisdictions (cities and districts)	
	Bullpen	Administrative	Southern California LAFCOs	Participate in quarterly meetings with other Southern California LAFCOs and related projects and/or trainings	
	Bullpen	Administrative	CALAFCO	Participate in CALAFCO sponsored programs and related trainings (conferences, workshops, committees, etc.)	
	Bullpen	Statutory	Policy | Commission Rule No. 4	Modernize Rule No. 4 and its provisions to regulate special districts' service functions and classes	
	Bullpen	Statutory	Escondido Region Governance Study	Study options to consolidate (functional and political) the City of Escondido and Rincon del Diablo MWD	
	Bullpen	Administrative	White Paper | JPAs	Evaluate the status of JPA filings in San Diego County relative to LAFCO's task in SB 1261	
	Bullpen	Statutory	Policy | Cities Advisory Committee	Coordinate with CAD in updating bylaws and related procedures to sync with current member interests/priorities	
	Bullpen	Statutory	Policy | Special Districts Advisory Committee	Coordinate with SDAC in updating bylaws and related procedures to sync with current member interests/priorities	

Complete | Near Complete | Underway | Pending

4c

AGENDA REPORT
Consent | Information

December 15, 2023

TO: Special Districts Advisory Committee

FROM: Michaela Peters, Analyst I

SUBJECT: **Report on Active Proposals and Related Activities**

SUMMARY

The Special Districts Advisory Committee ("Committee") will receive a status report on the 32 active proposals currently on file with San Diego LAFCO as well as anticipated filings based on ongoing discussions with proponents. The item is for information.

BACKGROUND

Processing Procedures and Timelines

LAFCO proceedings for jurisdictional changes are generally initiated by outside applicants through petitions (landowners or voters), and to a lesser degree by resolutions (local agencies). LAFCOs may also initiate jurisdictional changes to form, consolidate, or dissolve special districts if consistent with the recommendations of approved municipal service reviews. Most jurisdictional change filings take three to five months before they are scheduled for hearing. Applications for outside-of-agency service approvals – which are subject to separate procedures – generally take two months to process.

Administration:
Keene Simonds, Executive Officer
2550 Fifth Avenue, Suite 725
San Diego, California 92103
T 619.321.3380
E lafco@sdcounty.ca.gov
www.sdlafco.org

Chair Jim Desmond
County of San Diego
Joel Anderson
County of San Diego
Nora Vargas, Alt.
County of San Diego
Kristi Becker
City of Solana Beach
Dane White
City of Escondido
John McCann, Alt.
City of Chula Vista
Vice Chair Stephen Whitburn
City of San Diego
Marni von Wilpert, Alt.
City of San Diego
Jo MacKenzie
Vista Irrigation
Barry Willis
Alpine Fire Protection
David A. Drake, Alt.
Rincon del Diablo
Andy Vanderlaan
General Public
Harry Mathis, Alt.
General Public

DISCUSSION

This item provides the Committee with an update on active proposals on file with San Diego LAFCO. The item also – and for telegraphing purposes of future workload – identifies pending proposals staff anticipates being filed with LAFCO in the near term based on discussions with local agencies and/or other parties.

All active and pending proposals are outlined in Attachment One.

ANALYSIS

None.

RECOMMENDATION

This item is presented to the Committee for information only.

ALTERNATIVES FOR ACTION

None.

PROCEDURES

This item has been placed on the Committee's agenda as part of the consent calendar. A successful motion to approve the consent calendar will include taking affirmative action on the staff recommendation unless otherwise specified by the Committee.

On behalf of staff,

Michaela Peters

Michaela Peters
Analyst I

Attachment:

1) Active and Pending Proposals as of December 8, 2023

	File Number	Proposal Name | Affected Agencies	Project Manager	Proposal Summary
ACTIVE PROPOSAL APPLICATIONS | PENDING COMMISSION ACTION				
1	RO06-17	"Tobacco Road Reorganization" - City of Escondido: Annexation	Staff	Application submitted in March 2006 by landowner petition to annex six parcels to the City of Escondido. The affected territory comprises six parcels located along Tobacco Road. The application filing fulfilled an earlier Executive Officer approval in 2006 to authorize the City of Escondido to extend outside wastewater service to two of the six subject parcels due to failing septic systems. (The other four subject parcels are included in the proposal to provide connectivity to the existing City boundary.) The current number of residents within the affected territory is unknown. The application remains incomplete pending submittal of additional documentation and related information to complete the administrative review. The proposal is subject to formal abandonment pending the anticipated action by the Commission to approve authorizing policies.
2	RO08-09	"South Mollison Ave-Snyder Reorganization" - City of El Cajon: Annexation	Staff	Application submitted in May 2008 by landowner petition for a proposed annexation to the City of El Cajon. The affected territory includes approximately 1.25 acres and is subject to a proposed multi-family residential project. It is unknown whether there are any current residents within the affected territory. The application remains incomplete pending submittal of additional documentation and related information necessary to complete the administrative review. The proposal is subject to formal abandonment pending the anticipated action by the Commission to approve authorizing policies.
3	DA08-10	"Avocado Way-Potter Annexation" - Vallecitos WD: Annexation	Staff	Application submitted in March 2008 by landowner petition requesting annexation of to the Vallecitos Water District (WD) for purposes of receiving public wastewater services. The affected territory comprises two parcels developed with single-family residences located along Avocado Way. The number of current residents within the affected territory is unknown. The application remains incomplete pending submittal of additional documentation and related information necessary to complete the administrative review. The proposal is subject to formal abandonment pending the anticipated action by the Commission to approve authorizing policies.

	File Number	Proposal Name | Affected Agencies	Project Manager	Proposal Summary
4	RO08-15 SA08-15	"Crestlake Estates Reorganization" - San Diego County SD: Annexation - Lakeside FPD: Annexation	Staff	Application submitted in May 2008 by landowner petition requesting a reorganization to accommodate wastewater, fire protection, and ambulance services for an approved Tentative Map allowing the development of 60 single-family residences. It is unknown if there are any current residents. The affected territory lies within all three subject agencies' spheres of influence: San Diego County Sanitation District (SD); Lakeside Fire Protection District (FPD); and County Service Area (CSA) No. 69. The application remains incomplete pending submittal of additional documentation and related information necessary to complete the administrative review. The proposal is subject to formal abandonment pending the anticipated action by the Commission to approve authorizing policies.
5	DA12-02	"Lorch Annexation" - Borrego WD: Annexation	Staff	Application submitted in March 2012 by landowner petition to annex approximately 9.4 acres to the Borrego Water District (WD) to provide water service to one parcel within the District's sphere. It is unknown how many residents are currently within the affected territory. Application deemed incomplete in an April 2012 status letter. A new status letter was sent in January 2018 stating the proposal will be considered abandoned unless notified otherwise. Borrego WD responded to the letter and has reinitiated discussions with the landowner regarding possible service terms. Discussions continue.
6	DA16-10	"CSA 17 Harmony Grove Annexation" - CSA 17: Annexation	Carolanne Ieromnimon	Application submitted in May 2016 by resolution from the County of San Diego to annex approximately 3,600 acres to County Service Area (CSA) No. 17 for ambulance service and done so as a cross-condition of the Commission dissolving CSA No. 107 in 2015. The affected territory is entirely unincorporated and comprises portions of the Elfin Forest and Harmony Grove communities with an estimated resident population of 29,995. The proposal remains incomplete due to a variety of reasons and marked by opposition from the CSA No. 17 Advisory Committee. Staff continues to engage the County, Advisory Committee, and other stakeholders with the objective of fulfilling the Commission's earlier directive.
7	RO16-11	"Rancho Hills Reorganization" - Rancho Santa Fe CSD: Annexation - Olivenhain MWD: Expansion of Latent Power Area - Olivenhain MWD: Latent Sphere Amendment	Michaela Peters	Application submitted in October 2016 to annex a portion of a 37-lot residential subdivision titled "Rancho Hills" to Rancho Santa Fe CSD for wastewater service. A concurrent latent power expansion for Olivenhain MWD is needed to accommodate sewer to the remaining project site. The proposal was deemed incomplete in November 2016 status letter. Applicant has requested the proposal processing be placed on hold. The application is administratively paused due to incomplete and pending receipt of additional documentation and information from the applicant to complete staff's analysis. Communications remain ongoing.

	File Number	Proposal Name | Affected Agencies	Project Manager	Proposal Summary
8	RO19-04	"Ortega – Old Highway 80 Change of Organization" - San Diego County SD: Annexation	Carolanne Ieromnimon	Application submitted in February 2019 by landowner petition to annex approximately 5.07 acres to the San Diego County Sanitation District (SD) for wastewater service. The affected territory comprises two parcels presently developed with single-family residences with an unknown number of residents. The purpose of the proposal is to connect sewer services for a proposed office/warehouse building development. The submitted proposal application is incomplete pending receipt of additional documentation and related information to complete the administrative review.
9	SA19-26 RO19-26 OAS19-26	"Valiano - Eden Valley Reorganization" - City of Escondido: Extraterritorial Sewer - City of Escondido: Sphere Amendment - San Marcos FPD: Annexation - Rancho Fe FPD: Detachment - Rancho Fe FPD: Sphere Amendment	Michaela Peters	Application submitted in November 2019 jointly by landowner petition and the City of Escondido and involves a reorganization and outside-of-agency service agreement as part of the "Valiano" planned development in Harmony Grove. The reorganization involves the concurrent annexation of approximately 10.8 unincorporated acres to San Marcos FPD and detachment from Rancho Santa Fe FPD and related sphere amendments. The outside-of-agency service agreement approval request involves the extension of wastewater from the City of Escondido for approximately 82.9 unincorporated acres with related sphere amendments to add to Escondido and remove from San Marcos. The application is administratively paused due to incomplete and pending receipt of additional documentation and information from the applicant to complete staff's analysis. Communications remain ongoing.
10	CO21-09	"Otay Lakes Road Change of Organization" - City of Chula Vista: Annexation	Michaela Peters	Application submitted in October 2022 by landowner petition to annex approximately 1,870 acres of unincorporated territory to the City of Chula Vista. (The petitioners originally filed an application in October 2021 seeking approval to annex into the San Diego County Sanitation District. This previous application has since been withdrawn.) The affected territory comprises 6 parcels within the Baldwin and Moller communities and are presently undeveloped with no residents. The proposal is intended to facilitate a conditional development approval to construct 1,938 residential units with various ancillary uses as part of the "Otay Ranch Resort Village 13" project. The submitted proposal application is incomplete and pending receipt of additional documentation and information from the applicant to complete staff's analysis.
11	CO22-04	"AJX Homes - Carmichael Change of Organization" - City of La Mesa: Annexation - City of La Mesa: Sphere Amendment	Carolanne Ieromnimon	Application submitted in February 2022 by landowner petition and involves annexation of approximately 0.3 acres to City of La Mesa for wastewater service. The affected territory is developed with a single-family residence and the landowner intends to update the existing site from a septic system to public wastewater system. The proposal is scheduled for consideration by the Commission at its February 5th, 2024 meeting.

	File Number	Proposal Name | Affected Agencies	Project Manager	Proposal Summary
12	RO22-11	"Tummala-Rincon MWD Reorganization" - Rincon del Diablo MWD: Annexation - Metropolitan Water District: Annexation - San Diego CWA: Annexation	Michaela Peters	Application submitted in October 2022 by landowner petition and involves annexation of approximately 20 acres of unincorporated territory to make available public water services. The affected territory is currently vacant and undeveloped. The proposal purpose is to position the landowner to proceed in the future with a development plan with the County of San Diego. The submitted proposal application is incomplete pending receipt of additional documentation and related information to complete the administrative review.
13	RO23-01	"Tucker-Valley Road Reorganization" - National City: Annexation - South Bay ID: Detachment - Bonita FPD: Detachment - Bonita FPD: Sphere Amendment - CSA No. 135: Detachment	Carolanne Ieromnimon	Application submitted in November 2022 by landowner petition and involves annexation of approximately 35.3 acres of unincorporated territory to the San Diego County Sanitation District to make available public water and wastewater services. The affected territory is currently vacant and undeveloped. The proposal purpose is to position the landowner to proceed in the future with a development plan to grade the land for future industrial and outdoor storage uses. The submitted proposal application is incomplete pending receipt of additional documentation and related information to complete the administrative review.
14	OAS23-03	"Bryant-Felicita Road Outside-of-Agency Service Agreement" - City of Escondido: OAS	Priscilla Mumpower	Application submitted in February 2023 by landowner petition and involves an outside-of-agency service agreement for wastewater services to a single-family residence totaling 0.4 acres as a remedy to a failing septic system. The Executive Officer administratively approved the service request on February 22, 2023. The proposal is currently under administrative review and considered incomplete at this time.
15	CO23-09	"City of Carlsbad Change of Organization" - Leucadia WD: Detachment	Carolanne Ieromnimon	Application submitted in July 2023 by resolution from the City of Carlsbad to detach 99.0 acres of incorporated territory from the Leucadia Wastewater District. The affected territory is presently inhabited and developed with multiple residences with no plans for future development. The proposal purpose is to better utilize existing wastewater infrastructure provided by the City of Carlsbad. The proposal is currently under administrative review and considered incomplete at this time.

	File Number	Proposal Name | Affected Agencies	Project Manager	Proposal Summary
16	CO23-10	"Glen Abbey Drive-Bonita Road Change of Organization" - San Diego County SD: Annexation	Michaela Peters	Application Submitted in July 2023 by landowner petition and involves annexation of approximately 109.50 acres to the San Diego County Sanitation District (SD) to make available public wastewater services. The affected territory consists of a cemetery and funeral home as well as several mausoleums. The proposal purpose is to position the landowner in the future to proceed with the consolidation of the existing mausoleums into one mausoleum. The proposal is scheduled for consideration by the Commission at its February 5th, 2024 meeting.
17	RO23-11	"Nencini Associates-Jonel Way Reorganization" - San Diego County SD: Annexation - City of Chula Vista: Detachment	Carolanne Ieromnimon	Application submitted in July 2023 by landowner petition and involves annexation of approximately 20.6 acres to the San Diego County Sanitation District (SD) with concurrent detachment from the City of Chula Vista for the primary purpose of establishing sewer service. The affected territory is partially developed with one single-family residence, with plans to develop 7 additional single-family residences through subdivision. The proposal is scheduled for consideration by the Commission at its February 5th, 2024 meeting.
18	CO23-12	"Twin Oaks Valley Winery Change of Organization" - Vallecitos WD: Annexation	Michaela Peters	Application submitted in September 2023 by landowner petition and involves annexation of approximately 4.35 acres to the Vallecitos Water District with for the primary purpose of establishing sewer service. The affected territory is developed with one single-family residence, with plans to develop a full-service winery – including a tasting room, wine production space, restroom(s), etc. The proposal is currently under administrative review and considered incomplete at this time.
19	CO23-13	"Sky Ranch – Helix Water District Reorganization" - Helix WD: Detachment - Padre Dam MWD: Annexation	Carolanne Ieromnimon	Application submitted in September 2023 by resolution of the Helix Water District to detach approximately 27 acres of land with conforming sphere of influence amendments. The affected territory presently comprises 3 existing single-family residences with no additional plans of development. The proposal purpose is to remove the affected territory from the Helix WD boundary, given the territory is already sufficiently served by the Padre Dam MWD. The proposal is currently under administrative review and considered incomplete at this time.

	File Number	Proposal Name | Affected Agencies	Project Manager	Proposal Summary
ACTIVE PROPOSALS | POST COMMISSION ACTION				
20	SA16-20 LP16-20	"CSA 135 Islands Reorganization" - CSA 135 – LP Fire Area: Latent Powers Expansion - Bonita-Sunnyside FPD: Annexation - Lakeside FPD: Annexation - San Miguel FPD: Annexation - Ramona MWD: Annexation	Staff	Proposal submitted November 2016 by resolution of the San Diego County Fire Authority. Involved annexation of remaining unserved Islands 2, 3, and 4 via reorganization of local fire service territory among five local agencies: CSA 135; Bonita-Sunnyside FPD; Lakeside FPD; Ramona MWD; and San Miguel FPD. Reorganization involved annexation to the subject agencies and expansion of CSA No. 135's latent powers to provide fire protection and emergency medical services to three unincorporated and unserved island areas totaling approximately 21,048 acres. Conforming amendments to add the affected territory to the subject agencies' spheres of influence were also required. The reorganization proposal was approved February 4, 2018 and is now pending recordation once all terms are satisfied. A noticed protest hearing was held on March 13, 2019 at the LAFCO office. No protest was received by affected registered voters or landowners. Other terms remain pending.
21	LP(E)19-27	"Fallbrook PUD Latent Powers Expansion" - Activation: Park and Recreation - Activation: Street Lighting - Activation: Roads	Priscilla Mumpower	Application submitted in November 2019 by resolution from the Fallbrook Public Utility District (PUD) seeking approval to activate specified latent powers throughout its jurisdictional boundary and its 28,193 unincorporated acres. The estimated resident population within the affected territory is 33,986. Requested power activations involve park and recreation, street lighting, and roads with the former intended to supplement existing park and recreation services provided in the region by the County of San Diego via County Service Area No. 81. The proposal was approved by the Commission on April 4, 2022, and now pending recordation once all terms are satisfied. A noticed protest hearing was held on May 31, 2022 and continued to June 14, 2022 11, 2022 at the Fallbrook Public Utilities District. Not enough protest was received by affected registered voters or landowners. Other terms remain pending.
22	CO22-16	"Cumming Ranch Change of Organization" - Ramona Municipal Water District: Annexation - County Service Area 135: Detachment	Carolanne Ieromnimon	Application submitted in October 2022 by resolution of the Ramona Water District seeking approval for latent power expansion of Ramona MWD's activated wastewater service area by approximately 389 acres. The affected territory is currently vacant and undeveloped. The proposal purpose is to establish wastewater services for the future development of 125 single family residences as part of the "Cummings Ranch Subdivision" project. The proposal was approved by the Commission on May 1st, 2023 and now pending completion of terms and conditions as set forth by the Commission.

	File Number	Proposal Name | Affected Agencies	Project Manager	Proposal Summary
23	CO22-17	"Yung-La Presa Avenue Change of Organization" - San Diego County SD: Annexation	Carolanne Ieromnimon	Application submitted in October 2022 by landowner petition and involves annexation of approximately 0.16 acres of unincorporated territory to the San Diego County Sanitation District to make available public wastewater services. The affected territory is currently developed with 3 residents. The proposal purpose is to position the landowner to proceed in the future with a development plan to add an additional single-family residence. The proposal was approved by the Commission on June 5th, 2023 and now pending completion of terms and conditions as set forth by the Commission.
24	CO22-18	"For Giving LLC- Hymettus Avenue Change of Organization" - Leucadia WD: Annexation	Carolanne Ieromnimon	Application submitted in October 2022 by resolution of the Leucadia Wastewater District and involves annexation of approximately 1.20 acres of unincorporated territory to make available public wastewater services. The affected territory comprises one single family residence in Encinitas and presently vacant with no residents. The proposal purpose is to position the landowner to proceed in the future with a development plan to create two single-family residences. The proposal was approved by the Commission on June 5th, 2023 and now pending completion of terms and conditions as set forth by the Commission.
25	RO20-04	"Rainbow MWD – Eastern MWD Reorganization" - San Diego CWA: Detachment - Eastern MWD: Annexation - Eastern MWD: Sphere Action	Priscilla Mumpower	Application submitted April 2020 by resolution from the Rainbow Municipal Water District (MWD) to concurrently detach from the San Diego County Water Authority (CWA) and annex to the Eastern Municipal Water District (MWD). The affected territory spans approximately 50,857 acres covering the Rainbow and Bonsall communities with an estimated resident population of 22,130. The purpose of the proposal is to transfer the wholesale water supply provider for cost-savings. The submitted proposal application is incomplete pending receipt of additional documentation and related information to complete the administrative review. A 10-member advisory committee has also been established by the Commission to assist staff in evaluating the proposal and its technical merits The proposal was approved by the Commission on July 10th, 2023 and now pending completion of terms and conditions as set forth by the Commission.
26	RO20-05	"Fallbrook PUD – Eastern MWD Reorganization" - San Diego CWA: Detachment - Eastern MWD: Annexation - Eastern MWD: Sphere Action	Priscilla Mumpower	Application submitted April 2020 by resolution from Fallbrook Public Utility District (PUD) to concurrently detach from the San Diego County Water Authority (CWA) and annex to the Eastern Municipal Water District (MWD). The affected territory spans approximately 28,193 acres covering the Fallbrook and De Luz communities with an estimated resident population of 33,986. The purpose of the proposal is to transfer the wholesale water supply provider for cost-savings. The submitted proposal application is incomplete pending receipt of additional documentation and related information to complete the administrative review. A 10-member advisory committee has also been established by the Commission to assist staff in evaluating the proposal and its technical merits. The proposal was approved by the Commission on July 10th, 2023 and now pending completion of terms and conditions as set forth by the Commission.

	File Number	Proposal Name | Affected Agencies	Project Manager	Proposal Summary
27	CO22-20	"Camino De La Fuente-Wick Change of Organization" - San Diego County SD: Annexation	Carolanne Ieromnimon	Application submitted in November 2022 by landowner petition and involves annexation of approximately 35.3 acres of unincorporated territory to the San Diego County Sanitation District to make available public water and wastewater services. The affected territory is currently vacant and undeveloped. The proposal purpose is to position the landowner to proceed in the future with a development plan to grade the land for future industrial and outdoor storage uses. The proposal was approved by the Commission on October 2nd, 2023 and now pending completion of terms and conditions as set forth by the Commission.
28	RO23-07 (b)	"Escondido North LLC-Stanley Avenue Reorganization -B" - City of Escondido: Annexation - CSA No. 135: Detachment - Rincon del Diablo FPD ID-E: Exclusion	Michaela Peters	Application submitted in May 2023 by landowner petition and involves annexation of approximately 7.4 acres to the City of Escondido for the primary purpose of establishing wastewater services. The affected territory comprises 3 separate parcels; one parcel contains 2 preexisting single-family residences with plans of developing an additional 46 residential units, another parcel is presently vacant with plans to develop 20 residential units, and the third parcel is currently developed with an existing single-family residence and included due to expressed interest by the landowners in annexation. The reorganization also includes concurrent detachments from County Service Area No. 135 as well as formal exclusion from Rincon Municipal Water District's ID-E wastewater function. The proposal was approved by the Commission on November 6th, 2023 and now pending completion of terms and conditions as set forth by the Commission.
29	RO23-02	"Yerba Valley Road Reorganization" - Lakeside WD: Annexation - San Diego CWA: Annexation - MET: Annexation - Conforming sphere of Influence Amendments	Michaela Peters	Application submitted in February 2023 by resolution from Lakeside Water District to concurrently annex approximately 80.4 acres of unincorporated territory to the Lakeside Water District, San Diego County Water Authority, and Metropolitan Water District of Southern California. The affected territory presently comprises 17 existing single-family residences with no additional planned development. The proposal purpose is to make available public water services given uncertain well water flows within the affected territory. The proposal was approved by the Commission on November 6th, 2023 and now pending completion of terms and conditions as set forth by the Commission.
30	RO23-05	"Cambier-W. El Norte Parkway Reorganization" - Vista Irrigation District: Detachment - Vallecitos Water District: Annexation	Carolanne Ieromnimon	Application submitted in March 2023 by landowner petition and involves annexation of approximately 2.53 acres to the Vallecitos Water District to make available public water and wastewater services. The affected territory is currently vacant and undeveloped. The affected territory is presently vacant and undeveloped. The proposal purpose is to position the landowner to proceed in the future with a development plan to create one single-family residence. The proposal was approved by the Commission on November 6th, 2023 and now pending completion of terms and conditions as set forth by the Commission.

	File Number	Proposal Name | Affected Agencies	Project Manager	Proposal Summary
31	RO23-06	"North Iris - Hallmark Development Reorganization" - City of Escondido: Annexation - CSA No. 135: Detachment - Rincon del Diablo FPD ID-E: Exclusion	Michaela Peters	Application submitted in April 2023 by landowner petition and involves annexation of approximately 7.7 acres to the City of Escondido for the primary purpose of establishing water and wastewater services. The affected territory is currently developed, with four single-family residences, each with an ADU with plans to redevelop the site to consist of 102 new condominiums units and associated infrastructure/streets. The proposal was approved by the Commission on December 4th, 2023 and now pending completion of terms and conditions as set forth by the Commission.
32	RO23-08	"Colina Fuerte-Via Ascenso Reorganization" - Santa Fe ID: Annexation - Olivenhain MWD: Detachment	Michaela Peters	Application submitted in May 2023 by landowner petition and involves annexation of approximately 5.1 acres to the Santa Fe Irrigation District for the primary purpose of establishing potable water service. The affected territory as proposed includes one parcel presently undeveloped with plans to develop a single-family residence along with an accessory dwelling unit. The reorganization will also necessitate detachment from Olivenhain Municipal Water District. The proposal was approved by the Commission on December 4th, 2023 and now pending completion of terms and conditions as set forth by the Commission.

	File Number	Proposal Name | Affected Agencies	Project Manager	Proposal Summary
PENDING PROPOSAL APPLICATION SUBMITTALS (No project manager; inquiries should be directed to Keene Simonds)				
	Pending	"Harvest Hills Reorganization" - City of Escondido		This anticipated reorganization proposal is currently undergoing development and environmental review by the City of Escondido. Submittal to LAFCO anticipated for late 2020-2021 if approved by Escondido. The anticipated proposal involves annexation of approximately 1,098 acres to the City for the primary purpose of developing a 550-lot residential subdivision. All of the affected territory presently lies outside the adopted Escondido sphere. Due to the scope of the proposal area a comprehensive update of the City's sphere is warranted along with preparing the supporting municipal service review document. These and other service-related issues have been communicated to the City and are currently under joint review with other local stakeholders. Project was originally titled as "Safari Highlands."
	Pending	"Rancho Lomas Verde Reorganization" - City of Vista		This anticipated reorganization proposal is undergoing development and environmental review by the City of Vista. The proposal involves annexation of approximately 300 acres to the City of Vista and concurrent detachments from CSA 135 and the Vista FPD to facilitate a 153-lot residential development. Close to three-fourths of the project area lies outside the adopted Vista sphere. Due to the scope of the proposal area a comprehensive update of the City's sphere is warranted along with preparing the supporting municipal service review document. These and other service-related issues have been communicated to the City and are currently under joint review with other local stakeholders.
	Pending	"Sager Ranch Reorganization" - City of Escondido		This anticipated reorganization involves annexation of approximate 1,800 unincorporated acres to the City of Escondido and concurrent detachments from CSA 135 and the Valley Center FPD. The reorganization would facilitate the proposed development of approximately 200 acres to include 203 residential units and a 225-room resort. Portions of the project area lies outside the current City sphere. Due to the scope of the proposal area a comprehensive update of the City's sphere is warranted along with preparing the supporting municipal service review document. These and other service-related issues have been communicated to the City and are currently under joint review with other local stakeholders.
	Pending	"Harmony Grove Village South" (TM-626)		This anticipated reorganization involves the unincorporated Harmony Grove Village South project and specific to accommodating sewer services (among a variety of options) for the planned development of approximately 111 acres to include 453 residential units. On January 27, 2020 the San Diego Superior Court overturned the County's development approvals for the project. Appeals are pending with no update as of this report.

	File Number	Proposal Name | Affected Agencies	Project Manager	Proposal Summary
	Pending	"La Jolla Incorporation" -City of San Diego: Detachment		This anticipated special reorganization involves the detachment of 8,371 acres from the City of San Diego and the incorporation of the community of La Jolla. A draft fiscal impact analysis report is currently underway by the proponents - Association for the City of La Jolla (501c3) – to determine whether La Jolla could obtain cityhood and be economically sustainable on its own. Application is pending.

Blank for Photocopying

5a

AGENDA REPORT
Business | Discussion

December 15, 2023

TO: Special Districts Advisory Committee

FROM: Carolanne Ieromnimon, Analyst II

SUBJECT: **Draft Policy on Out-of-Agency Services**

SUMMARY

The Special Districts Advisory Committee ("Committee") will review the newest version of a draft policy to govern out-of-agency service activities in San Diego County. The newest version is the fourth overall and builds on feedback provided by the Committee in September 2023 (second version) and Commission in October 2023 (third version), respectively. The preparation of the draft policy itself ties to the adopted workplan and premised on providing clear rules of engagement between local agencies and LAFCO with respect to the former complying with Government Code Section 56133 and receiving LAFCO approval before providing contract out-of-agency services. Staff anticipates drawing on the Committee feedback in presenting a final draft version to the Commission for action in February 2024.

BACKGROUND

Government Code Section 56133

State law was expanded in January 2001 to require cities and special districts to request and receive approval from LAFCOs before providing new or extended services outside their jurisdictions by contracts or agreements. The addition is codified in Government Code Section 56133 and includes a limited number of exemptions where LAFCOs' approval is not needed. The includes agreements between two or more public agencies where the contract service is an equal substitute for services already provided.

Administration:
Keene Simonds, Executive Officer
2550 Fifth Avenue, Suite 725
San Diego, California 92103
T 619.321.3380
E lafco@sdcounty.ca.gov
www.sdlafco.org

Chair Jim Desmond
County of San Diego
Joel Anderson
County of San Diego
Nora Vargas, Alt.
County of San Diego
Kristi Becker
City of Solana Beach
Dane White
City of Escondido
John McCann, Alt.
City of Chula Vista
Vice Chair Stephen Whitburn
City of San Diego
Marni von Wilpert, Alt.
City of San Diego
Jo MacKenzie
Vista Irrigation
Barry Willis
Alpine Fire Protection
David A. Drake, Alt.
Rincon del Diablo
Andy Vanderlaan
General Public
Harry Mathis, Alt.
General Public

Annual Workplan & Direction to Prepare Policy on Out-of-Agency Services

LAFCO's current annual workplan was adopted at a noticed public hearing in May 2023 and includes 30 specific projects for the fiscal year with several having been caried over from the prior fiscal year. One of these carried over projects involve establishing formal policies to govern out-of-agency service approvals at LAFCO and in doing so focus on formalizing and expanding on existing practices.

Earlier Draft Policy Versions on Out-of-Agency Services

LAFCO staff prepared an initial draft policy on out-of-agency services for discussion by the Commission in November 2022. The initial version was marked by staff proposing the establishment of local definitions for "new" and "extended" services as well as local exemptions in which certain out-of-agency services would not require formal review and approval. Staff also included an explicit policy in the initial version that the Commission determines exemption (statute and local) eligibility. This initial version was subsequently shared with the Committee in December 2022. The resulting feedback informed a second draft version, which expanded local exemptions along with other refinements and presented back to the Committee in September 2023. This latter meeting informed a third draft version presented to the Commission in October 2023 that no longer included an explicit policy advising the Commission determines exemption eligibility.

DISCUSSION

This item is for the Committee to review the fourth version of a draft policy governing the process in receiving, evaluating, and acting on out-of-agency service requests. The fourth version incorporates feedback generated from the Commission at its October 2023 meeting and marked by reinstating an earlier policy statement that LAFCO determines exemption eligibility. The fourth version also incorporates most of the revisions recently requested by a consortium of district general managers led by Brian Olney with Helix Water District. This latter grouping of revisions is marked by expanding on the list of exemptions, specific to agreements between two or more agencies, as they relate to cost and scope, as well as adding to the list of activities under the shared services between cities and special districts. This latter grouping also includes revising language throughout the document to be more inclusive/exact specifically to the policy's premising goals and priorities.

A summary of all key provisions reflected in the fourth versions follows.

- Make explicit the Commission's policy preference to consider out-of-agency service requests on an exception basis when otherwise merited new or extended municipal services cannot be accommodated through jurisdictional changes.

- Premise the policy on the Commission's preference to consider out-of-agency service requests on an exception basis when otherwise merited services cannot be accommodated through jurisdictional changes.

- Establish local definitions for "new" and "extended" services and in doing so, frame the overall extent of the Commission's regulation of out-of-agency services as follow.

  - New services would involve the actual delivery of municipal functions or classes to previously unserved non-jurisdictional lands and/or the re-commencement of functions or classes after a discontinuous period of six or more months.

  - Extended services mean the intensification of municipal functions or classes to served (actual) non-jurisdictional lands facilitated by a zoning change.

- Establish local exemptions in which Commission review and approval – which is separate from determining eligibility – is not required for the following activities:

  - Advisory or automatic aid services provided by a city and/or special district where no monetary compensation is provided other than reimbursements.

  - Temporary access to a city and/or special district's potable water or wastewater collection, treatment, and discharge facilities.

  - Shared services between two or more agencies where monetary compensation is provided beyond reimbursements for any of the following:

    - Abandoned Vehicle Abatement
    - Accounting, Billing, and Payroll
    - Animal Care and Control
    - Building and Code Enforcement
    - Customer Service
    - Dispatch
    - Grant Writing
    - Heavy Equipment Exchange and/or operation
    - Human Resources
    - Information Technology
    - Laboratory Services
    - Legal
    - Pooled Equipment Purchasing and Use
    - Pooled Materials Purchasing and Use
    - Pooled Services Purchasing and Use
    - Public Affairs/Outreach
    - Training
    - Water, Wastewater, Recycled Water, Stormwater and Advanced Purification Plan Operations

- Make explicit LAFCO via the Executive Officer determines exemption eligibility with related no-cost request procedures.

- Amend the existing delegation to the Executive Officer to approve out-of-agency service requests tied to public health or safety threats to only water and wastewater functions. All other requests are redirected to the full Commission.

A copy of the fourth draft version is attached.

ANALYSIS

LAFCO staff believes the fourth draft version to establishing a policy to govern out-of-agency service activities appropriately reflects both Commission and Committee input to date with deference to the Commission where differences exists. This latter statement applies to the reinstatement of an explicit policy that LAFCO determine exemption eligibility. However, as noted in the preceding section, the balance of the changes requested by the Committee at its September 2023 meeting are reflected in the fourth version along with similar revisions requested by Brian Olney with Helix Water District on behalf of several district general managers – including members on the Committee.

RECOMMENDATION

Review and discuss as requested.

ALTERNATIVES FOR ACTION

None. Any related action by the Committee – including making formal recommendations to the Commission and/or LAFCO staff – can be accommodated through a successful motion.

PROCEDURES

This item has been placed on the Committee's agenda for discussion and possible action as part of the business calendar. The following procedures are recommended in the consideration of this item:

1) Receive verbal presentation from staff unless waived.
2) Invite comments from interested audience members.
3) Discuss item and provide feedback as requested.

Respectfully,



Carolanne Ieromnimon
Analyst II

Attachments:

1) Draft Policy on Out-of-Agency Services, Fourth Version
2) Communications with Brian Olney with Helix WD

Subject:
OUT-OF-AGENCY SERVICES
(Exclusive of Fire Protection Services)

Purpose:
Serve as a guide to the Commission in receiving, evaluating, and acting on requests by cities and special districts to provide new or extended services other than fire protection outside their jurisdictional boundaries.

Background:
State law requires cities and special districts to request and receive Commission approval before providing new or extended outside services by contracts or agreements with limited exemptions (Government Code Section 56133).[1]

Policy:
It is the policy of the Commission:

1. Goals and Priorities:

   a) ~~a)~~ The Commission will consider out-of-agency service requests whenever otherwise merited new or extended services cannot be reasonably accommodated through annexations or other jurisdictional changes.

   b) The Commission will review out-of-agency service agreements not previously considered by the Commission in conjunction with future applications for related changes to organization and not unilaterally seek out and review out-of-agency service agreements for compliance with Government Code Section 56133.

   b) The Commission shall only approve out-of-agency service requests for cities and special districts involving territory within their spheres of influence in anticipation of future jurisdictional changes.

      i. The Commission will exercise independent discretion in potentially prescribing the timing of future jurisdictional changes through its authority to condition out-of-agency service approvals.

   c) The Commission shall only approve out-of-agency service requests for cities and special districts involving territory outside their spheres of influence in

[1] Contracts involving fire protection services are separately addressed under Government Code Section 56134 and are not covered under this policy.

response to efficient utilization of regional government resources and existing or impending public health and safety threats.

i. The Commission will exercise its independent discretion in determining efficient utilization of government resources and when existing or impending public health and safety threats exist with consideration of State Water Resources Control Board Division of Drinking Water, Regional Water Quality Control Board, California Department of Public Health and San Diego County Department of Public Health regulatory guidance and based on available documentation and analysis provided by LAFCO staff.

2. Definitions:

a) "Agreement" and/or "contract" shall mean a formal written arrangement contemplated under Section 56133.

b) "Service" shall mean any authorized municipal service functions and/or classes provided by cities and special districts other than fire protection as well as those exempted by the Commission within Section 4 of this policy.

c) "New service" shall mean the actual provision of municipal service functions or classes to previously unserved non-jurisdictional lands.

i. New service shall also mean the re-commencement of actual services after a discontinuous period of six or more months.

d) "Extended service" shall mean the intensification of municipal service functions and/or classes to served (actual) non-jurisdictional lands that require a zoning change by the land use authority.

3. Applicability:

a) The Commission determines exemption eligibility of all statutory exemptions under 56133(e) as well as local exemptions provided under this policy.

~~a)~~b) The Commission shall emphasize the "point of delivery" in assessing the applicability of Section 56133.

~~b)~~c) Cities and special districts may request a no-cost determination from the Commission as to whether any proposed out-of-agency services are eligible for exemption under 56133 (e) and/or Section 4 of this policy.

i. The Commission delegates all inquiries for exemption eligibility under 56133(e) and/or Section 3 of this policy to the Executive Officer. The Executive Officer shall provide written notice of their determination to the city or special district to either accept, deny, or deny pending additional information all exemption inquiries within five business days.

ii. Should the Executive Officer determine an inquiry does not qualify for exemption, the city or special district may appeal directly to the full Commission. The appeal request must be made in writing and signed by the city manager or special district manager.

4. Exemptions

a) In addition to those provided by the Legislature under Section 56133(e), which includes agreements established prior to 2001, the Commission establishes the following local exemptions in which approvals are not required:

i. Advisory or automatic aid services provided by a city and/or special district where no monetary compensation other than reimbursements are exchanged.

ii. Agreements solely involving two or more public agencies where the public service to be provided (by Agency A) is an alternative to, or substitute for, public services already being provided by an existing public service provider (by Agency A) is consistent with the level of service contemplated by the existing service provider (Agency B).

a. For the purposes of this section, "already being provided" means the services are within the agency's (Agency B) jurisdictional boundary and an established service area wherein services are being actively provided by the agency (Agency B).

b. For the purposes if this section, "contemplated" means:

i. The service level is anticipated in a master plan or some long-range planning document of Agency B.

ii. Sufficient infrastructure and capacity exists (by Agency A) to provide the service.

~~i.~~

iii. Service agreements between cities and.or special districts for the use, installations, and maintenance of meter or operational technology (OT)

communications infrastructure similar to wireless ethernet, cellular towers, fiber optic, etc.

iv. Agreements involving Cathodic protection of pipelines.

~~ii.~~v. Temporary access to cities and/or special districts' potable water supplies due to an interruption – planned or otherwise.

vi. Temporary access to cities and/or special districts' wastewater collection, treatment, or discharge facilities.

~~iii.~~vii. Temporary access to cities and/or special districts' potable, raw, or recycled water when deemed the best and most efficient use of resources.

~~iv.~~viii. Shared services between cities and/or special districts where monetary compensation is exchanged beyond reimbursements for any of the following activities:

- Abandoned Vehicle Abatement
- Accounting, Billing, and Payroll
- Animal Care and Control
- Building and Code Enforcement
- Customer Service
- Dispatch
- Grant Writing
- Heavy Equipment Exchange and/or operation
- Human Resources
- Information Technology
- Laboratory Services
- Legal
- Pooled Equipment Purchasing and Use
- Pooled Materials Purchasing and Use
- Pooled Services Purchasing and Use
- Public Affairs/Outreach
- Training
- Water, Wastewater, Recycled Water, Stormwater and Advanced Purification Plan Operations

4. Request Procedures:

a) All approval requests for out-of-agency services shall be made in writing by cities and special districts and filed with the Executive Officer. Requests

shall be made in letter form by the city or special district manager and include all of the following information:

i. Identification of the affected territory by parcel number or another appropriate geographic marker.
ii. Description of the ability of the agency to provide the contract service and relationship – including impacts – on existing and/or planned infrastructure and resources.

iii. Application fee.

iv. Any other information required by the Executive Officer.

5. Consideration Procedures:

a) The Commission shall consider all requests for out-of-agency service approvals at a public meeting unless otherwise provided in this policy.

b) The Executive Officer shall ensure all procedures under Section 56133 are completed and responsible for placing the request on the first available meeting agenda thereafter. The Executive Officer shall include his or her written recommendation on the request to the Commission.

c) Should requests involve purported public health or safety threats, the Commission delegates approval authority to the Executive Officer under the following circumstances.

i. The request involves water and/or wastewater services only. If approved, the Executive Officer shall provide notice to the Commission at the next public meeting for information only.

d) All other requests involving purported public health or safety threats shall be considered by the Commission at the earliest time possible – including the scheduling of a special meeting with no less than 24-hour notice.

7. Reconsideration:

a) Should an out-of-agency service request be approved with conditions or denied, the applicant may request reconsideration.

8. CEQA

a) All out-of-agency service request approvals shall be subject to concurrent review under the California Environmental Quality Act (CEQA).

b) The Commission assigns all functions and related responsibilities provided under CEQA Guidelines Section 15025 to the Executive Officer – including, but limited to, making exemption findings and related fillings.

November 13, 2023

Keene Simonds
San Diego LAFCO
2550 Fifth Avenue, Suite 725
San Diego, CA 92103

Delivered via email communication

Re: Proposed Out-of-Agency Services Policy

Dear Keene,

The San Diego Local Agency Formation Commission (LAFCO) is working to develop an out-of-agency services policy to formalize and expand existing practices to provide clear direction to all local agencies on how out-of-agency services are regulated. Several local agencies, including ours, have expressed concerns regarding these proposed changes, noting that they create unnecessary oversight, inefficiency in service delivery, a lack of applicable exemptions, and concern with language as written in section 3(a) of the draft policy.

Local agencies would like to work collaboratively with LAFCO to address these concerns and develop a policy that meets both LAFCO and local agency needs. In this effort, we have provided additional comments to the proposed policy on the attached redline version of the Out-of-Agency Services policy. Our recommended changes to the policy provide needed clarification and additional exemptions that help ensure efficient service delivery by local agencies. The additions to the policy also reduce existing concerns with the language used in section 3(a).

Local agencies look forward to working with LAFCO staff on finalizing an out-of-agency services policy and are available to discuss the additional comments provided in the attached redline version of the draft policy.

Sincerely,

Michael T. Thornton, P.E.
General Manager
San Elijo Joint Powers Authority

Kyle Swanson
CEO/General Manager
Padre Dam Municipal Water District

Paul J. Bushee
General Manager
Leucadia Wastewater District

Gary T. Arant
General Manager
Valley Center Municipal Water District

Brett Sanders
General Manager
Lakeside Water District

Erica Wolski
General Manager
Ramona Municipal Water District

Kimberly A. Thorner
General Manager
Olivenhain Municipal Water District

Joel A. Scalzitti
Board of Directors, Helix Water District
San Diego LAFCO Special Districts Advisory Committee

Jose Martinez
General Manager
Otay Water District

Al Lau
General Manager
Santa Fe Irrigation District

From:	Brian Olney
To:	Ieromnimon, Carolanne; Simonds,Keene
Subject:	[External] RE: [EXTERNAL] RE: Out of Agency Service Policy
Date:	Friday, December 8, 2023 1:41:04 PM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png image007.png

Thank you Carol,
Have a great weekend!

Brian

From: Ieromnimon, Carolanne <Carolanne.Ieromnimon@sdcounty.ca.gov>
Sent: Friday, December 8, 2023 1:39 PM
To: Brian Olney <Brian.Olney@HELIXWATER.org>; Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>
Subject: RE: [EXTERNAL] RE: Out of Agency Service Policy

Hi Brian,

I realized I mistakenly did not respond to your email below. My apologies in the delay! We have received your responses and have incorporated the feedback into our draft policy which will be presented to the Special Districts Advisory Committee next Friday, December 15th.

We appreciate the time and effort you took to provide us these revisions and feedback.

Thank you!

Carol Ieromnimon
Local Government Analyst II
San Diego County
Local Agency Formation Commission (LAFCO)
Subdivision of the State of California | Regional Service Planning
2550 Fifth Avenue, Suite 725
San Diego, California 92103
T | 619.321.3382 Direct
858.298.7280 Cell

From: Brian Olney <Brian.Olney@HELIXWATER.org>
Sent: Wednesday, November 15, 2023 11:07 AM
To: Ieromnimon, Carolanne <Carolanne.Ieromnimon@sdcounty.ca.gov>; Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>
Subject: [External] RE: [EXTERNAL] RE: Out of Agency Service Policy

Hi Carol,
Thanks for providing me some time to respond to your questions and comments. I have inserted responses to your comments in blue to your original email below. I am hopeful that the responses answer your questions or provide clarification as requested. If not, please feel free to contact me.

I also noticed we inadvertently left out a word in the original redline I submitted to you. Section 4(a)(x) – last item was submitted as follows:
Water, Wastewater, Recycled Water and Advanced Purification Plant Operations

It was intended to be submitted as follows:
Water, Wastewater, Recycled Water, Stormwater and Advanced Purification Plant Operations

We appreciate your time in reviewing our policy considerations and working with us to address our concerns in a final policy.

Best,
Brian

Brian Olney | General Manager
O 619-596-1362 | M 619-962-7442 | brian.olney@helixwater.org

Helix WATER DISTRICT

INSPIRE

From: Ieromnimon, Carolanne <Carolanne.Ieromnimon@sdcounty.ca.gov>
Sent: Tuesday, November 14, 2023 12:02 PM
To: Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>; Brian Olney <Brian.Olney@HELIXWATER.org>
Subject: [EXTERNAL] RE: Out of Agency Service Policy

CAUTION: This email originated from outside of Helix Water District. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Brian,

Thank you for taking the time to provide us the suggested revision to the draft OSA policy. We have carefully reviewed the document and are agreeable to most of the suggested changes apart from the following (in red)..

4 (iv): "Recycled water service agreements between cities and/or special districts that provide for the best use of the resource considering infrastructure availability."

- We believe this standalone exemption is not needed given it is seemingly covered under the suggested change for 4 (a)(ii) and if not, this does merit Commission review.
- Response: Agree that this is seemingly covered under 4(a)(ii), however, it does not cover all scenarios related to best use of recycled water as a resource as directed by SWRCB. Example, Agency A may have a property that could benefit from recycled water use but does not provide recycled water service. Agency B may provide recycled water service and have recycled water infrastructure in close proximity to Agency A property but not have potable water infrastructure close to Agency A property. Under 4(a)(ii), Agency A would not be able to work under this exemption because it does not provide existing recycled water service. Additionally, reorganization of this property to Agency B would require unnecessary and expensive infrastructure to be installed to also provide potable water service. Section 4(a)(ii) covers most scenarios but 4(iv) is also required to maximize use of recycled water where warranted and accessible per SWRCB direction.

1 (a) (first part): "The Commission will review out-of-agency service agreements not previously considered by the Commission"

- This portion is unclear, can you please assist?
- Response: Section 1(a) was taken directly from the Orange County LAFCO 56133 policy. This first statement acknowledges that some agreements may exist that have not previously been reviewed by the Commission/LAFCO staff. If this situation exists, LAFCO will review these agreements in conjunction with future applications for related changes to organization but not unilaterally seek out agreements for review solely for compliance with 56133.
- Not clear on the confusion in this statement in context of the entire statement. Possibly rewording will clarify? For example, "Out-of-Agency service agreements not previously considered will be reviewed in conjunction with future applications for related changes to organization and not unilaterally sought out and reviewed for compliance with Government Code section 56133."

4 (a) (iii): "Service agreements between cities and/or special districts equal to or less than $100,000 annually or agreements that provide equal or increased service levels at agreement costs less than estimated infrastructure costs to provide equivalent service levels by each agency."

- The first portion of this revision we believe is not merited, and the latter portion we can benefit from your clarification on the intent and/or meaning.

Response:

1. The first portion is merited from a cost of service and efficient service delivery aspect. We have provided many specific exemption examples but not every example as this would become overwhelming. This statement provides the ability for agencies to collaborate on the best cost of service basis for a service that may not be listed in other exemptions. The dollar

amount limits this from being overly broad but provides the ability for agencies to continue to collaborate on efficient and cost-effective service delivery to customers. Examples may include Agency A having safety training or safety response expertise and capacity that can be provided to Agency B by agreement. Using the "point of service" aspect, Agency A would not be allowed to provide this service to Agency B because the point of service is outside their sphere. This would mean Agency B would have to spend more than this amount to develop their own training/response at more cost to the end customer. We felt this is in alignment with the Commission request of not having to review non-significant items or items that are daily parts of conducting efficient business practices.

2. The focus of the second portion is related to the cost of providing service to the end user. Our thought was that the provision of service should include analysis of the cost to provide that service and what is most effective. For example, if agency A is the service area but does not have immediate infrastructure and the cost to add the infrastructure is more expensive than it would be for agency B to provide service via agreement, it is more beneficial to use the service agreement because this is ultimately a lower cost to the customer. However, after additional review, this section is seemingly covered under section 4(a)(ii) and could be removed. Cost should always be considered in these actions and likely considered under section 4(a)(ii) also.

Finally, as you may be aware, our Commission expressed strong support to add back in the original item 3(a) which states, "The Commission determines exemption eligibility of all statutory exemptions under 56133(e) as well as local exemptions provided under this policy." Given the response we received from Commission on this item, we will be bringing it back into the policy for their consideration.

Response: We are aware of the Commission feedback to add back the original item 3(a) language. While we feel inclusion of our items into the policy lessens some concern over this language, we still feel inclusion of this language in its entirety adds legal issues to the policy due to LAFCO adding additional power not provided in state law. We feel LAFCO should determine eligibility of local exemptions that they list in their local policy but "eligibility of all statutory exemptions under 56133(e)" is of concern as previously stated. Statutory exemptions are listed in Government Code 56133(e) so the legislature determined eligibility of these exemptions. We feel the following language is more appropriate and lessens potential legal issues that could arise. " The Commission determines eligibility of local exemptions in this policy".

We look forward to hearing back from you on the above and appreciate your efforts in working collaboratively with us on this draft policy update.

With best,

Carol Ieromnimon
Local Government Analyst II
San Diego County
Local Agency Formation Commission (LAFCO)
Subdivision of the State of California | Regional Service Planning
2550 Fifth Avenue, Suite 725
San Diego, California 92103

T | 619.321.3382 Direct
858.298.7280 Cell

From: Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>
Sent: Monday, November 13, 2023 9:05 PM
To: Brian Olney <Brian.Olney@HELIXWATER.org>
Cc: Ieromnimon, Carolanne <Carolanne.Ieromnimon@sdcounty.ca.gov>
Subject: RE: Out of Agency Service Policy

Hi Brian –

Thank you!

We are going to take a close look and follow up shortly with you and the crew. More to come!
Keene.

_____
Keene Simonds
Executive Officer

San Diego County
Local Agency Formation Commission (LAFCO)
Subdivision of the State of California | Regional Service Planning
2550 Fifth Avenue, Suite 725
San Diego, California 92103-6624

T 619-321-3380
E keene.simonds@sdcounty.ca.gov

From: Brian Olney <Brian.Olney@HELIXWATER.org>
Sent: Monday, November 13, 2023 12:41 PM
To: Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>; Ieromnimon, Carolanne <Carolanne.Ieromnimon@sdcounty.ca.gov>
Cc: eastcountywater@yahoo.com; Kim Thorner <KThorner@olivenhain.com>; Thorton, Mike <thornton@sejpa.org>; Kyle Swanson (kswanson@padre.org) <kswanson@padre.org>; Paul Bushee <PBushee@lwwd.org>; Gary Arant <GArant@vcmwd.org>; Brett Sanders <BrettS@lakesidewater.org>; Erika Wolski <ewolski@rmwd.org>; Martinez, Jose <jose.martinez@otaywater.gov>; Al Lau (alau@sfidwater.org) <alau@sfidwater.org>; Brian Olney <Brian.Olney@HELIXWATER.org>
Subject: [External] Out of Agency Service Policy

Hi Keene and Carolanne,
Several local agencies have been working together to develop proposed policy language to assist in moving the Out-of-Agency Service Policy forward in a manner workable for LAFCO and local agencies. Please see attached letter and policy redline from the participating agencies. We look forward to working with you and your team in making a model policy for the region.

Please feel free to contact me if you would like to discuss in more detail.

Sincerely,
Brian
(On behalf of the participating agencies)

Brian Olney | General Manager
O 619-596-1362 | M 619-962-7442 | brian.olney@helixwater.org



5b

AGENDA REPORT
Business | Discussion

December 15, 2023

TO: Special Districts Advisory Committee

FROM: Carolanne Ieromnimon, Analyst II

SUBJECT: **Establishing a Fee Waiver and/or Fee Reduction for Funding Agencies**

SUMMARY

The Special Districts Advisory Committee ("Committee") will review LAFCO's existing policies involving applicant fee waivers and reductions and potential merits therein to establish a new provision specific to funding agencies. The topic was recently discussed by LAFCO and done so at the request by Commissioner Willis to explore options to establish dedicated fee relief for funding agencies in filing applications with LAFCO. The Committee's discussion and feedback – which will include screening preliminary options identified by staff – will help inform potential recommendations to the Commission for future consideration.

BACKGROUND

Current Fee Schedule

San Diego LAFCO's fee schedule was last amended in February 2019 as part of a planned comprehensive update. The update transitioned the basis to charge most applicants from variable and refundable fees based on acreage to fixed and non-refundable fees based on application type and the expected level of noticing and environmental review. Most application filings at LAFCO generate a fee between $6,405 and $23,250.

Administration:
Keene Simonds, Executive Officer
2550 Fifth Avenue, Suite 725
San Diego, California 92103
T 619.321.3380
E lafco@sdcounty.ca.gov
www.sdlafco.org

Chair Jim Desmond
County of San Diego
Joel Anderson
County of San Diego
Nora Vargas, Alt.
County of San Diego
Kristi Becker
City of Solana Beach
Dane White
City of Escondido
John McCann, Alt.
City of Chula Vista
Vice Chair Stephen Whitburn
City of San Diego
Marni von Wilpert, Alt.
City of San Diego
Jo MacKenzie
Vista Irrigation
Barry Willis
Alpine Fire Protection
David A. Drake, Alt.
Rincon del Diablo
Andy Vanderlaan
General Public
Harry Mathis, Alt.
General Public

Fee Waiver and Reduction Allowances

San Diego LAFCO's current fee schedule contemplates two distinct types of fee waivers and reductions – discretionary and pre-approved. All discretionary allowances must be approved by the Commission in response to a written request by the applicant. Preapproved authorizations are automatically applied so long as the Executive Officer confirms eligibility. All current allowances follow.

Discretionary Allowances:
The Commission may reduce or waive applicant fees based on financial hardships, as determined by the membership. The Commission may also reduce or waive applicant fees in response to earlier LAFCO recommendation.

Preapproved Allowances:
The Executive Officer is authorized to immediately apply a fee waiver and/or reduction at the time of the application filing under the following criteria:

- Applications (jurisdictional changes and out-of-agency service requests) initiated in response to an existing or pending septic or well failure shall receive a 75% fee reduction relative to the charges normally incurred under the fee schedule.

- Jurisdictional changes involving a qualifying city annexation of an entire "island" under Government Code 56375.3 shall receive a 50% fee reduction relative to the charges normally incurred under the fee schedule.

- Jurisdictional changes involving a qualifying city annexation of a disadvantaged unincorporated community under Government Code 56375(a)(8) shall receive a 50% fee reduction relative to the charges normally incurred under the fee schedule.

DISCUSSION

This item is for the Committee to discuss and provided feedback to LAFCO staff with regards to potential options and merits therein to establish a dedicated fee waiver and/or reduction for funding agencies. The item ties to an earlier request from the dais by Commissioner Willis in October 2023 to explore options to provide potential fee relief for applicants that are also LAFCO funding agencies. Specifically, Commissioner Willis conveyed interest from some smaller special districts in filing otherwise logical boundary changes but are deterred from doing so given the LAFCO fees. Staff proceeded to present the following three broad-stroke options on the topic to the full Commission at its December 4th meeting.

- One-Time Fee Waiver - Unrestricted
  Under this option the Commission would allow any funding agency to make use of a one-time fee waiver to cover an application filing at LAFCO, irrespective of the total.

- One-Time Fee Waiver - Restricted
  Under this option the Commission would allow any funding agency to make use of a one-time fee waiver to cover an application filing at LAFCO with the restriction that it not exceed the value of their total budget contributions over the last 10 years.

  * As an example of the potential benefit to a smaller special district, Julian Community Services District's approximate budget contribution to LAFCO over the past 10 years has been $2,000.

  * As an example of the potential benefit to a medium sized special district, Lakeside Fire Protection District's approximate budget contribution to LAFCO over the past 10 years has been $98,000.

- Annual Fee Reduction
  Under this option, the Commission would allow any funding agency to make use of an annual fee reduction to cover an application filing at LAFCO up to – and not to exceed – their budget contribution to LAFCO for the fiscal year.

The Commission's December 4th discussion on the topic and the above three broad-stroke options presented by LAFCO staff did not generate any consensus among the membership.

ANALYSIS

LAFCO staff is seeking discussion and feedback from the Committee on the possibility of revising the adopted fee schedule to provide targeted applicant relief to funding agencies. This includes input on the three broad-stroke options identified in the proceeding section as well as any variations identified by the Committee. Feedback from the Committee will help inform next steps with the Commission.

RECOMMENDATION

Review and discuss as requested.

ALTERNATIVES FOR ACTION

None. Any related action by the Committee – including making formal recommendations to the Commission and/or LAFCO staff – can be accommodated through a successful motion.

PROCEDURES

This item has been placed on the Committee's agenda for discussion and possible action as part of the business calendar. The following procedures are recommended in the consideration of this item:

1) Receive verbal presentation from staff unless waived.
2) Invite comments from interested audience members.
3) Discuss item and provide feedback as requested.

Respectfully,



Carolanne Ieromnimon
Analyst II

Attachments:

1) Current Fee Schedule
2) Email Regarding Fee Waiver/Reduction Policies Among Other Regional LAFCOs

SAN DIEGO COUNTY LOCAL AGENCY FORMATION COMMISSION

Regional Service Planning | Political Subdivision of the State of California

FEE SCHEDULE

Standard Jurisdctional Changes

Standard jurisdictional changes include (a) annexations, (b) detachments, (c) latent power establishments, and (d) service power divestitures

	LAFCO is Responsible Agency			LAFCO is Lead Agency Plus Consultant Costs		
	Exemption	Initial Study	Impact Report	Exemption	Initial Study	Impact Report
Single Jurisdictional Change						
- With Full Consent | No Protest Hearing	$ 6,405.00	$ 7,045.50	$ 7,686.00	$ 6,405.00	$ 8,326.50	$ 10,248.00
- Without Full Consent | Protest Hearing	$ 8,326.50	$ 8,967.00	$ 9,607.50	$ 8,326.50	$ 10,248.00	$ 12,169.50
Each Additional Jurisdictional Change						
- With Full Consent | No Protest Hearing	$ 4,163.25	$ 4,579.58	$ 4,995.90	$ 4,163.25	$ 5,412.23	$ 6,661.20
- Without Full Consent | Protest Hearing	$ 5,412.23	$ 5,828.55	$ 6,244.88	$ 5,412.23	$ 6,661.20	$ 7,910.18

Fees for all standard jurisdictional changes are fixed and represent reasonable cost estimates for the underlying action(s) based on a number of predetermined staff hours to complete. These fees are non-refundable and – while not typical or expected – may be augmented by one or more deposits when additional time is needed beyond the predetermined staff hour allocation as determined by the LAFCO Executive Officer.

Other Jurisdictional Changes

Special District Formation	Billed for time and material starting with a $ 9,150 deposit to cover the first 75 hours
Special District Consolidation or Dissolution	Billed for time and material starting with a $12,200 deposit to cover the first 100 hours
Incorporation	Billed for time and material starting with a $24,400 deposit to cover first 200 hours

Fees for other boundary changes are at-cost. These fees require an initial and refundable deposit to cover staff time based on the hourly composite rate. Additional deposits may be required as determined by the Executive Officer.

Other Requests and Charges

Outside Service Extensions	
- Exemption	$ 1,921.50
- Initial Study	$ 2,113.65
- Impact Report	$ 2,305.80
Sphere of Influence Amendments	Billed at their corresponding rate for standard boundary changes; applies to expansions, reductions, establishments, and eliminations
Municipal Service Reviews	Billed for time and material starting with a $12,200 deposit to cover the first 100 hours
Reconsideration of a Commission Determination	$ 2,600.00
Time Extension to Complete Proceedings	$ 610.00
General Staff Research	$ 122.00 per hour; first four hours of any general research project waived
Scheduling a Special Meeting	$ 3,210.00
Postage, Mail Supplies, Photocopies, Etc.	at cost

Common Third Party Charges

County of San Diego Clerk-Recorder	$ 50.00
California Department of Fish and Game	
- Filing for a Negative Declaration	$ 2,280.25
- Filing for a Mitigated Negative Declaration	$ 2,280.25
- Filing for an Environmental Impact Report	$ 3,168.00
State Board of Equalization	
- 0.0 to 1.0 acre	$ 300.00
- 1.0 to 5.0 acres	$ 350.00
- 6.0 to 10.0 acres	$ 500.00
- 11.0 to 20.0 acres	$ 800.00
- 21.0 to 50.0 acres	$ 1,200.00
- 51.0 to 100.0 acres	$ 1,500.00
- 100.0 acres or more	$ 2,000.00

Implementing Policies

1 Proposals and requests subject to this fee schedule will be deemed incomplete until the appropriate fee has been received by LAFCO.

2 All additional staff time required to process proposals or requests subject to this fee schedule beyond the coverage of the initial fixed fee or collected at-cost deposit will be billed at a composite hourly rate of $122.00.

3 Applicants with proposals or requests subject to this fee schedule requiring consultants to prepare environmental or other technical documents will be responsible for all direct costs therein and will be required to provide a dedicated deposit as determined by the Executive Officer.

4 The Executive Officer may stop work on any proposal or request subject to this fee schedule until receipt of a requested fee or deposit.

5 The Commission may reduce or waive fees if a financial hardship is demonstrated and/or if the proposal or request is in response to a LAFCO condition or recommendation. Requests must be made in writing. Pre authorized reductions follow.

a) Jurisdictional changes that include a qualifying city annexation of an entire "island" under Government Code 56375.3 shall receive a 50% fee reduction relative to the charges normally incurred under the fee schedule. Additional reductions or waivers require Commission approval.

b) Jurisdictional changes that include a qualifying city annexation of a disadvantaged unincorporated community under Government Code 56375(a)(8) shall receive a 50% fee reduction relative to the charges normally incurred under the fee schedule. Additional reductions or waivers would require Commission approval.

c) Jurisdictional changes initiated in response to an existing or pending septic or well failure shall receive a 75% fee reduction relative to the charges normally incurred under the fee schedule. Qualifying proposals mush have 100% written consent of all affected landowners and confirmation from the County Environmental Health Department verifying an existing or pending failure exists. Additional reductions or waivers would require Commission approval.

Blank for Photocopying

From: Ieromnimon, Carolanne
To: Simonds,Keene
Subject: Fee Waiver Policies | SoCal LAFCOs
Date: Tuesday, November 28, 2023 10:48:00 AM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png

Keene,

I followed up on your request regarding the Southern Region LAFCOs' policies and procedures involving fee waivers.

Each are outlined below for your reference.

- **LA LAFCO**:
  - EO has the authority to waive or reduce fees in an amount of $2,500 or less and only for request from a private party (not from public agency); waiver request exceeding $2,500 require Commission approval.
  - Per Government Code Section 56383(d), to grant fee waiver, the Commission or EO must make a finding that the payment would be detrimental to public interest (i.e., cause financial hardship upon applicant, application is consistent with recommendations outlines in MSR adopted by LAFCO and/or the application advances principles of CKH relative to logical boundaries).
  - Applicants must submit request in writing and explain how payment would be detrimental; applicants are notified within 2 weeks (in writing by EO) and EO must notify Commission at the next regular meeting.

    Microsoft Word - Fee Waiver Policy 06-08-11.docx (lalafco.org)

- **OC LAFCO (2020 copy found (currently doing updates to their policies/procedures):**
  - Any request for fee waiver requires action by the Commission.
  - Applications for "island" annexations are automatically granted.
  - Fee refunds requires action by the Commission; are automatically rewarded to Special District that has successfully completed the annexation of 2 or more service islands that constitute all the remaining islands within their SOI.
  - Fee waivers/refunds have to be written request and specify the reason.

    FINAL_Orange County LAFCO COMPLETE SEC 1-5_Revised_June2019.xps (oclafco.org) (page 230)

- **RSIDE LAFCO:**
  - Unable to locate a policy specific to fee waivers on their website or in their policies and procedures. They have received fee waiver request and submitted to Commission.

Policy B-1 LAFCO Policies and Procedures adopted 10-28-2021.pdf

- **SB LAFCO:**
  - Filing fees for proposals involving corrections to boundary alignment problems are automatically waived but do not include costs for legal counsel, noticing, and environmental reviews.
  - Filing fees for reorganization proposals for SOI amendments (concurrent) + detachment/annexation of same area are automatically waived.
  - Island areas will be assessed one-half of the filing fee for each area of consideration; readjustments of agency boundaries as a result of realignment of a roadway will be reduced to single action fee per entity involved.
  - EO determined compliance for automatic waivers/reductions and is to notify the applicant.
  - Any applicant can request a waiver or reduction of the LAFCO filing fee and must be submitted in writing and accompany the submission of the application to the EO; request must justify the request and fee(s) it is requesting to be waived or the dollar amount of fees being reduced.
  - EO presents the request for Commission review via consent calendar at next regular meeting.
  - Commission can waive/reduce fee if it determines that payment will be detrimental to the public interest per Government Code Section 56383(d).
  - Waiver/reduction limited to those costs incurred by the Commission in processing the proposal.

LAFCO_Policy_and_Procedure_Manual.pdf (sbcounty.gov)

- **Imperial LAFCO:**
  - Unable to locate a policy specific to fee waivers on their website or in their policies and procedures.

iclafco-policy-manual.pdf

Carol Ieromnimon
Local Government Analyst II
San Diego County
Local Agency Formation Commission (LAFCO)
Subdivision of the State of California | Regional Service Planning
2550 Fifth Avenue, Suite 725
San Diego, California 92103
T | 619.321.3382 Direct
858.298.7280 Cell

5c

AGENDA REPORT
Business | Information

December 15, 2023

TO: Special Districts Advisory Committee

FROM: Michaela Peters, Analyst I
Chris Cate, LAFCO Consultant

SUBJECT: **Pending Determination | Commission's Oversight Duties and the San Diego Unified Port District**

SUMMARY

The San Diego Special Districts Advisory Committee ("Committee") will receive an update on a pending determination regarding LAFCO's oversight duties as they relate to the Port of San Diego – formally the San Diego Unified Port District. This includes reviewing a preliminary assessment performed by staff that tentatively concludes – and based on available information – the Port is a special district subject to LAFCO oversight. It similarly concludes the Port qualifies as an "independent" special district, and accordingly eligible to seat members on the Commission and responsible for proportionally paying part of the special districts' share of the LAFCO budget. Staff's preliminary assessment is qualified pending additional discussion with the Port. The preliminary assessment is being shared with the Committee for information with an invitation to provide feedback as staff proceeds with finalizing a determination for future presentation to the Commission.

BACKGROUND

LAFCOs' Oversight Responsibilities

The State Legislature delegates LAFCOs' responsibilities to regulate and plan the location of cities and most special districts and their municipal service areas in all 58 counties. This includes establishing, expanding, and reorganizing cities and districts in meeting LAFCOs' underlying directive to facilitate orderly and accountable growth and development relative

Administration:
Keene Simonds, Executive Officer
2550 Fifth Avenue, Suite 725
San Diego, California 92103
T 619.321.3380
E lafco@sdcounty.ca.gov
www.sdlafco.org

Chair Jim Desmond, County of San Diego
Joel Anderson, County of San Diego
Nora Vargas, Alt., County of San Diego
Kristi Becker, City of Solana Beach
Dane White, City of Escondido
John McCann, Alt., City of Chula Vista
Vice Chair Stephen Whitburn, City of San Diego
Marni von Wilpert, Alt., City of San Diego
Jo MacKenzie, Vista Irrigation
Barry Willis, Alpine Fire Protection
David A. Drake, Alt., Rincon del Diablo
Andy Vanderlaan, General Public
Harry Mathis, Alt., General Public

to community needs – current and future – as determined by individual LAFCOs. Specific regulatory actions under LAFCO statute include the following: city incorporations and disincorporations; district formations; consolidations; and dissolutions; city and district mergers; and city and district annexations and detachments.

Special Districts Defined in LAFCO Statute

The Legislature defines "special district" under LAFCO statute as follows: [1]

> "An agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries and in areas outside district boundaries when authorized by the commission pursuant to Section 56133."

Special Districts Excluded in LAFCO Statute

The Legislature excludes the following special districts from LAFCO oversight that otherwise would qualify under the preceding definition: [2]

- School Districts
- Community College Districts
- Assessment Districts
- Special Assessment Districts
- Improvement Districts
- Community Facilities Districts (Mello Roos)
- Permanent Road Districts
- Air Pollution Control Districts
- Air Quality Maintenance Districts

DISCUSSION

This item is for the Committee to receive a preliminary assessment addressing LAFCO's oversight duties in statute as it relates to the Port of San Diego. The assessment has been prepared in response to an October 2023 request from the dais by Commissioner MacKenzie with concurrence from the full Commission. The request ties to a recent Civil Grand Jury report, which – among other items – identifies the lack of local oversight of the Port. A front-page article in the Union-Tribune proceeded to cover the Grand Jury report and presented its own queries into the Port and related accountability issues. Copies are attached.

Additional discussion regarding LAFCO practice as well as related inquiries follows.

[1] Reference to Government Code 56036(a).
[2] Reference to Government Code 56036(b).

Historical Practice to Date

San Diego LAFCO has not asserted any direct oversight of the Port to date. (The Port's establishment predates LAFCO.) The origins of the practice, however, are uncertain to current staff, most of whom joined LAFCO after 2017. There are no records showing the topic – and specifically why the Port is not included in the group of special districts overseen by LAFCO – being addressed by previous Executive Officers and/or Commissions.

Revisiting the Port's Status in 2019

In 2019, San Diego LAFCO received a reorganization filing seeking annexation of certain unincorporated territory to the City of National City.[3] The administrative review led staff to revisit the Port's status relative to the Commission and whether a concurrent annexation to the Port through LAFCO was needed.[4] However, the combination of uncertainty in the origins of past practice as described paired with the applicant's timing interests led staff to table the topic. The Commission proceeded to approve the reorganization without further inquiry into the Port in December 2019.

Returning to the Port's Status in 2021

The pandemic delayed LAFCO staff returning to the Port topic until late 2020. After performing initial analysis, staff reached out to the Port via e-mail in December 2020 to communicate – with historical practice aside – it may be subject to the Commission. A meeting was subsequently held in June 2021 between senior staff with both sides agreeing to explore the topic in greater detail. LAFCO staff proceeded to perform additional analysis in step with consulting with outside counsel and proceeded to summarize their tentative conclusions in an August 6, 2021, letter to the Port. The letter tentatively concluded – and in the absence of other information – the Port was subject to LAFCO oversight and responsible for contributing towards the special districts' annual share of the LAFCO budget. The Port responded on September 16, 2021 that they would review the matter in more detail. No further communications were received.

ANALYSIS

The preliminary assessment performed by LAFCO staff revisits and expands on staff's earlier analysis as described in the preceding sections regarding the LAFCO-Port relationship. This includes revisiting the earlier record in its entirety and seeking direct input from the Port. Based on the information available, the assessment determines the Commission's oversight applies to the Port. It similarly determines the Port is eligible to serve on the Commission and responsible for paying a portion of the special districts' share of the LAFCO budget. These central determinations draw and/or supported by the following factors.

1. The Legislature does not include port districts among the list of special districts excluded from Commission oversight under the Cortese-Knox-Hertzberg Act.

[3] Reference to the "Sweetwater Reorganization," LAFCO File No. RO19-16.
[4] The referenced prompt ties to the Port's enabling act setting the original boundary to match the Cities of Chula Vista, Coronado, Imperial Beach, and San Diego, and if subsequent annexations to these agencies requires concurrent action by LAFCO to formally add to the Port.

2. The San Diego Unified Port District Act is part of California Harbor and Navigation Code. There are two other known port districts – Stockton and Ventura – formed under the Harbor and Navigation Code; both agencies are overseen by their LAFCOs.

3. The San Diego Unified Port District Act specifies the Port may annex additional territory and/or be dissolved by "operation of law." It appears LAFCO statute serves as operation of law given no other direction is provided in the enabling act.

4. In the absence of LAFCO involvement, there are no clear mechanisms for boundary changes for the Port to be filed with the State via the Board of Equalization – Tax Division. Boundary change filings are done by the conducting authority. LAFCO assumed the conducting authority role from the affected cities and districts in 2000. The Tax Division reports no boundary change filings for the Port have been received thereafter despite – materially – three of the five Port cities (Chula Vista, National City, and San Diego) having annexed unincorporated lands. This disconnect suggests LAFCO should be reorganizing annexations involving the five cities to include concurrent annexation to the Port and filing accordingly with the Tax Division.[5]

5. The Port's Board of Commissioners are appointed by the five cities' councils to fixed four-year terms. This appointment method qualifies the Port as an "independent special district" within the definition of the Cortese-Knox-Hertzberg Act. This means the Port may participate in serving and selecting Commission members representing special districts. It also means the Port is responsible for contributing towards the special districts' annual share of the LAFCO budget.

The Commission received the preliminary analysis at its December 4, 2023 meeting with direction to staff to proceed with finalizing a determination for presentation at a future meeting. The Port is also in receipt of the preliminary assessment and currently performing an internal review of their own.

RECOMMENDATION

Information only.

ALTERNATIVES FOR ACTION

No action proposed, information only with the opportunity to provide feedback to LAFCO staff in calibrating its ongoing assessment.

[5] The Port's enabling act states lands annexed to the five cities shall be automatically added to the Port boundary. (Annexation of other lands would be subject to "operation of law.") The referenced LAFCO role would parallel a similar feature that was, until recently, part of the County Service Area (CSA) Act to require automatic detachments when annexing lands to cities. LAFCOs would take action to approve the automatic detachment and file the boundary change involving the CSA with the Board of Equalization – Tax Division. (The CSA Act was amended in the late 2000s as part of a comprehensive rewrite and removed the automatic detachment provision and allows LAFCOs to retain newly annexed city lands with CSAs under certain conditions.)

PROCEDURES

This item has been placed on the Committee's agenda for information part of the business calendar. It will include a verbal presentation by staff paired with the opportunity for the Committee to discuss and provide feedback as it chooses.

Respectfully,



Michaela Peters
Analyst I

Attachments:

1) San Diego Unified Port District Act
2) Civil Grand Jury Report: Governance of San Diego Bay, 2022-2023
3) Union-Tribune: Does the SD Port Have Too Much Power, September 5, 2023
4) Government Code 56036
   Subsection (a) – definition of special district in LAFCO statute
   Subsection (b) – exclusion of certain special districts from LAFCO oversight
5) Government Code 56044 – definition of independent special districts in LAFCO statute

Blank for Photocopying

San Diego Unified Port District
Document No. 70987
Filed MAR 03 2020
Office of the District Clerk

(48)

SAN DIEGO UNIFIED PORT DISTRICT ACT

California Harbors and Navigation Code, Appendix 1
(Cal. Harb. & Nav., Appx. 1)

An act to provide for the establishment of the San Diego Unified Port District; to provide for the calling of municipal elections therefor; describing the powers, duties, and functions thereof, authorizing the district to borrow money and issue bonds for district purposes; to provide means of raising revenues for the operation, maintenance and bond redemption of the district; and to provide for the transfer to such district of tidelands and lands lying under inland navigable waters.

Section headings in this document are for reference only
and are not official section headings of the legislation.

(Stats. 1962, 1st Ex. Sess., c. 67, as amended by Stats. 1963, c. 673,
Stats. 1965, c. 349, Stats. 1965, c. 577, Stats. 1965, c. 1953, Stats. 1965, c. 2043,
Stats. 1974, c. 208, Stats. 1975, c. 587, Stats. 1977, c. 1227,
Stats. 1982, c. 171, Stats. 1990, c. 168, Stats. 1991, c. 978,
Stats. 1996, c. 399, Stats. 1996, c. 480, Stats. 1997, c. 118,
Stats. 1998, c. 889, Stats. 2000, c. 302, Stats. 2001, c. 946,
Stats. 2005, c. 382, Stats. 2006, c. 538, Stats. 2014, c. 931, Stats 2018, c.192, Stats. 2019, c. 372.)

Table of Contents

Section	Page
§ 1. SHORT TITLE.	6
§ 2. STATE POLICY.	6
§ 3. DEFINITIONS.	6
§ 4. ESTABLISHMENT OF PORT DISTRICT; PURPOSES; USE OF POWERS.	6
§ 5. TERRITORY; JURISDICTION.	7
§ 5.5 TRANSFER OF INTEREST IN REAL PROPERTY; SAN DIEGO UNIFIED PORT DISTRICT.	7
§ 5.7 TRANSFER OF INTEREST IN REAL PROPERTY; SAN DIEGO UNIFIED PORT DISTRICT; TIDELANDS AND SUBMERGED LANDS WITHIN SAN DIEGO BAY.	9
§ 5.8 TRANSFER OF REAL PROPERTY IN THE CITY OF CHULA VISTA TO THE SAN DIEGO UNIFIED PORT DISTRICT.	10
§ 6. ELECTION ON FORMATION OF DISTRICT.	12
§ 7. PETITION OR RESOLUTION OF CONSENT; CONTENTS.	13
§ 8. QUALIFICATIONS OF SIGNERS.	13
§ 9. PUBLICATION OF PETITION; HEARING; LAW GOVERNING.	13
§ 10. ELECTION PROCEEDINGS; LAW GOVERNING; DEFINITION OF TERMS; CONSOLIDATION OF ELECTIONS.	13
§ 11. VOTE COUNT; CONDUCT.	14
§ 12. APPROVAL BY ELECTORS.	14
§ 13. CANVASS OF VOTES; ENTRIES ON MINUTES.	14
§ 14. CONVEYANCE OF TIDELANDS, SUBMERGED LANDS AND FACILITIES THEREON IN TRUST TO DISTRICT; EXCEPTIONS	14
§ 15. INCLUSION OF UNINCORPORATED TERRITORY.	14
§ 16. GOVERNMENT OF DISTRICT; APPOINTMENT OF PORT COMMISSIONERS; QUALIFICATIONS; EXERCISE OF POWERS AND DUTIES.	14
§ 17. TERM OF COMMISSIONERS; VACANCIES; OATH; CERTIFICATE; REMOVAL.	15
§ 18. COMMISSIONERS; ORGANIZATION; QUORUM; MEETINGS; RULES AND REGULATIONS, COMPENSATION.	15
§ 19. MASTER PLAN FOR HARBOR AND PORT IMPROVEMENT; MODIFICATION OF PLAN; CONFLICTING LOCAL ORDINANCES.	15

§ 20. FISCAL YEAR; ESTABLISHMENT; ANNUAL FINANCE REPORT BUDGET. 16
§ 21. ORDINANCES AND RESOLUTIONS. 16
§ 22. EMPLOYMENT OF OFFICERS AND EMPLOYEES. 17
§ 23. ACTIONS BY AND AGAINST DISTRICT. 18
§ 24. SEAL. 18
§ 25. ACQUISITION AND DISPOSAL OF PROPERTY. 18
§ 26. REPEALED 1996 – By Stats. 1996, c. 399. 18
§ 27. EMINENT DOMAIN. 18
§ 28. PUBLIC CORPORATION. 18
§ 29. BONDS AND OTHER INDEBTEDNESS; REFUNDING; RETIREMENT. 18
§ 30. POWERS AND SERVICES. 19
§ 30.5 EXERCISE OF POWERS OFF TIDELANDS. 20
§ 31. CONTRACTS WITH CITY FOR SERVICES. 21
§ 32. ELECTIONS; APPLICABILITY OF ELECTIONS CODE. 21
§ 33. ELECTIONS; INITIATIVE REFERENDUM AND RECALL. 21
§ 34. INVESTMENT OF EXCESS FUNDS. 21
§ 35. NECESSARY AND CONVENIENT ACTS. 21
§ 36. FIXING OF RATES AND CHARGES. 21
§ 37. PUBLIC PROJECTS; APPLICABLE LAW. 21
§ 37.2 DESIGN-BUILD CONTRACTS FOR PROJECTS EXCEEDING ONE MILLION DOLLARS. 22
§ 37.5 NEGOTIATIONS WITH FEDERAL GOVERNMENT; CONTRIBUTIONS FOR WORK DONE BY UNITED STATES. 22
§ 38. CREATION AND ACCUMULATION OF CAPITAL OUTLAY FUND. 22
§ 40. USE OF FUND; PURPOSES; AUTHORIZATION. 23
§ 41. BORROWING MONEY; NOTES AND CONDITIONAL SALES CONTRACTS; RESTRICTIONS AND CONDITIONS; TAXES. 23
§ 42. GENERAL OBLIGATION BONDS. 24
§ 43. BONDS; PROVISION FOR PAYMENT. 27
§ 44. BONDS; CERTIFICATE OF REQUIRED TAX REVENUES. 27

§ 45. LEVY AND COLLECTION OF TAXES; USE OF PROCEEDS. 27

§ 47. NOTICE OF ADOPTION OF PRELIMINARY BUDGET; HEARING ON FINAL BUDGET. 28

§ 48. APPEARANCE OF TAXPAYERS; CONTINUATION OF HEARING. 28

§ 49. REPORT OF FINAL BUDGET TO BOARD OF SUPERVISORS. 28

§ 49.5 LEVY OF TAX BY BOARD OF SUPERVISORS; PAYMENT OF FUNDS TO DISTRICT TREASURER; LIMITATIONS ON LEVY FOR CAPITAL OUTLAY. 28

§ 50. BONDS AS LEGAL INVESTMENTS. 29

§ 51. REVENUE BONDS. 29

§ 52. AUDIT OF ACCOUNTS. 31

§ 53. ANNEXATION OF TERRITORY. 31

§ 54. REPEALED 1965 – Added by Stats. 1963, c. 673, Repealed by Stats. 1965, c. 2043 31

§ 55. RULES AND REGULATIONS OF BOARD; REGULATION OF VESSELS; HARBOR POLICE AND FIRE PROTECTION. 31

§ 56. ENACTMENT AND ENFORCEMENT OF POLICE AND SANITARY REGULATIONS. 32

§ 57. ACQUISITION AND OPERATION OF FACILITIES FOR PROMOTION OF COMMERCE, NAVIGATION, FISHERIES AND RECREATION. 32

§ 57.5 TRANSPORTATION VENDOR CONDUCTING BUSINESS ON DISTRICT TIDELANDS; PARKING STRUCTURE FINANCING FEE; CONDITIONS. 32

§ 58. SUSPENSION OF RULES AND REGULATIONS IN EMERGENCIES; EMERGENCY REGULATIONS. 33

§ 59. VIOLATIONS; MISDEMEANORS; CONDUCT OF PROSECUTION; JURISDICTION. 33

§ 60. APPLICABILITY OF MUNICIPAL POLICE, FIRE AND SANITARY REGULATIONS. 34

§ 61. ASSESSMENTS, REASSESSMENTS, SPECIAL TAXES, AND BONDS; AUTHORIZED PROJECTS; APPLICATION OF OTHER STATUTORY PROVISIONS; ASSESSMENT DIAGRAMS; ASSESSMENT ROLL; COLLECTION; APPORTIONMENT. 34

§ 62. CONTRIBUTIONS TO WORKS BY OTHER AGENCIES TO IMPROVE NAVIGATION AND COMMERCE. 36

§ 63. REPEALED 1963 – Repealed by Stats. 1963, c. 673 36

§ 64. REPEALED 1963 – Repealed by Stats. 1963, c. 673 36

§ 65. REPEALED 1963 – Repealed by Stats. 1963, c. 673 36

§ 66. CONTRACT WITH NOTE AND BOND HOLDERS; ENFORCEMENT. 36

§ 67. ASSUMPTION OF MUNICIPAL DEBT FOR DISTRICT PURPOSES; VALIDATION. 37

§ 68. CONSENT OF STATE TO CONVEYANCES IN TRUST TO DISTRICT: SURRENDER OF POWER TO MANAGE HARBOR. 37

§ 69. REVERSION OF LANDS AND POWER TO MANAGE HARBOR ON DISSOLUTION OF DISTRICT. 37

§ 70. DISTRICT AS SUCCESSOR OF CERTAIN POWERS OF COUNTY AND CITIES; TRANSFER OF TITLE AND POSSESSION OF PROPERTY. 38

§ 71. CESSATION OF CERTAIN LOCAL OFFICES UPON ESTABLISHMENT OF DISTRICT; EXCEPTIONS; RETIREMENT AND DISABILITY BENEFITS. 38

§ 71.5 DISCHARGE OF TRANSFERRED EMPLOYEES; INDEPENDENT CONTRACTORS. 39

§ 72. DISTRICT OFFICERS. 39

§ 72.5 UNCLASSIFIED AND CLASSIFIED SERVICES. 39

§ 73. SALARIES; BONDS. 40

§ 74. EXECUTION OF BONDS, NOTES AND CONTRACTS. 41

§ 75. ADOPTION OF CIVIL SERVICE REGULATIONS; PROVISIONS. 41

§ 76. USE OF SERVICES OF CIVIL SERVICE COMMISSION OFFICE OF SAN DIEGO COUNTY. 42

§ 77. TIME FOR PAYING WAGES OR SALARIES. 42

§ 78. DELIVERY OF PROPERTY OF COUNTY AND CITIES TO DISTRICT OFFICERS. 42

§ 79. PROVISIONS OF ACT TO CONTROL OVER INCONSISTENT PROVISIONS OF FREEHOLDERS' CHARTER. 42

§ 80. DEPOSIT OF MONEYS RECEIVED FROM HARBOR FACILITIES OR UTILITIES IN DISTRICT REVENUE FUND; APPROPRIATIONS. 43

§ 81. USE OF FUND FOR EXPENSES OF CONDUCTING DISTRICT. 43

§ 82. USE OF FUND FOR ADVERTISING COMMERCIAL ADVANTAGES AND FACILITIES. 43

§ 83. USE OF FUND FOR ACQUISITION AND MAINTENANCE OF IMPROVEMENTS, WORKS AND FACILITIES, ETC. 43

§ 84. USE OF FUND FOR BOND AND INTEREST PAYMENTS AND FOR ESTABLISHMENT OF FUNDS TO SECURE SUCH PAYMENTS. 43

§ 85. USE OF FUND FOR PAYMENT OF PRINCIPAL AND INTEREST OF OUTSTANDING MUNICIPAL BONDS FOR HARBOR IMPROVEMENTS. 44

§ 86. TRANSFER OF AMOUNTS BETWEEN BUDGET ITEMS AND BETWEEN BOND FUNDS. 44

§ 87. PURPOSES FOR USE OF TIDE AND SUBMERGED LANDS HELD IN TRUST BY DISTRICT. 44

§ 88. PARTIAL INVALIDITY. 47

§ 1. SHORT TITLE.

This act shall be known and may be cited as the San Diego Unified Port District Act.

§ 2. STATE POLICY.

It is hereby declared to be the policy of the State of California to develop the harbors and ports of this State for multiple purpose use for the benefit of the people. A necessity exists within San Diego County for such development. Because of the several separate cities and unincorporated populated areas in the area hereinafter described, only a specially created district can operate effectively in developing the harbors and port facilities. Because of the unique problems presented by this area, and the facts and circumstances relative to the development of harbor and port facilities, the adoption of a special act and the creation of a special district is required.

§ 3. DEFINITIONS.

For the purposes of this act the following words shall have the following meanings:

(a) "District" or "port district" shall mean the San Diego Unified Port District.

(b) "Board" or "board of commissioners" shall mean the Board of Commissioners of the San Diego Unified Port District.

(c) "County" shall mean the County of San Diego.

§ 4. ESTABLISHMENT OF PORT DISTRICT; PURPOSES; USE OF POWERS.

(a) A port district for the acquisition, construction, maintenance, operation, development and regulation of harbor works and improvements, including rail and water, for the development, operation, maintenance, control, regulation, and management of the harbor of San Diego upon the tidelands and lands lying under the inland navigable waters of San Diego Bay, and for the promotion of commerce, navigation, fisheries, and recreation thereon, may be established or organized and governed as provided in this act and it may exercise the powers expressly granted herein.

(b) Subject to Section 87 and any other provision of applicable law, the district may use the powers and authority granted pursuant to this section to protect, preserve, and enhance all of the following:

(1) The physical access to the bay.

(2) The natural resources of the bay, including plant and animal life.

(3) The quality of water in the bay.

(c) Notwithstanding any other provision of law, the powers and authority specified in this section are to be used only as necessary or incident to the development and operation of a port and shall not apply to public utilities operated under the jurisdiction of the Public Utilities Commission of the State of California.

(d) This section shall become operative on December 2, 2002. (Amended Stats. 1996, c. 399; Stats. 2001, c. 946)

§ 5. TERRITORY; JURISDICTION.

(a) The area within the district shall include all of the corporate area of each of the cities of San Diego, Chula Vista, Coronado, National City, and Imperial Beach which establish the district as provided in this act, and any unincorporated territory in the County of San Diego contiguous thereto, which is economically linked to the development and operation of San Diego Bay, included in the district by the board of supervisors of the county as provided in this act. The regulatory, taxing, and police power jurisdiction of the district, as otherwise provided for in this act, shall apply to the above-described area.

(b) In addition to the powers and authority described in subdivision (a), the district shall exercise its land management authority and powers over the following areas:

(1) The tidelands and submerged lands granted to the district pursuant to this act or any other act of the Legislature.

(2) Any other lands conveyed to the district by any city or the County of San Diego or acquired by the district in furtherance of the district's powers and purposes as provided in Section 87.

(c) This section shall become operative on December 2, 2002. (Amended by Stats. 1990 c. 168; Stats. 1996 c. 399; Stats. 2001, c. 946)

§ 5.5 TRANSFER OF INTEREST IN REAL PROPERTY; SAN DIEGO UNIFIED PORT DISTRICT.

(a) There is hereby granted and conveyed in trust to the San Diego Unified Port District in the County of San Diego all the right, title, and interest of the State of California, except as hereafter reserved and upon conditions specified in subdivision (c), acquired and held by the state pursuant to an agreement and deeds identified as Documents Number 1999 0845732, 1999 0845736, and 1999 0845737, recorded December 30, 1999, Official Records, San Diego County, and which are further described as follows:

(1) Parcel No. 1, which consists of that portion of the southwest quarter of the southwest quarter of quarter Section 163 and that portion of the northwest quarter of the northwest quarter of quarter Section 164 of Rancho De La Nacion in the City of Chula Vista, County of San Diego, State of California, according to map thereof no. 166 filed in the Office of the County Recorder of San Diego County May 11, 1869, and all of lots 7, 8, 9, 10, and 11 and those portions of lots 1, 2, 3, 4, 5, 6, 12, 13, 14, and 15 in block "B" of resubdivision of Bay Villa Tract, according to map thereof no. 1198, filed in the Office of the County Recorder of San Diego County August 6, 1909. Together with those portions of Walnut Street adjoining said block "B" on the west and the alley lying within said block "B" and that portion of "I" Street lying within said

quarter Sections 163 and 164 as vacated and closed to public use by resolution of the City Council of the City of Chula Vista recorded August 12, 1971, as file no. 179188 of official records described as a whole as follows:

Beginning at a point on the southerly line of said quarter Section 163, distance thereon 20.00 feet easterly from the southwest corner thereof; thence north 17°46'58" west on a line 20.00 feet easterly from and parallel with the westerly line of said quarter Section 163, a distance of 1282.11 feet to a point on the southerly line of "H" Street as shown on said map no. 1198; thence along said southerly line north 72°12'15" east 19.89 feet to a point on the westerly line of that land conveyed to the State of California (Caltrans) by deed recorded August 1, 1968, as file no. 130106 of official records; thence along the westerly boundary of said Caltrans land the following seven courses: (1) south 17°48'37" east 5.95 feet; (2) north 74°58'17" east 188.10 feet to the beginning of a tangent 45.00 foot radius curve concave southwesterly; (3) southeasterly along the arc of said curve through a central angle of 73°18'01" a distance of 57.57 feet; (4) tangent to said curve south 31°43'55" east 181.34 feet; (5) south 26°51'03" east 342.59 feet to the beginning of a tangent 1669.99 foot radius curve concave westerly; (6) southerly along the arc of said curve through a central angle of 14°20'28" a distance of 418.00 feet; and (7) south 12°30'35" east 303.54 feet to the centerline of "I" Street as closed and vacated; thence along said centerline south 72°15'16" west 332.90 feet to the point of beginning.

(2) Parcel No. 2, which consists of those portions of fractional quarter Section 170 and 171 of the Rancho De La Nacion in the City of Chula Vista, in the County of San Diego, State of California, according to map thereof by Morrill, filed as map no. 166 in the Office of the County Recorded of San Diego County, bounded and described as follows:

Commencing at the Northeast corner of said fractional quarter Section 171; thence south 17 °54'28" east along the easterly line of said fractional quarter section, 1270.95 feet to a point on a line nine feet parallel to and northerly of the westerly prolongation of the northerly line of "H" Street as said street is shown on the map of Bay Villa Tract, according to map thereof no. 1198, on file in the Office of the County Recorder of San Diego County; thence south 72°12'00" west along said parallel line, a distance of 170.00 feet to the true point of beginning of this description; thence parallel with and distant 170.00 feet westerly from the easterly line of said fractional quarter sections, the following three courses and distances: (1) south 17°54'28" east 49.14 feet; (2) south 17°47'12" east 1321.96 feet; and (3) south 17 °50'01" east 1283.10 feet to a point in the westerly prolongation of the northerly line of "J" Street, as shown on record of survey no. 917 on file in the Office of the County Recorder of San Diego County; thence along said westerly prolongation south 72°04'39" west 593.24 feet to a point on the ordinary high water mark of San Diego Bay, as said ordinary high water mark was fixed and established by that agreement recorded June 22, 1953, in book 4897, page 408, of official records, San Diego County and as shown on miscellaneous map no. 217 on file in the Office of the County Recorder of San Diego County; thence along said ordinary

high water mark the following eight courses and distances: (1) north 07°04'12" west 491.51 feet to station 117; (2) north 04°01'57" west 568.80 feet to station 116; (3) north 14°12'27" west 489.77 feet to station 115; (4) north 22°26'52" west 184.97 feet to station 114; (5) north 57°45'31" west 230.80 feet to station 113; (6) north 20°56'53" west 453.58 feet to station 112; (7) north 24°18'00" west 233.28 feet to station 111; and (8) north 30°20'10" west 87.43 feet to a point on a line nine feet parallel to and northerly of the westerly prolongation of the northerly line of "H" Street as described; thence a long said parallel line north 72°12'00" east 568.65 feet to the true point of beginning.

(b) The lease of the lands described in subdivision (a), designated No. PRC 8121, from the State Lands Commission to the district shall terminate on January 1, 2001.

(c) The district shall own, operate and manage the public trust lands described in subdivision (a) in accordance with the same terms, trusts, and conditions as the tide and submerged lands granted to it and held pursuant to Chapter 67 of the Statutes of 1962 of the First Extraordinary Session, as amended. (Added by Stats. 2000, c. 302)

§ 5.7 TRANSFER OF INTEREST IN REAL PROPERTY; SAN DIEGO UNIFIED PORT DISTRICT; TIDELANDS AND SUBMERGED LANDS WITHIN SAN DIEGO BAY.

(a) There is hereby granted in trust to the district all the right, title, and interest of the State of California, held by the state by virtue of its sovereignty, in and to all those remaining tidelands and submerged lands not previously granted, whether filled or unfilled, within the San Diego Bay lying northerly of the following described line:

Beginning at NGS monument Road 2 (PID DC1690), thence S 68°07'54" W 8,621.00 feet to NGS monument North Island NAS Shoran Tower (PID DC1727). The basis of bearings of this description is the California Coordinate System of 1983, Zone 6. All distances are grid distances.

(b) The district shall own, operate, and manage the public trust lands granted pursuant to subdivision (a) in accordance with the same terms, trusts, and conditions as the tide and submerged lands otherwise granted under this act.

(c) (1) (A) (i) By June 30, 2020, the district shall transfer to the State Lands Commission the initial sum of four hundred twelve thousand nine hundred three dollars ($412,903) from the revenues generated on the lands granted pursuant to subdivision (a). This initial amount is based on the estimated gross annual revenues generated, as of June 30, 2020, from the lands granted pursuant to subdivision (a).

(ii) By June 30, 2021, and at the end of each fiscal year thereafter, the initial sum required to be transferred pursuant to clause (i) shall be adjusted according to the change in the Consumer Price Index, and

that adjusted amount shall be transferred to the State Lands Commission.

(B) If the gross annual revenues generated by the lands granted pursuant to subdivision (a) exceed the amount required to be transferred to the commission pursuant to subparagraph (A), the district shall, in addition, transfer to the State Lands Commission 20 percent of the total amount of the excess annual gross revenues.

(C) Notwithstanding subparagraph (B), the State Lands Commission may, at its discretion and at a properly noticed public meeting, enter into different revenue sharing agreements, upon proposal by the district, if it finds that the agreement will provide a significant benefit to the public trust and is in the best interests of the state. If the State Lands Commissions approves a revenue sharing agreement different from subparagraph (B), the State Lands Commission shall provide notification, in writing or email, to the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Water.

(2) Upon receipt of the moneys pursuant to paragraph (1), the State Lands Commission shall allocate 80 percent to the Treasurer for deposit in the General Fund and 20 percent to the Treasurer for deposit in the Land Bank Fund for expenditure pursuant to Division 7 (commencing with Section 8600) of the Public Resources Code for management of the commission's granted lands program.

(d) On or before January 1, 2024, the district shall submit to the State Lands Commission a trust lands use plan for trust lands granted pursuant to this section, describing any proposed development, preservation, or other use of the trust lands. The district shall then submit to the State Lands Commission for its approval any proposed changes to, or amendment to, the trust lands use plan. The State Lands Commission, in its sole discretion, may consider whether the submission of the Port Master Plan, pursuant to Section 19, meets the requirements of, and therefore may be considered, a trust lands use plan for trust lands granted pursuant to this section.

(e) The requirements of Section 6359 of the Public Resources Code do not apply to the trust lands granted pursuant to this section. (Added by Stats. 2019, c. 372 (S.B. 507), § 2, eff. Jan. 1, 2020.)

§ 5.8 TRANSFER OF REAL PROPERTY IN THE CITY OF CHULA VISTA TO THE SAN DIEGO UNIFIED PORT DISTRICT.

(a) (1) Notwithstanding any other law, there is hereby granted and conveyed in trust to the San Diego Unified Port District in the County of San Diego all the right, title, and interest of the state, acting by and through the State Lands Commission, in real property acquired and held by the state subject to the common law public trust doctrine and pursuant to a Grant Deed identified as Document No. 2016-0073422, recorded on February 19, 2016, in the Official

Records of San Diego County, and pursuant to the agreement that was approved as Calendar Item 48 of the December 10, 2010, State Lands Commission meeting, which is further described as follows:

Real property in the City of Chula Vista, County of San Diego, State of California, described as follows:

That portion of quarter sections 172 and 173 of Rancho De La Nacion, in the City of Chula Vista, County of San Diego, State of California, according to map thereof No. 166, filed in the Office of the County Recorder of said San Diego County, being more particularly described as follows:

Beginning at the intersection of the northerly line of F Street with a line lying 170.00 feet westerly of and parallel with the easterly line of said quarter Section 172 as shown on Record of Survey 9039 on file in the Office of the Recorder of said County; thence along the northerly line of F Street south 72°03'09" west (south 72°03'22" west per Record of Survey 9039) 1576.25 feet; thence leaving said northerly line along the boundary of that certain parcel of land granted to the Chula Vista Yacht Club by deed recorded March 20, 1914 in Book 648, Page 5 of deeds, north 17°56'51" west (north 19°30'00" west record) 125.00 feet; thence south 72°03'09" west 360.27 feet (south 70°30'00" west 357.32 feet record) to a point on the ordinary high water mark as shown on said record of Survey 9039; thence along said ordinary high water mark north 25°58'19" west (north 25°58'27" west record) 21.21 feet; thence north 34°45'18" west 351.42 feet (north 34°45'26" west 351.42 feet record); thence north 31°15'18" west 369.02 feet (north 31°15'26" west 369.00 feet record); thence north 39°43'12" west (north 39°39'35" west record) 65.98 feet; thence leaving said ordinary high water mark along the line shown as proposed buffer line on Record of Survey 10601 on file in the Office of the Recorder of said County north 54°19'29" east 242.85 feet (north 54°21'35" east 242.81 feet record); thence north 25°59'02" east 168.30 feet (north 25°56'57" east 168.40 feet record); thence north 10°11'18" east 105.09 feet (north 10°12'03" east 105.09 feet) to a point on the arc of a nontangent 200.00 foot radius curve concave southeasterly, a radial line to said point bears north 34°13'58" west (north 34°13'23" west record); thence northeasterly along said curve through a central angle of 28°27'27" an arc distance of 99.33 feet to a point of reverse curvature with a 100.00 foot radius curve concave northwesterly; thence northeasterly along said curve through a central angle of 82°22'52" an arc distance of 143.78 feet; thence along a nontangent line north 01°34'50" east 78.45 feet (north 01°35'25" east 78.45 feet record); thence north 14°41'41" east 153.05 feet (north 14°42'16" east 153.05 feet record); thence north 09°57'42" west 362.16 feet (north 09°57'07" west 362.16 feet record); thence north 09°51'27" west 201.35 feet (north 09°53'08" west 201.40 feet record); thence north 32°52'31" east 220.47 feet (north 32°51'10" east 220.47 feet record); thence north 16°04'50" east 244.79 feet (north 16°03'29" east 244.79 feet record) to a point on the arc of a nontangent 200.00 foot radius curve concave easterly, a radial line to said point bears south 75°49'10" west (south

75°47'49" west record); thence northerly along said curve through a central angle of 32°42'11" an arc distance of 114.15 feet; thence along a nontangent line north 06°46'56" west 202.96 feet (north 06°48'17" west 202.96 feet record); thence north 19°06'19" east 80.68 feet (north 19°04'58" east 80.68 feet record); thence north 31°10'16" west 90.80 feet (north 31°00'20" west 90.57 feet record); thence north 86°38'04" east 160.03 feet (north 86°36'43" east 160.00 feet record) to a point on the arc of a nontangent 600.00 foot radius curve concave northerly, a radial line to said point bears south 24°19'51" west (south 24°20'15" west record); thence easterly along said curve through a central angle of 33°40'00" an arc distance of 352.56 feet; thence along a nontangent line north 85°42'51" east 491.73 feet (north 85°43'14" east 491.67 feet record) to a point on a line which lies 170.00 feet westerly and parallel with the easterly line of said quarter Section 173; thence along said line south 17°42'40" east 1225.66 feet to a point on the southerly line of said quarter Section 173; thence continuing along a line which lies 170.00 feet westerly and parallel with the easterly line of said quarter Section 172 south 17°48'19" east 1287.27 feet to the point of beginning.

(2) Said parcel being described in paragraph (1) is described in a Conditional Certificate of Compliance recorded November 1, 1990, as Instrument no. 90-592926 of official records of the County of San Diego.

(3) Said land is also described in that certain Grant Deed Recorded December 10, 2010, as Instrument No. 2010-0684029 of official records of the County of San Diego.

APN: 567-011-05-00 and 565-010-30-00

(b) The lease of the real property described in Subdivision (a), designated as No. PRC 8912.9, from the state, acting by and through the State Lands Commission, to the district, shall terminate on the effective date of the Act that added this section.

(c) The district shall own, operate, and manage in trust for the benefit of the public statewide the public trust lands conveyed to the district by the state pursuant to subdivision (a) in accordance with the same terms, trusts, and conditions as the tidelands and submerged lands granted and held pursuant to this act.

(d) The requirements of Section 6359 of the Public Resources Code do not apply to the trust lands granted pursuant to this Section. (Added by Stats. 2018, c. 192 (A.B. 2646), § 1, eff. Aug. 24, 2018)

§ 6. ELECTION ON FORMATION OF DISTRICT.

The Board of Supervisors of San Diego County shall call an election in the area to be included within the district not later than the 1964 State Primary Election on the question of the formation of the district if either of the two conditions specified below is met:

(a) A petition calling for the formation of the district is filed with the board of supervisors from each of the five cities specified in Section 5. Each of the petitions from the five respective cities shall be signed by at least five percent (5%) of the voters registered for the last municipal election in each particular city.

(b) A resolution of consent calling for the formation of the district is filed with the board of supervisors from each of the city councils of the five cities specified in Section 5; provided, that the requirements of this section shall be deemed to have been met if a combination of petitions and resolutions of consent have been filed with the board of supervisors, so long as each of the five cities specified in Section 5, either through a petition or by a vote of the city council, has authorized the calling of an election for the formation of the district.

§ 7. PETITION OR RESOLUTION OF CONSENT; CONTENTS.

The petition or the resolution of consent shall contain:

(a) A declaration calling for the creation of the San Diego Unified Port District, for the purpose of improving and developing the harbor.

(b) A declaration that the tide and submerged lands owned by the particular city should be granted to the district.

§ 8. QUALIFICATIONS OF SIGNERS.

Each signer of a petition within a particular city shall be a registered voter and resident of that city.

§ 9. PUBLICATION OF PETITION; HEARING; LAW GOVERNING.

The publication of the petition and the hearing on the petition shall be governed by the provisions of Section 6014 of the Harbors and Navigation Code.

§ 10. ELECTION PROCEEDINGS; LAW GOVERNING; DEFINITION OF TERMS; CONSOLIDATION OF ELECTIONS.

The election shall be called, noticed, held, and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted and returned, returns canvassed, results declared, oaths of office administered, and all other proceedings incidental to and connected with the election shall be regulated and done, as nearly as may be practicable, in accordance with the provisions of law regulating municipal elections in general law cities.

For the purposes of the election, the terms "board of trustees" and "city clerk," respectively, as used in the Elections Code provisions respecting the conduct of elections in general law cities, shall mean the county board of supervisors and the county clerk, respectively, for the purpose of the election held under this act.

An election called pursuant to the provisions of this act may be consolidated with any other election pursuant to the provisions of Chapter 4 (commencing with Section 23300) of Part 2 of Division 12 of the Elections Code.

§ 11. VOTE COUNT; CONDUCT.

The count of the vote in the election shall be conducted in two parts. One part shall consist of those votes cast in the City of San Diego, and the other part shall consist of all of those votes cast in the other four cities specified in Section 5 and outside territory.

§ 12. APPROVAL BY ELECTORS.

If the electors in the City of San Diego and the electors in the other four cities specified in Section 5 and outside territory approve of the formation of the district, at an election held pursuant to the provisions of this act, the district shall be established.

§ 13. CANVASS OF VOTES; ENTRIES ON MINUTES.

If from the canvass it appears and the board of supervisors finds that a majority of the votes cast in the City of San Diego and a majority of the votes cast in the other four cities and outside territory, the votes of such other four cities and outside territory being combined together, were cast in favor of the formation of the district, it shall enter that fact upon its minutes, together with a description of the boundaries of the district, its name, the official name or names by which the district is commonly known and enter its order declaring the district duly formed and existing in the county.

§ 14. CONVEYANCE OF TIDELANDS, SUBMERGED LANDS AND FACILITIES THEREON IN TRUST TO DISTRICT; EXCEPTIONS.

Upon the establishment of the district, every city specified in Section 5 shall convey to the district all its right, title and interest in and to the tidelands and submerged lands, together with any facilities thereon, which are owned by the city, including any such lands which have been granted in trust to the city by the State in the Bay of San Diego. The City of San Diego shall convey to the district all its right, title and interest in and to such pueblo lands as lie within the tidelands and submerged lands in the Bay of San Diego, together with any facilities thereon, which are owned by the City of San Diego. Thereafter the title to such lands shall reside in the district, and the district shall hold such lands in trust for the uses and purposes and upon the conditions which are declared in this act. Notwithstanding any other provision of this act, the City of San Diego shall not be required to convey to the district those lands described in Chapter 778 of the Statutes of 1929, and the City of Coronado shall not be required to convey to the district those lands described in Chapter 1839 of the Statutes of 1953.

§ 15. INCLUSION OF UNINCORPORATED TERRITORY.

The Board of Supervisors of the County of San Diego may, by ordinance, include within the district unincorporated territory which the board has determined would be benefited by the district.

§ 16. GOVERNMENT OF DISTRICT; APPOINTMENT OF PORT COMMISSIONERS; QUALIFICATIONS; EXERCISE OF POWERS AND DUTIES.

The district shall be governed by a board of commissioners who shall be known as "port commissioners." Each city council, respectively, of the cities which are

included in the district pursuant to the provisions of this act shall appoint the commissioner or commissioners to which it is entitled, pursuant to this section, to represent that particular city on the board. Three of the commissioners shall be residents of the City of San Diego, one shall be a resident of the City of National City, one shall be a resident of the City of Chula Vista, one shall be a resident of the City of Coronado, and one shall be a resident of the City of Imperial Beach. The commissioners shall be residents of the respective cities they represent at the time of their appointments, and during the term of their office. All of the powers and duties conferred upon the district shall be exercised through the board of commissioners.

§ 17. TERM OF COMMISSIONERS; VACANCIES; OATH; CERTIFICATE; REMOVAL.

The term of each commissioner shall be for four years, except as provided in this section.

Any vacancy shall be filled by appointment by the city council of the city from which the vacancy has occurred. Any appointment to fill a vacancy during the term of a commissioner shall be for the unexpired term.

Each commissioner, before entering upon the duties of his office, shall take and subscribe the oath as provided in Section 1360 of the Government Code of the State of California, and a certificate of the same shall be filed with the city clerk of the city from which the commissioner shall have been appointed, and a copy of which shall be filed with the district.

A commissioner may be removed from the board by a majority vote of the city council which appointed the commissioner. (Amended by Stats. 1965, c. 577; Stats. 1982, c. 171)

§ 18. COMMISSIONERS; ORGANIZATION; QUORUM; MEETINGS; RULES AND REGULATIONS, COMPENSATION.

Immediately after their appointment, the commissioners shall enter upon the performance of their duties. The board shall annually elect one of its members as chairperson and another as vice chairperson, and shall also elect annually a secretary, who may or may not be a member of the board. A majority shall constitute a quorum for the transaction of business. The board shall make rules and regulations for its own government and procedure, shall hold at least one regular meeting each month, and may hold any special meetings it deems necessary.

The commissioners shall be officers of the district and shall receive no salaries but shall be reimbursed for necessary traveling and other expenses incurred while engaged in the performance of their duties. (Amended by Stats. 1963 c. 673; Stats. 1996, c. 480)

§ 19. MASTER PLAN FOR HARBOR AND PORT IMPROVEMENT; MODIFICATION OF PLAN; CONFLICTING LOCAL ORDINANCES.

The board shall draft a master plan for harbor and port improvement and for the use of all of the tidelands and submerged lands which shall be conveyed to the district pursuant to the provisions of this act. A two-thirds vote of the board shall be

required to adopt the plan. The board may from time to time modify the master plan by a two-thirds vote of the board.

The provisions in the master plan shall not override or supersede any local existing zoning ordinance which was in effect on April 30, 1962; provided, that if any local zoning ordinance is repealed, or expires, or becomes nonoperative for any reason, thereafter the provisions of the master plan adopted by the board shall control as to all lands and waters under the jurisdiction of the district.

§ 20. FISCAL YEAR; ESTABLISHMENT; ANNUAL FINANCE REPORT BUDGET.

The board shall establish a fiscal year for its operations and shall at the end of each fiscal year, or as soon as possible after the end of each fiscal year, make a complete report of the affairs and financial condition of the district for the preceding fiscal year, which shall show the sources of all receipts and the purposes of all disbursements during the year. The report shall be verified by the chairperson of the board and the secretary thereof. The board shall draw up a budget for each fiscal year. (Amended by Stats. 1996, c. 480)

§ 21. ORDINANCES AND RESOLUTIONS.

The board may pass all necessary ordinances and resolutions for the regulation of the district.

The enacting clause of all ordinances passed by the board shall be in substantially the following form:

"The Board of Port Commissioners of San Diego Unified Port District do ordain as follows:"

All ordinances and resolutions shall be signed by the chairperson of the board and attested by the clerk.

All ordinances and resolutions shall be entered in the minutes. All ordinances passed by the board shall be published, within 15 days from the passage thereof, with the names of the members voting for and against them at least once in a daily newspaper of general circulation printed and published in the district.

Ordinances passed by the board shall not go into effect until the expiration of 30 days from the date of their passage by the board, except ordinances ordering or otherwise relating to the following which shall take effect upon their publication:

(a) An election.

(b) The adoption of the annual budget.

(c) The bringing or conducting of suits or actions.

(d) The condemnation of private property for public use.

(e) The immediate preservation of the public peace, health, or safety, which ordinance shall contain a specific statement showing its urgency and be passed by a two-thirds vote of the board.

A grant, franchise, lease, right, or privilege shall never be construed to be an urgency measure.

All grants, franchises, leases, permits, rights, or privileges for five years or less may be made by the executive director in accordance with any regulations the board prescribes by resolution, and all grants, franchises, leases, permits, or privileges for more than five years shall be made by ordinance, except leases or installment sales to or from a joint powers authority or nonprofit corporation in connection with the issuance of bonds or certificates of participation which may be authorized by resolution. Irrevocable permits shall not be granted or issued to any person. (Amended by Stats. 1963, c. 673; Stats. 1996, c. 399)

§ 22. EMPLOYMENT OF OFFICERS AND EMPLOYEES.

(a) The board may employ engineers, attorneys, and any other officers and employees necessary in the work of the district.

(b) The executive director shall appoint a treasurer whose duty it shall be to receive and safely keep all moneys of the district.

(1) The treasurer shall do all of the following:

(a) Comply with all provisions of law governing the deposit and securing of public funds.

(b) Pay out moneys only as authorized by the board, except that no authorization shall be necessary for the payment of principal and interest on bonds of the district, or payment of lease rentals or installment purchase payments used to pay the principal and interest on bonds or certificates of participation issued by, or on behalf of, or at the request of the district.

(c) At regular intervals, at least once each month, submit to the secretary of the district a written report and accounting of all receipts and disbursements and fund balances, a copy of which report he or she shall file with the board.

(2) The treasurer may appoint a deputy or deputies for whose acts the treasurer and the treasurer's bondsmen shall be responsible. The deputy or deputies shall hold office subject to the pleasure of the treasurer and shall receive compensation as may be provided by the board.

(3) The treasurer shall execute a bond covering the faithful performance by him or her of the duties of the treasurer's office and his or her duties with respect to all moneys coming into his or her hands as treasurer in an amount fixed by resolution of the board. The surety bond required by

this paragraph shall be executed only by a surety company authorized to do business in the State of California and the premium therefor shall be paid by the district. The bond shall be approved by the board and filed with the secretary of the district.

(4) The treasurer, before entering upon the duties of his or her office, shall take and file with the secretary of the district the oath of office required by the California Constitution. (Amended by Stats. 1963, c. 673; Stats. 1996, c. 399)

§ 23. ACTIONS BY AND AGAINST DISTRICT.

The district and the board may sue and be sued in all actions and proceedings in all courts and tribunals of competent jurisdiction.

The district also may bring an action to determine the validity of any of its taxes, revenues, rates, charges, bonds, warrants, contracts, obligations, or evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. (Amended by Stats. 1963, c. 673; Stats. 1996, c. 399)

§ 24. SEAL.

The board may adopt a seal for the district and alter it at pleasure. (Amended 1963 by Stats. 1963, c. 673)

§ 25. ACQUISITION AND DISPOSAL OF PROPERTY.

The district may take by grant, purchase, gift, devise, lease or otherwise acquire, hold and enjoy and lease and dispose of real and personal property of every kind, within the district, necessary to the full or convenient exercise of its powers. (Amended by Stats. 1963, c. 673)

§ 26. REPEALED 1996 – By Stats. 1996, c. 399

§ 27. EMINENT DOMAIN.

The district may exercise the right of eminent domain within the boundaries of the district to take any property necessary or convenient to the exercise of its powers consistent with Section 4 and pursuant to Section 30.5. (Amended by Stats. 1975, c. 587; Stats. 1996, c. 399)

§ 28. PUBLIC CORPORATION.

The district created in accordance with the provisions of this act is a public corporation created for the purposes set forth herein. (Amended by Stats. 1963, c. 673)

§ 29. BONDS AND OTHER INDEBTEDNESS; REFUNDING; RETIREMENT.

(a) (1) The district may issue bonds, borrow money, and incur indebtedness as authorized by law or as provided in this act.

(2) The district also may refund any indebtedness as provided in this act or in any other applicable law, may refund by the issuance of the same type of

obligations as those refunded and following the same procedure as at that time may be applicable to the issuance of those obligations, and may retire any indebtedness or lien that may exist against the district or its property.

(3) For the exclusive purpose of securing financing or refinancing of any project or purpose permitted by this act, through the issuance of bonds or certificates of participation by a joint powers authority, and notwithstanding any other provision of law applicable to borrowing or the issuance of bonds, the district may borrow money or purchase or lease property from the authority. In this connection, the district may sell or lease property to the authority to the extent allowed by subdivision (b) of Section 87, in each case, in accordance with the interest rate or rates, maturity date or dates, installment payment or rental provisions, security, pledge of revenues and other assets, covenants to increase rates and charges, default, remedy, and any other terms or provisions as may be specified in the loan, loan purchase, installment sale, lease, or other agreement or agreements between the district and the authority.

(4) The district may enter into any liquidity or credit agreement it may deem necessary or appropriate in connection with any financing or refinancing authorized by this section. This section provides a complete, additional, and alternative method of performing the acts authorized by this section, and the borrowing of money, incurring indebtedness, sale, purchase, or lease of property from or to a joint powers authority.

(b) The district may retire any indebtedness that is outstanding as of the effective date of the act amending this section enacted at the 1989-90 Regular Session of the Legislature, that has been incurred by the City of Imperial Beach for the construction or reconstruction of the Imperial Beach pier located upon tide and submerged lands granted to the district by the Legislature pursuant to that act. (Amended by Stats. 1963, c. 673, Stats. 1990, c. 168; Stats. 1996, c. 399)

§ 30. POWERS AND SERVICES.

(a) (1) The board may regulate and control the anchoring, mooring, towing, and docking of all vessels.

(2) The board may manage the business of the district and promote the maritime and commercial interests by proper advertisement of its advantages and by the solicitation of business within or outside the district, within other states or in foreign countries, through employees or agencies that are expedient.

(b) (1) The district may perform the functions of warehousemen, stevedores, lighterers, reconditioners, shippers, and reshippers of properties of all kinds.

(2) Within the boundaries of the district, consistent with the provisions of this act, the district may do all of the following:

(a) Acquire, purchase, take over, construct, maintain, operate, develop, and regulate grain elevators, bunkering facilities, belt or

other railroads, floating plants, lighterage, towage facilities, and any and all other facilities, aids, equipment, or property necessary for or incident to the development and operation of a harbor or for the accommodation and promotion of commerce, navigation, fisheries, or recreation in the district.

(b) Acquire, purchase, develop, construct, maintain, repair, operate, and regulate highways, streets, roadways, bridges, railroads, trolleys, buses, and similar transportation facilities, parking facilities, power, communication facilities, water and gas pipelines, and all other transportation and utility facilities or betterments incidental, necessary, or convenient to the development and operation of air terminal and rail facilities, and the other purposes for which the district was established. (Amended by Stats. 1963, c. 673; Stats. 1996, c. 399)

§ 30.5 EXERCISE OF POWERS OFF TIDELANDS.

(a) The district may undertake the activities authorized in Section 27 or listed in paragraph (2) of subdivision (b) of Section 30 outside of the lands listed in subdivision (b) of Section 5 if all of the following occur:

(1) The activities are adjacent to the lands listed in subdivision (b) of Section 5.

(2) The board finds that adequate areas for these activities do not presently exist within the lands listed in subdivision (b) of Section 5.

(3) The activities are necessary or incidental to carrying out the purposes described in Section 87.

(b) At least 60 days before making a capital expenditure in excess of one hundred thousand dollars ($100,000), but not more than one million dollars ($1,000,000), in or on the lands specified in subdivision (a), the district shall give written notice of that proposed expenditure to the State Lands Commission. The notice shall set forth the trust purposes, as set forth in this act, for which the proposed expenditure will be made.

(c) The district shall not make capital expenditures in excess of one million dollars ($1,000,000) in or on lands listed in subdivision (a) unless the State Lands Commission approves the expenditure pursuant to Chapter 2 (commencing with Section 6701) of Part 2 of Division 6 of the Public Resources Code.

(d) At least 60 days before making a capital expenditure of not more than two hundred fifty thousand dollars ($250,000) in or on the lands that are not adjacent to lands specified in subdivision (b) of Section 5, the district shall give written notice of that proposed expenditure to the State Lands Commission. The notice shall set forth the trust purposes, as set forth in this act, for which the proposed expenditure will be made.

The district shall not make capital expenditures in excess of two hundred fifty thousand dollars ($250,000) in or on lands that are not adjacent to lands specified in subdivision (b) of Section 5 unless the State Lands Commission approves the expenditure pursuant to Chapter 2 (commencing with Section 6701) of Part 2 of Division 6 of the Public Resources Code.

(e) Any property acquired by the district shall become an asset of the public trust and be subject to Section 87. (Added by Stats. 1996, c. 399)

§ 31. CONTRACTS WITH CITY FOR SERVICES.

As to any service which the district is authorized to perform pursuant to the provisions of this act, the district may contract for the performance of such service by the city within which the particular tidelands are located. (Amended by Stats. 1963, c. 673)

§ 32. ELECTIONS; APPLICABILITY OF ELECTIONS CODE.

All district elections shall be held in accordance with the provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, for the holding of elections in general law cities insofar as the same are not in conflict with this act. (Amended by Stats. 1963, c. 673)

§ 33. ELECTIONS; INITIATIVE REFERENDUM AND RECALL.

The provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended; governing the initiative and the referendum in districts shall apply insofar as such provisions of the Elections Code are not in conflict with this act. Officers of the district shall not be subject to recall. (Amended by Stats. 1963, c. 673)

§ 34. INVESTMENT OF EXCESS FUNDS.

The board may, by resolution, order that any of the moneys in the funds under its control which are not necessary for current operating expenses be invested in any obligations, bonds or securities in which a general law city could invest such funds; provided, however, that (1) any such investment shall be made in such a manner that the moneys in such funds will be available at the times and in the amounts necessary to accomplish the purpose for which said funds were established, and (2) no such investment shall be made in contravention of any provision or covenant in any proceedings for the authorization and issuance of bonds, notes, contracts or other evidences of indebtedness. (Amended by Stats. 1963, c. 673)

§ 35. NECESSARY AND CONVENIENT ACTS.

The board may do all other acts necessary and convenient for the exercise of its powers.

§ 36. FIXING OF RATES AND CHARGES.

The board shall by ordinance fix the rate of wharfage charges and other charges which are appropriate for the use of any of the facilities owned and constructed or services furnished or provided by the district.

§ 37. PUBLIC PROJECTS; APPLICABLE LAW.

(a) Article 48 (commencing with Section 20750) of Part 3 of Division 2 of the Public Contract Code applies to public projects of the district.

(b) The district shall adopt policies and procedures, including bidding regulations, governing purchases of supplies and equipment by the district. Purchases of supplies and equipment by the district shall be in accordance with those policies and procedures and with all provisions of law governing those purchases.

(c) As used in this section, "public project" means any of the following:

(1) A project for the erection, improvement, painting, or repair of public buildings and works.

(2) Work in or about streams, bays waterfronts, embankments, or other work for protection against overflow.

(3) Street or sewer work except maintenance or repair.

(4) Furnishing supplies or materials for any project specified in paragraphs (1) to (3), inclusive, including maintenance or repair of streets or sewers. (Amended by Stats. 1977, c. 1227, Stats. 1997, c. 118)

§ 37.2 DESIGN-BUILD CONTRACTS FOR PROJECTS EXCEEDING ONE MILLION DOLLARS.

(a) Notwithstanding subdivision (a) of Section 37 of this act or any other law, the district, with approval of the board of commissioners, may procure design-build contracts for the construction of a building or buildings and improvements directly related to the construction of a building or buildings that exceed one million dollars ($1,000,000) using the design-build procurement process described in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code.

(b) For the purposes of this section, except where the context otherwise requires, all references in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code to "local agency" shall mean the San Diego Unified Port District. (Added by Stats. 2014, c. 931)

§ 37.5 NEGOTIATIONS WITH FEDERAL GOVERNMENT; CONTRIBUTIONS FOR WORK DONE BY UNITED STATES.

The board may, without advertising for bids, negotiate with the government of the United States for the purpose of assisting the board in the performance of any of the work authorized by this act, and the board may contribute to the United States all or any portion of the estimated cost of any work authorized by this act which is to be done by or under contract with the United States.

§ 38. CREATION AND ACCUMULATION OF CAPITAL OUTLAY FUND.

By resolution, the board may provide for the creation and accumulation of a fund for capital outlays.

§ 39. TRANSFERS TO FUND.

At any time after the creation of the fund, the board may transfer to the Capital Outlay Fund any unencumbered surplus funds raised for any purpose whatever, remaining on hand at the end of any fiscal year or years.

§ 40. USE OF FUND; PURPOSES; AUTHORIZATION.

The Capital Outlay Fund shall remain inviolate for the making of any capital outlays and the money shall not be disbursed from the fund except for such a purpose unless the district board submits a proposition to the electors of the district to obtain their consent to use the money in the fund for some other specific purpose. The proposition may be submitted at any election. A two-thirds vote of all the voters voting at the election is necessary to authorize the expenditure of the money for such other purpose.

§ 41. BORROWING MONEY; NOTES AND CONDITIONAL SALES CONTRACTS; RESTRICTIONS AND CONDITIONS; TAXES.

Notwithstanding any other provision of this act, the board may borrow money by issuance of negotiable promissory notes, or execute conditional sales contracts to purchase personal property, in an amount or of a value not exceeding in the aggregate at any one time the sum of two hundred thousand dollars ($200,000), for the purposes of the acquisition, construction, completion, or repair of any or all improvements, works, property, or facilities authorized by this act or necessary or convenient for the carrying out of the powers of the district.

Negotiable promissory notes issued pursuant to this section shall mature five years from their respective dates of issuance and shall bear interest at a rate or rates not exceeding 6 percent per annum payable annually or semiannually.

No conditional sales contract shall be for a term in excess of five years from the date of execution thereof.

The negotiable promissory notes and the conditional sales contracts shall contain any terms and provisions the board specifies in the ordinance providing for the issuance thereof. The negotiable promissory notes shall be signed in the same manner as general obligation bonds of the district and the conditional sales contracts shall be signed in the same manner as other contracts of the district.

As a condition precedent to the issuance of any negotiable promissory notes for the purposes of the acquisition, construction, completion, or repair of any or all improvements, works, property, or facilities authorized by this section or the execution of any conditional sales contract for those purposes, as provided in this section, in excess of twenty-five thousand dollars ($25,000), the board shall first unanimously approve by resolution and have on file a report approved by the executive director on the engineering and economic feasibility relating to the project contemplated for the expenditure of that borrowed money or conditional sales contract. The feasibility report shall be prepared and signed by an engineer or engineers licensed and registered under the laws of the State of California.

Taxes for the payment of all negotiable promissory notes or conditional sales contracts issued under this section shall be levied, collected, paid to the district, and used in the same manner as is hereinafter provided for general obligation bonds of the district. (Amended by Stats. 1963, c. 673; Stats. 1996, c. 399)

§ 42. GENERAL OBLIGATION BONDS.

(a) Whenever the board deems it necessary for the district to incur a general obligation bonded indebtedness for the acquisition or improvement of real property, authorized by this act or necessary or convenient for the carrying out of the powers of the district, it shall, by ordinance, adopted by two-thirds of all members of the board, so declare and call an election to be held in the district for the purpose of submitting to the qualified voters thereof the proposition of incurring indebtedness by the issuance of general obligation bonds of the district. The ordinance shall state all of the following:

(1) The purpose for which the proposed debt is to be incurred, which may include expenses of all proceedings for the authorization, issuance, and sale of the bonds.

(2) The estimated cost of accomplishing the purpose.

(3) The amount of the principal of the indebtedness.

(4) The maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed 40 years from the date thereof or the date of each series thereof.

(5) The maximum rate of interest to be paid, which shall not exceed 12 percent per annum.

(6) The proposition to be submitted to the voters.

(7) The date of the election.

(8) The manner of holding the election and the procedure for voting for or against the measure.

(b) Notice of the holding of the election shall be given by publishing, pursuant to Section 6066 of the Government Code, the ordinance calling the election in at least one newspaper published in the district. No other notice of the election need be given. Except as otherwise provided in the ordinance, the election shall be conducted as other district elections.

(c) If any proposition is defeated by the electors, the board shall not call another election on a substantially similar proposition to be held within six months after the prior election. If a petition requesting submission of a proposition, signed by 15 percent of the district electors, as shown by the votes cast for all candidates for Governor at the last election, is filed with the board, it may call an election before the expiration of six months.

(d) If two-thirds of the electors voting on the proposition vote for it, then the board may, by resolution, at a time or times as it deems proper, issue bonds of the district for the whole or any part of the amount of the indebtedness so authorized and may, from time to time, in that resolution or resolutions, provide for the issuance of those amounts as the necessity thereof may appear, until the full amount of the bonds authorized have been issued. The full amount of bonds may be divided into two or more series and different dates and different dates of payment fixed for the bonds of each series. A bond need not mature on an anniversary of its date. The maximum term the bonds of any series shall run before maturity shall not exceed 40 years from the date of each series respectively. In the resolution or resolutions the board shall prescribe the form of the bonds and the form of any coupons to be attached thereto, the registration, conversion, and exchange privileges, if any, pertaining thereto, and fix the time when the whole or any part of the principal shall become due and payable.

(e) The bonds shall bear interest at a rate or rates not exceeding 12 percent per annum, payable semiannually, except that the first interest payable on the bonds or any series thereof may be for any period not exceeding one year as determined by the board. In the resolution or resolutions providing for the issuance of the bonds, the board also may provide for call and redemption of the bonds prior to maturity at those times and prices and upon other terms as it may specify, provided that no bond shall be subject to call or redemption prior to maturity unless it contains a recital to that effect or unless a statement to that effect is printed thereon. The denomination or denominations of the bonds shall be stated in the resolution providing for their issuance, but shall not be less than one thousand dollars ($1,000). The principal of and interest on the bonds shall be payable in lawful money of the United States at the office of the treasurer of the district or at any other place or places as may be designated, or at either place or places at the option of the holders of the bonds. The bonds shall be dated, numbered consecutively and signed by the chair and treasurer, countersigned by the clerk, and the official seal of the district attached. The interest coupons of the bonds shall be signed by the treasurer. All signatures, countersignatures, and seal may be printed, lithographed, or mechanically reproduced, except that one of the signatures or countersignatures on the bonds shall be manually affixed. If any officer whose signature or countersignature appears on bonds or coupons ceases to be that officer before the delivery of the bonds, his or her signature is as effective as if he or she had remained in office.

(f) The bonds may be sold, either above or below par, at a price the board determines by resolution. Before selling the bonds, or any part thereof, the board shall give notice inviting sealed bids in a manner that it may prescribe. If satisfactory bids are received, the bonds offered for sale shall be awarded to the highest responsible bidder. If no bids are received or if the board determines that the bids received are not satisfactory as to price or responsibility of the bidders, the board may reject all bids received, if any, and either readvertise or sell the bonds at private sale.

(g) Delivery of any bonds may be made at any place either inside or outside the state, and the purchase price may be received in cash or bank credits.

(h) All accrued interest received on the sale of bonds shall be placed in the fund to be used for the payment of principal of and interest on the bonds and the remainder of the proceeds of the bonds shall be placed in the treasury to the credit of the proper improvement fund and applied exclusively to the purpose for which the debt was incurred. However, when that purpose has been accomplished, any moneys remaining in the improvement fund (1) shall be transferred to the fund to be used for the payment of principal of and interest on the bonds, or (2) shall be placed in a fund to be used for the purchase of outstanding bonds of the district. The bonds may be purchased only after publishing, pursuant to Section 6066 of the Government Code, in the district a notice inviting sealed proposals for the sale of bonds to the district. The notice shall state the time and place when proposals will be opened and the amount of money available for the purchase of the bonds and the maximum price to be paid for the bonds so purchased. The notice may be published elsewhere in the United States in the discretion of the board. The board may reject any or all proposals and if it rejects all proposals, the board, within a period of 30 days thereafter, may purchase for cash any outstanding bonds of the district but in that event the purchase price shall not be more than the lowest purchase price at which bonds were tendered to the district in the public bidding. Any bonds so purchased shall be canceled immediately.

(i) After the expiration of three years after a general obligation bond election, the board may determine, by ordinance adopted by two-thirds of all the members of the board, that any or all of the bonds authorized at the election remaining unsold shall not be issued or sold. When the ordinance takes effect, the authorization to issue the bonds shall become void.

(j) Whenever the board deems that the expenditure of money for the purpose for which the bonds were authorized by the voters is impractical or unwise, it may, by ordinance adopted by two-thirds of all members of the board, so declare and call an election to be held in the district for the purpose of submitting to the qualified voters thereof, the proposition of incurring indebtedness by the issuance of the bonds for some other purpose. The procedure, so far as applicable, shall be the same as when a bond proposition is originally submitted.

(k) The board, by resolution and without the necessity of an election, may provide for the issuance, sale, or exchange of refunding bonds to redeem or retire any bonds issued by the district upon the terms, at the times, and in the manner which it determines. Refunding bonds may be issued in a principal amount sufficient to pay all or any part of the principal of any outstanding bonds, the interest thereon, and the premiums, if any, due upon call redemption thereof prior to maturity and all expenses of that refunding. The provisions for this section for authorization, issuance, and sale of bonds shall apply to the authorization, issuance, and sale of those refunding bonds, except that when

refunding bonds are to be exchanged for outstanding bonds, the method of exchange shall be as determined by the board.

(l) The district shall not incur a general obligation bonded indebtedness which in the aggregate exceeds 15 percent of the assessed value of all real and personal property in the district. (Amended by Stats. 1963, c. 673; Stats. 1996, c. 399)

§ 43. BONDS; PROVISION FOR PAYMENT.

All bonds issued pursuant to Section 42 of this act are general obligations of the district and at the time of making the general tax levy after the incurring of any such bonded indebtedness, and annually thereafter until the bonds are paid or until there is a sum in the treasury of the district set apart for that purpose sufficient to meet all payments of principal and interest on the bonds as they become due, the board must cause a tax to be levied and collected annually, as hereinafter provided in Sections 44 and 45 of this act, sufficient to pay the interest on the bonds and such part of the principal as will become due before the proceeds of a tax levied at the next general tax levy will be available. (Amended by Stats. 1963, c. 673)

§ 44. BONDS; CERTIFICATE OF REQUIRED TAX REVENUES.

The board shall, on or before the first day of August, certify to the board of supervisors and to the auditor of the county in which the district is located, in writing the minimum amount of money required to be raised by taxation during the fiscal year for the payment of the principal of and interest on any general obligation bonded debt of the district that will become due before the proceeds of a tax levied at the next general tax levy will be available. To the extent that, pursuant to this act or otherwise, moneys are on hand and have been set aside in the proper special fund for the purpose of paying such principal and interest, the amount of money required to be raised by taxation during the fiscal year may be reduced and if all of the moneys required to be raised by such annual tax levy are actually on hand and have been set aside in said fund for said purpose from some such other source, the tax levy hereinbefore required for such year need not be made. (Amended by Stats. 1974, c. 208)

§ 45. LEVY AND COLLECTION OF TAXES; USE OF PROCEEDS.

The taxes required to be levied by Sections 43 and 44 of this act shall be levied upon all property within the district taxable for county purposes and shall be in addition to any and all other taxes levied by the board of supervisors and it shall be the duty of the officer, officers or body having authority to levy taxes within the county to levy the taxes so required. It shall be the duty of all county or other officers charged with the duty of collecting taxes to collect such taxes in the time, form and manner as county taxes are collected and when collected to pay the same to the district. All such taxes shall be of the same force and effect as taxes levied for county purposes and their collection may be enforced by the same means as provided for the collection of county taxes. Such taxes shall be used only for the payment of the bonds and interest thereon. (Amended by Stats. 1963, c. 673)

§ 46. PRELIMINARY BUDGET.

On or before the 15th day of June of each year, the district board shall estimate and determine the amount of money required by the district and shall adopt a preliminary budget which shall be divided into the following main classes:

(1) Ordinary annual expenses.

(2) Capital Outlay and Capital Outlay Fund.

(3) Prior indebtedness. (Amended by Stats. 1963, c. 673)

§ 47. NOTICE OF ADOPTION OF PRELIMINARY BUDGET; HEARING ON FINAL BUDGET.

On or before the 15th day of June of each year, the board shall publish a notice pursuant to Section 6061 of the Government Code in the district stating:

(1) That the preliminary budget has been adopted and is available at a time and at a place within the district specified in the notice for inspection by interested taxpayers.

(2) That on a specified date not less than one month after the publication of the notice and at a specified time and place, the district board will meet for the purposes of fixing the final budget, and that any taxpayer may appear and be heard regarding the increase, decrease or omission of any item in the budget, or for the inclusion of additional items. (Amended by Stats. 1963, c. 673)

§ 48. APPEARANCE OF TAXPAYERS; CONTINUATION OF HEARING.

At the time and place designated in the published notice for the meeting, any taxpayer may appear and be heard regarding the increase, decrease or omission of any item in the budget or for the inclusion of additional items. The hearing on the budget may be continued from time to time.

§ 49. REPORT OF FINAL BUDGET TO BOARD OF SUPERVISORS.

The district board shall report the final budget to the board of supervisors after the budget hearing but not later than the first day of August each year after making any changes in the preliminary budget it deems advisable during or after the hearing, including deductions, increases or additions.

§ 49.5 LEVY OF TAX BY BOARD OF SUPERVISORS; PAYMENT OF FUNDS TO DISTRICT TREASURER; LIMITATIONS ON LEVY FOR CAPITAL OUTLAY.

The board of supervisors shall at the time of levying the county taxes levy the taxes required by other sections of this act and also a tax upon all the taxable property within the district sufficient to meet the amounts set forth in the final budget submitted by the district board. The money when collected by the tax collector of the county shall be paid to the treasurer of said district; provided further, that any levy for capital outlay or for Capital Outlay Fund shall not exceed three cents

($0.03) per hundred dollars ($100) assessed valuation of all real and personal property in the district. (Amended by Stats. 1963, c. 673)

§ 50. BONDS AS LEGAL INVESTMENTS.

Bonds issued by the district pursuant to this act are legal investments for all trust funds, and for the funds of all insurers, banks, both commercial and savings, and trust companies, and for the state school funds, and whenever any money or funds may, by law now or hereafter enacted, be invested in bonds of cities, cities and counties, counties, school districts or municipalities in this State, such money or funds may be invested in bonds of the district organized pursuant to this act.

§ 51. REVENUE BONDS.

(a) Whenever the board deems it necessary for the district to incur a revenue bonded indebtedness for the acquisition, construction, completion, or repair of any or all improvements, works, property, or facilities authorized by this act or necessary or convenient for the carrying out of the powers of the district, the board shall issue those revenue bonds in accordance with the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code).

Article 3 (commencing with Section 54380) of Chapter 6 of Part 1 of Division 2 of Title 5 of the Government Code and the limitations set forth in subdivision (b) of Section 54402 of the Government Code shall not apply to the issuance and sale of bonds pursuant to this section. Instead, by ordinance adopted by two-thirds of all the members of the board and subject to referendum, the board may provide for the issuance of those bonds and, unless the ordinance is subject to referendum, no election shall be required to authorize the issuance of the bonds. To initiate a referendum, a petition protesting against the adoption of the ordinance shall be signed by voters of the district equal in number to at least 5 percent of the entire vote cast within that district for all candidates for Governor at the last gubernatorial election.

The ordinance shall specify all of the following:

(1) The purposes for which the bonds are to be issued, which may include any one or more purposes authorized by this section or this act.

(2) The maximum principal amount of the bonds.

(3) The maximum term for the bonds.

(4) The maximum rate of interest, fixed or variable, to be payable upon the bonds.

(5) The maximum discount or premium on the sale of bonds.

(b) For the purposes of issuing and selling revenue bonds pursuant to this section, the following definitions are applicable to the Revenue Bond Law of 1941

(Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code):

(1) "Enterprise" means any purpose, operation, facility, system, improvement, or undertaking of the district from which revenues are derived or otherwise allocable, which revenues are or may, by resolution or ordinance, be required to be separately accounted for from other revenues of the district.

(2) "Fiscal agent" means any fiscal agent, trustee, paying agent, depository, or other fiduciary provided for in the ordinance authorizing the issuance of the bonds. The fiscal agent may be located within or without the state.

(3) "Ordinance" means, unless the context otherwise requires, the instrument providing the terms and conditions for the issuance of the revenue bonds, and may be an indenture, resolution, ordinance, lease, installment sale, agreement, or other instrument in writing.

(c) Each ordinance shall provide for the issuance of revenue bonds in the amounts as may be necessary, until the full amount of the bonds authorized has been issued. The full amount of bonds may be divided into two or more series with different dates of payment fixed for the bonds of each series. A bond need not mature on its anniversary date. Any provision of the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code) that is inconsistent with this section or this act shall not be applicable.

(d) The district may issue refunding revenue bonds to redeem or retire any revenue bonds issued by the district upon the terms, at the times, and in the manner which the board, by ordinance, determines. Refunding bonds may be issued in a principal amount sufficient to pay all, or any part of, the principal of the outstanding bonds, the premiums, if any, due upon call and redemption thereof prior to maturity, all expenses of the refunding, and either of the following:

(1) The interest upon the refunding bonds from the date of sale thereof to the date of payment of the bonds to be refunded out of the proceeds of the sale of the refunding bonds or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(2) The interest upon the bonds to be refunded from the date of sale of the refunding bonds to the date of payment of the bonds to be refunded or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(e) This section provides a complete, additional, and alternative method of performing the acts authorized by this section, and the issuance of revenue bonds, including refunding revenue bonds, need not comply with any other

law applicable to borrowing or the issuance of bonds. (Amended by Stats. 1963, c. 673; Stats. 1996, c. 399)

§ 52. AUDIT OF ACCOUNTS.

The accounts of the district shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants and a copy of the audit report shall be filed with the clerk for inspection by any person or persons interested. (Amended by Stats. 1963, c. 673)

§ 53. ANNEXATION OF TERRITORY.

Any territory annexed in accordance with law to a city specified in this act shall, upon the completion of such annexation proceedings, be deemed incorporated into and annexed to the district. In addition to the annexation of territory to the district as a result of it being annexed to such a city, there may be annexed to the district any of the following territory which is in the same county as the district:

(a) Any territory contiguous to the district.

(b) Any territory, any point of which touches the district.

(c) Any territory separated from the district by a "separating barrier," which term includes a street, road, highway, railway line, railway crossing, railway right-of-way, watercourse, lagoon, or other natural barrier.

Any territory specified in this section may consist of one or more separate parcels of land, but it is not necessary that all parcels shall constitute in the aggregate one tract of land. (Amended by Stats. 1963, c. 673)

§ 54. REPEALED 1965 – Added by Stats. 1963, c. 673, Repealed by Stats. 1965, c. 2043

§ 55. RULES AND REGULATIONS OF BOARD; REGULATION OF VESSELS; HARBOR POLICE AND FIRE PROTECTION.

The board shall:

(a) Make and enforce all necessary rules and regulations governing the use and control of all navigable waters and all tidelands and submerged lands, filled or unfilled, and other lands within the territorial limits of the district.

(b) Regulate and control the anchoring, mooring, towing and docking of all vessels.

(c) Establish and maintain a system of harbor police and may establish harbor fire protection within the territorial limits of the district for the enforcement of the ordinances, rules and regulations of the district, and employ the necessary officers, who shall as to such matters have all the power of peace officers and firemen within the district; or in the alternative, the district may contract with the municipalities whose territorial limits are adjacent to or contiguous to those of the district to provide such services.

§ 56. ENACTMENT AND ENFORCEMENT OF POLICE AND SANITARY REGULATIONS.

The board shall make and enforce such local police and sanitary regulations relative to the construction, maintenance, operation and use of all public services and public utilities in the district, operated in connection with or for the promotion or accommodation of commerce, navigation, fisheries, and recreation therein as are now vested in the district.

§ 57. ACQUISITION AND OPERATION OF FACILITIES FOR PROMOTION OF COMMERCE, NAVIGATION, FISHERIES AND RECREATION.

The board may acquire, construct, erect, maintain or operate within the district, all improvements, utilities, appliances or facilities which are necessary or convenient for the promotion and accommodation of commerce, navigation, fisheries and recreation, or their use in connection therewith upon the lands and waters under the control and management of the board, and it may acquire, maintain and operate facilities of all kinds within the district. (Amended by Stats. 1963, c. 673)

§ 57.5 TRANSPORTATION VENDOR CONDUCTING BUSINESS ON DISTRICT TIDELANDS; PARKING STRUCTURE FINANCING FEE; CONDITIONS.

(a) If the district requires any transportation vendor conducting business on district tidelands; including San Diego International Airport, Lindbergh Field, or the airport, in writing, to collect a fee from its customers on behalf of the district for financing a parking structure that is located on district-owned property and adjacent to an intended principally to serve a convention center, all of the following shall apply:

(1) The fees shall be calculated on a per transaction basis.

(2) All fees collected for this purpose constitute debts owed to the district by the collecting party. The debts are due and payable to the district quarterly or at any other interval the district may establish to facilitate collection and ensure payment.

(3) The fee is a transaction fee, not a tax.

(4) Revenues collected from the fee may not exceed the reasonable costs of financing the construction of the parking structure and may not be used for any other purpose.

(5) For purposes of this section, a rental car company shall be deemed to be conducting business on district tidelands if it has a business location on district tidelands or it picks up customers at a location on district tidelands.

(b) If the vendor required to collect a fee pursuant to subdivision (a) is a rental car company, then, notwithstanding any other provision of law, including, but not limited to, Section 1936 of the Civil Code, the rental car company shall do all of the following:

(1) Collect the fee only as permitted by this section.

(2) Clearly disclose the existence of the fee in any radio, television, or print advertisement that states a rental rate applicable to the location, at which the fee is to be imposed, and the amount of the fee at the location where it is imposed, or a range of fees if the fee is imposed at more than one location.

(3) Clearly disclose the existence of the fee in a telephonic, in-person, or computer-transmitted quotation that states a rental rate applicable to a location at which the fee is to be imposed and the amount of the fee at the location where it is imposed.

(4) Separately identify the fee on its rental agreement.

(c) If a rental car company conducting business on district tidelands operates a facility not located on district tidelands, then, the rental car company shall be subject to all provisions of subdivisions (a) and (b), but shall collect the fee only from those customers of that facility who do either of the following:

(1) Are picked up from a location on district tidelands, including the airport, and are transported to the rental car company's business facility via a courtesy ground transportation vehicle for the purpose of entering into a car rental agreement or securing a rental vehicle.

(2) Enter into a car rental agreement with the rental car company within 24 hours of arrival at the airport and rental car arrangements or reservations were made using a telephone located at an airport information board by such customers.

(d) In the event that the Federal Aviation Administration makes a determination that the provisions of this section are in conflict with federal law requiring a nexus to airport operations, the provisions of this section shall be inoperative. (Added by Stats. 1998, c. 889)

§ 58. SUSPENSION OF RULES AND REGULATIONS IN EMERGENCIES; EMERGENCY REGULATIONS.

In case of emergency the board may suspend, modify or amend any rule or regulation of the board, or it may place in effect any emergency rule or regulations, for periods not exceeding thirty (30) days, and every such ordinance shall so provide.

§ 59. VIOLATIONS; MISDEMEANORS; CONDUCT OF PROSECUTION; JURISDICTION.

Any person who violates the provisions of any ordinance, or any local police or sanitary regulation, of the board shall be guilty of a misdemeanor. The prosecution shall be conducted by the City Attorney of San Diego if the infraction occurred within the corporate limits of the City of San Diego on lands or waters subject to the jurisdiction of the district. The prosecution shall be conducted by the District

Attorney of San Diego County if the infraction occurred without the corporate limits of the City of San Diego but otherwise on lands or waters subject to the jurisdiction of the district. The complaint shall be filed in the judicial district within which the infraction occurred.

§ 60. APPLICABILITY OF MUNICIPAL POLICE, FIRE AND SANITARY REGULATIONS.

In the absence of the adoption of any police, fire and sanitary regulations by the district, the police, fire and sanitary regulations of any municipal corporation whose boundaries are adjacent to or contiguous to the territorial limits of the district shall be applicable.

§ 61. ASSESSMENTS, REASSESSMENTS, SPECIAL TAXES, AND BONDS; AUTHORIZED PROJECTS; APPLICATION OF OTHER STATUTORY PROVISIONS; ASSESSMENT DIAGRAMS; ASSESSMENT ROLL; COLLECTION; APPORTIONMENT.

(a) The district in any year, may levy assessments, reassessments, or special taxes and issue bonds to finance waterway construction projects and related operations and maintenance, or operations and maintenance projects independent of construction projects in accordance with, and pursuant to, the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), the Refunding Act of 1984 for 1915 Improvement Act Bonds (Division 11.5 (commencing with Section 9500) of the Streets and Highways Code), the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), the Benefit Assessment Act of 1982 (Chapter 6.4 (commencing with Section 54701) of the Government Code), the Integrated Financing District Act (Chapter 1.5 (commencing with Section 53175) of Part 1 of Division 2 of Title 5 of the Government Code), the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code), and the Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code).

(b) Sections 5116, 5117, 5118, 5119, 5190, 5191, 5192, 5193, 10104 and 10302 of the Streets and Highways Code shall not apply to assessment proceedings undertaken pursuant to this section.

(c) Notwithstanding the related provisions of any assessment act which the district is authorized to use, any assessment diagram which any of those acts requires to be prepared prior to final approval of the assessment district may show only the exterior boundaries of the assessment district and the boundaries of any assessment zones or improvement areas within the district. The diagram may refer to the county assessor's maps and records for a detailed description of each lot or parcel.

(d) Notwithstanding any other provision of law, the district may levy and collect assessments and reassessments in the same manner as provided in Article 3 (commencing with Section 51320) of Chapter 2 of Part 7 of Division 15 of the Water Code, to pay any or all of the following:

(1) For the operation and maintenance of projects, including maintenance of lands, easements, rights-of-way, dredge material disposal areas, and remediation.

(2) For the satisfaction of liabilities arising from projects.

(3) To accumulate a fund which may be used to advance the cost of district projects, if the advances are repaid, with interest as determined by the commissioners, from assessments, reassessments, special taxes, or fees charged by the district pursuant to this section.

(4) To acquire real property, easements, or rights-of-way for a navigation project or the maintenance of a navigation project.

(5) To acquire real property within the district for the disposal of dredged material.

(e) For the purposes of this section, functions designated by Article 3 (commencing with Section 51320) of Chapter 2 of Part 7 of Division 15 of the Water Code to be performed by the board of supervisors, the board of trustees, or valuation commissioners shall be performed by the district's board.

(f) For the purposes of this section, the board may order the creation of a separate assessment roll to pay the allowable expenses of any single project or any group or system of projects.

(g) Notwithstanding any other provision of law, all assessments, reassessments, and taxes levied by the district may be collected together with, and not separately from, taxes for county purposes. Any county in which the district is located may collect, at the request of the district, all assessments, reassessments, and special taxes levied by the district and shall cause those revenues to be deposited into the county treasury to the credit of the district. Each county may deduct its reasonable collection and administrative costs.

(h) Notwithstanding any other provision of law, any assessment or reassessment levied pursuant to this section may be apportioned on the basis of land use category, tonnage shipped on the waterway, size and type of vessel using the waterway, front footage, acreage, capital improvements, or other reasonable basis, separately or in combination, as determined by the district commissioners.

(i) Notwithstanding any other provision of law, Division 4 (commencing with Section 2800) of the Streets and Highways Code shall not apply to any assessment levied by the district.

(j) Notwithstanding any other provision of law, no bond issued pursuant to this section shall be used to fund the routine maintenance dredging of channels. (Added by Stats. 1991, c. 978; Amended by Stats. 1996, c. 399)

§ 62. CONTRIBUTIONS TO WORKS BY OTHER AGENCIES TO IMPROVE NAVIGATION AND COMMERCE.

The district may contribute money to the federal or the state government or to the county in which it is located or to any city within the district, for the purpose of defraying the whole or a portion of the cost and expenses of work and improvement to be performed, either within or without the territorial limits of the district, by the federal, state, county or city government, in improving rivers, streams, or in doing other work, when such work will improve navigation and commerce, in or to the navigable waters in the district. (Amended by Stats. 1963, c. 673)

§ 63. REPEALED 1963 – Repealed by Stats. 1963, c. 673

§ 64. REPEALED 1963 – Repealed by Stats. 1963, c. 673

§ 65. REPEALED 1963 – Repealed by Stats. 1963, c. 673

§ 66. CONTRACT WITH NOTE AND BOND HOLDERS; ENFORCEMENT.

Notwithstanding any other provisions of this act or any other law, the provisions of all ordinances, resolutions, and other proceedings in the issuance by the district of any general obligation bonds, general obligation bonds with a pledge of revenues, revenue bonds, negotiable promissory notes, or any and all evidences of indebtedness or liability shall constitute a contract between the district and the holders of those bonds, notes, or evidences of indebtedness or liability and the provisions thereof, and the provisions of this act shall be enforceable against the district, any or all of its successors or assigns, by mandamus or any other appropriate suit, action, or proceeding in law or in equity in any court of competent jurisdiction. Nothing contained in this act or in any other law shall be held to relieve the district or the territory included within it from any bonded or other debt or liability contracted by the district. Upon dissolution of the district or upon withdrawal of territory therefrom, the property formerly included within the district or withdrawn therefrom shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of the dissolution or withdrawal the same as if the district had not been so dissolved or the territory withdrawn therefrom, and it shall be the duty of the successors or assigns to provide for the payment of that bonded and other indebtedness and liabilities. To the extent provided in the proceedings for the authorization, issuance, and sale of any revenue bonds or general obligation bonds secured by a pledge of revenues, revenues of any kind or nature derived from any revenue-producing improvements, works, facilities, or property owned, operated, or controlled by the district may be pledged, charged, assigned, and have a lien thereon for the payment of those bonds as long as the bonds are outstanding, regardless of any change in ownership, operation, or control of those revenue-producing improvements, works, facilities, or property, and it shall be the duty of the successors or assigns to continue to maintain and operate those revenue-producing improvements, works, facilities, or property as long as the bonds are outstanding. (Amended by Stats 1963, c. 673; Stats. 1996, c. 399)

§ 67. ASSUMPTION OF MUNICIPAL DEBT FOR DISTRICT PURPOSES; VALIDATION.

The district shall take over and assume indebtedness incurred for development of tide and submerged lands of the county or any city specified in this act which shall have heretofore issued bonds or created any indebtedness for harbor development or improvement in the Bay of San Diego in the manner and with the effect set forth in the following entitled contracts:

(1) Assumption Agreement, between San Diego Unified Port District and the City of San Diego, dated February 14, 1963, Port Clerk Document No. 72.

(2) Assumption Agreement, between San Diego Unified Port District and the City of Chula Vista, dated February 26, 1963, Port Clerk Document No. 101.

and the district, the board and any other public agencies, boards, councils, and officers mentioned in such contracts shall take all acts and proceedings necessary to carry into effect the provisions of said contracts. Said contracts are hereby confirmed, validated and declared legally effective, including, without limitation, all acts and proceedings of the parties thereto done or taken with respect to said contracts prior to the date thereof. The provisions of this section shall operate to supply such legislative authorization as may be necessary to confirm, validate and make legally effective any such contracts and the proceedings taken in connection therewith prior to the date thereof which the Legislature could have supplied or provided for in the law under which such acts or proceedings were taken. (Amended by Stats. 1963, c. 673)

§ 68. CONSENT OF STATE TO CONVEYANCES IN TRUST TO DISTRICT: SURRENDER OF POWER TO MANAGE HARBOR.

The State hereby consents to the county or any city which has elected to join the district established under the provisions of this act to grant its right, title and interest in and to the tidelands, submerged lands, whether filled or unfilled, swamp, overflowed, and salt marshlands in the Bay of San Diego, which are owned by the county or any city, including any such lands which have been granted in trust to the county or city by the State, to the district in trust for the uses and purposes and upon the conditions specified in this act. The county or such city may also transfer, relinquish and surrender to the district its power to manage, conduct and operate the harbor in or adjacent to which such portion of such lands are situated. The district shall, upon its establishment in accordance with the provisions of this act, become the successor of the county or such city whose tide and submerged lands shall have been included therein with respect to the management, conduct and operation of the harbor and with respect to the use, possession and title to such portions of such lands, and they shall continue to be held and used by the district pursuant to this act.

§ 69. REVERSION OF LANDS AND POWER TO MANAGE HARBOR ON DISSOLUTION OF DISTRICT.

If the district is dissolved by operation of law, or otherwise, any such lands so granted thereto pursuant to this act, together with any and all improvements thereon,

and the management, conduct and operation of such harbor reverts to and is revested in the county or city so granting the same to the district. The lands reverting to the cities or the county pursuant to this section shall be held by the respective cities or the county in trust subject to the conditions, terms, and purposes of this act.

§ 70. DISTRICT AS SUCCESSOR OF CERTAIN POWERS OF COUNTY AND CITIES; TRANSFER OF TITLE AND POSSESSION OF PROPERTY.

Whenever the district is established under the provisions of this act it is the successor of the county and each of the cities included therein as to all powers theretofore vested in the county or each such city or exercisable by its officers, which are by the provisions of this act granted to the district or are exercisable by its officers. Such powers are relinquished by the county and the cities and surrendered to the district. The title to, and possession and control of, any works, structures, appliances, improvements and equipment of the kinds designated in this act, owned or held by or in trust for the county and each of the cities, or by any officer or board thereof, in trust or otherwise, for any purpose for which the district is authorized to acquire and use property pursuant to this act, are upon the establishment of the district, transferred to and vested in the district and are thereafter owned, operated and controlled by the district pursuant to this act.

§ 71. CESSATION OF CERTAIN LOCAL OFFICES UPON ESTABLISHMENT OF DISTRICT; EXCEPTIONS; RETIREMENT AND DISABILITY BENEFITS.

(a) Upon the establishment of the district, all persons then occupying the several offices of or under the government, of the county and each of the cities included therein, except as otherwise provided, whose several powers and duties are within the powers of the district or within the powers or duties of the several officers thereof, shall immediately quit and surrender the occupancy or possession of those offices which shall thereupon cease and determine, except as to any persons who have powers and perform duties for the county and the cities other than those mentioned, whose offices shall not cease and determine as to those other powers and duties, but shall continue with respect thereto the same as if the district had not been established.

(b) Notwithstanding subdivision (a), all employees of the county and any city performing duties in connection with the Port of San Diego or the respective harbor departments shall be blanketed in as employees of the district.

(c) The district may do all of the following with respect to retirement and disability benefits for its employees:

(1) Contract with the State Employees' Retirement System and provide retirement and disability benefits for employees under the State Employees' Retirement System pursuant to its rules and regulations.

(2) Contract with any city included within the district that has a retirement system for retirement and disability benefits for district employees.

(3) Contract with any other employee retirement and disability system.

(4) Establish an independent employee retirement and disability system pursuant to Article 1.5 (commencing with Section 53215) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

(5) By contract, continue those employees of the district so blanketed in, as members of the retirement system of which they were members while they were employees of the respective cities. (Amended by Stats. 1963 c. 673; Stats. 2005, c. 382)

§ 71.5 DISCHARGE OF TRANSFERRED EMPLOYEES; INDEPENDENT CONTRACTORS.

No employee of the district who was previously employed by another governmental agency and was transferred to the district when it was formed and took over functions previously performed by such other agency shall be discharged, except for cause, or transferred to any position of a lesser class.

Nothing in this section shall prevent the district from employing an independent contractor to provide services of a professional, scientific or technical nature where the district has determined that it is impractical to have such service furnished by a person employed or to be employed in the classified service and the employment of such independent contractor will not require the removal, suspension, layoff or transfer of any employee in the classified service or the elimination of any classification thereof.

This section shall not apply to any employee of the district who is or has been employed by another governmental agency in substantially the same class of position and rate of pay as the position held, and pay received, while employed by the district. (Added by Stats. 1965, c. 1953)

§ 72. DISTRICT OFFICERS.

The officers of the district shall be as follows:

(a) An auditor.
(b) An executive director.
(c) An attorney.
(d) A clerk.
(e) A treasurer.
(f) A chief engineer.

The auditor, executive director, and attorney shall be appointed by the board. The auditor and attorney shall appoint deputies or assistants as authorized by the board. All other officers and employees shall be appointed by the executive director. All officers appointed by the executive director shall be confirmed by the board. (Amended by Stats. 1965, c. 349; Stats. 1996, c. 399)

§ 72.5 UNCLASSIFIED AND CLASSIFIED SERVICES.

(a) Employment in the district shall be divided into the unclassified and classified service.

(b) The unclassified service shall include all of the following:

(1) All officers of the district.

(2) All department and division heads.

(3) The principal assistant or deputy of all officers and department and division heads.

(4) All assistant and deputy attorneys

(5) Management employees having significant responsibilities for formulating or administering district policies and programs. Each of these positions shall be exempted from the classified service, by ordinance, upon recommendation of the executive director.

(6) Employees who are required to develop or present management positions with respect to employer-employee relations, who, in the regular course of their duties, have access to confidential information concerning employer-employee relations, or who contribute significantly to the development of management positions.

(7) Persons employed for temporary expert professional services for a specified period.

(c) The board shall establish a classified civil service that shall include all positions not specifically included in the unclassified service; provided, however, any incumbents in the positions included in the unclassified service presently in the classified service shall remain in the classified service until the respective positions are vacated by the incumbents.

(d) Officers and employees appointed by the board may be removed from office by the affirmative vote of the majority of the members of the board.

(e) All persons in the classified service shall be appointed by and may be removed by the executive director subject to the civil service regulations of the district. (Added by Stats. 1965, c. 349; Amended by Stats. 1982, c. 171; Stats. 1996, c. 480)

§ 73. SALARIES; BONDS.

The salaries of the officers and employees shall be fixed by the board by ordinance. All officers and employees shall give such bond as is prescribed by the board; the premium on all bonds on officers and employees shall be paid by the district. (Amended by Stats. 1965, c. 349)

§ 74. EXECUTION OF BONDS, NOTES AND CONTRACTS.

Bonds, notes and other evidences of indebtedness issued or incurred by the district shall be signed as provided in the section of this act applicable thereto or as provided in any other law applicable thereto; provided, however, that if the particular section or law does not prescribe the method of such execution, the method provided for general obligation bonds of the district shall apply so far as applicable. All other contracts of the district shall be executed in such manner as the board may fix by resolution. (Added by Stats. 1963, c. 673)

§ 75. ADOPTION OF CIVIL SERVICE REGULATIONS; PROVISIONS.

The board may adopt civil service regulations in accordance with the following provisions:

(a) The civil service regulations shall provide for all of the following:

(1) The qualifications and examination of all applicants for employment and the employment of persons on probation.

(2) The registration of persons, other than unskilled laborers, in the classified civil service, in accordance with their general average standing upon examination.

(3) Promotions on the basis of ascertained merit and seniority in service and examination, and competitive examinations for promotions.

(4) Leaves of absence.

(5) The transfer from one position to a similar position of the same class.

(6) The reinstatement to the list of eligibles on recommendation of the executive director, of persons who have become separated from service or have been reduced in rank, other than persons who have been removed for cause.

(7) The reassignment of persons injured in the service of the district who were at the time of injury actually engaged in the discharge of the duties of their positions.

(8) The keeping of service records for all employees in the civil service, and for their use as one of the bases for the promotion, removal, suspension, layoff, or transfer of any employee.

(9) The procedure for the removal, discharge, or suspension of employees, the investigation by the board of the grounds thereof, and the reinstatement or restoration to duty of persons found to have been removed, discharged, or suspended for insufficient grounds, or for reasons that are not sustained by investigation.

(10) Generally for any other purpose that may be necessary or appropriate to carry out the objects and purposes of the civil service system and the regulations herein specifically authorized.

(b) The following persons may be exempted by the board, by ordinance, from the civil service:

(1) Persons employed to render professional, scientific, technical, or expert service of a temporary or exceptional character.

(2) Persons employed on the construction of district works, improvements, buildings, or structures.

(3) Persons receiving a salary not exceeding fifty dollars ($50) per month.

Any exemption made pursuant to this subdivision may be terminated at any time by resolution of the board. (Amended by Stats. 1965, c. 349; Stats. 1996, c. 480)

§ 76. USE OF SERVICES OF CIVIL SERVICE COMMISSION OFFICE OF SAN DIEGO COUNTY.

Nothing herein contained shall prevent the board from contracting with the County of San Diego to utilize the services of its civil service commission office or department to effectuate the purposes hereof.

§ 77. TIME FOR PAYING WAGES OR SALARIES.

The salaries or wages of all officers and employees of the district shall be paid at such regular periods as the board by ordinance may determine. (Amended by Stats. 1963, c. 673)

§ 78. DELIVERY OF PROPERTY OF COUNTY AND CITIES TO DISTRICT OFFICERS.

Such persons shall severally forthwith deliver and turn over to the proper officers of the district, all property of the county and each city in their hands or under their control including any and all works, structures, appliances, improvements and equipment of the character, kinds or classes enumerated or designated in this act and pertaining to harbor improvements or affairs.

§ 79. PROVISIONS OF ACT TO CONTROL OVER INCONSISTENT PROVISIONS OF FREEHOLDERS' CHARTER.

The provisions of this act shall apply to any municipal corporation which is governed under a freeholders' charter even if such provisions are inconsistent with the charter or its amendments, it being hereby declared that such provisions are a matter of statewide concern and are to prevail over any inconsistent provisions in any such charter. If the district is dissolved by operation of law or otherwise, any such works, structures, appliances, improvements and equipment are vested in such municipal corporation, together with any other works, structures, appliances, improvements and equipment acquired or constructed by the district in that portion of the district within the limits of each such municipal corporation respectively.

§ 80. DEPOSIT OF MONEYS RECEIVED FROM HARBOR FACILITIES OR UTILITIES IN DISTRICT REVENUE FUND; APPROPRIATIONS.

All money received or collected from or arising out of the use or operation of any harbor or port improvement, work, appliance, facility or utility, or vessel, owned, controlled or operated by the district; all tolls, charges and rentals collected by the board, and all compensation, or fees required to be paid for franchises or licenses, or otherwise by law or ordinance or order, to the district for the operation of any public service utility upon lands or waters under the control and management of the board, shall be deposited in the treasury of the district to the credit of the San Diego Unified Port District Revenue Fund. The money in or belonging to the fund shall not be appropriated or used for any purpose except those enumerated in this act and any enumeration shall not be deemed to create any priority of one use or purpose over another. (Amended by Stats. 1963, c. 673; Stats. 1996, c. 399)

§ 81. USE OF FUND FOR EXPENSES OF CONDUCTING DISTRICT.

The fund may be used for the necessary expenses of conducting the district, including the operation and maintenance of all harbor or port improvements, works, utilities, appliances, facilities and vessels owned, controlled or operated by the district for the promotion and accommodation of commerce, navigation, fisheries, and recreation, or used in connection therewith, and for the purposes set forth in any grants in trust.

§ 82. USE OF FUND FOR ADVERTISING COMMERCIAL ADVANTAGES AND FACILITIES.

The money in the fund also may be used for advertising the commercial and other advantages and facilities of any harbor in the district, for encouraging and promoting commerce, navigation, and transportation in and through that harbor, and for encouraging and promoting the region's commercial airport. (Amended by Stats. 1996, c. 480)

§ 83. USE OF FUND FOR ACQUISITION AND MAINTENANCE OF IMPROVEMENTS, WORKS AND FACILITIES, ETC.

The money in the fund may also be used for the acquisition, construction, completion and maintenance of harbor and port improvements, works, utilities, appliances, facilities, and vessels, for the promotion and accommodation of commerce, navigation and fisheries, and recreation, or uses in connection therewith; and for extraordinary improvements and betterments to lands and property under the control, supervision and management of the district, including the purchase or condemnation of necessary lands and other property and property rights.

§ 84. USE OF FUND FOR BOND AND INTEREST PAYMENTS AND FOR ESTABLISHMENT OF FUNDS TO SECURE SUCH PAYMENTS.

The money in the fund may also be used for the payment of the principal, or interest, or both, of district bonds authorized, issued and sold pursuant to this act and for the establishment and maintenance of bond service funds, sinking funds, reserve funds or other funds or accounts established to secure the payment of principal of, interest on, or redemption of or for the security of such bonds. (Amended by Stats. 1963, c. 673)

§ 85. USE OF FUND FOR PAYMENT OF PRINCIPAL AND INTEREST OF OUTSTANDING MUNICIPAL BONDS FOR HARBOR IMPROVEMENTS.

The money in the fund may also be used for the payment of the principal or interest, or both, of the bonds of the county or any city in the district, for harbor improvements, authorized or outstanding prior to the establishment of the district, or thereafter issued and sold by such county or city for harbor improvements pursuant to this act.

§ 86. TRANSFER OF AMOUNTS BETWEEN BUDGET ITEMS AND BETWEEN BOND FUNDS.

The executive director may make application in writing to the board for a transfer of amounts from one appropriated item to another in the budget allowance. On the approval of the board by a two-thirds vote, the auditor shall make the transfer, but a transfer shall not be made except as herein provided. Any transfer of bond or note proceeds or of bond or note service, reserve, or sinking funds shall be made only as provided in the proceedings authorizing the issuance of those bonds. (Amended by Stats. 1963, c. 673; Stats. 1996, c. 399)

§ 87. PURPOSES FOR USE OF TIDE AND SUBMERGED LANDS HELD IN TRUST BY DISTRICT.

(a) The tide and submerged lands conveyed to the district by any city included in the district shall be held by the district and its successors in trust and may be used for purposes in which there is a general statewide purpose, as follows:

(1) For the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation.

(2) For all commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities.

(3) For the establishment, improvement, and conduct of airport and heliport or aviation facilities, including, but not limited to, approach, takeoff, and clear zones in connection with airport runways, and for the construction, reconstruction, repair, maintenance, and operation of terminal buildings, runways, roadways, aprons, taxiways, parking areas, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of air commerce and air navigation.

(4) For the construction, reconstruction, repair, and maintenance of highways, streets, roadways, bridges, belt line railroads, parking facilities, power, telephone, telegraph or cable lines or landings, water and gas pipelines, and all other transportation and utility facilities or

betterments incidental, necessary, or convenient for the promotion and accommodation of any of the uses set forth in this section.

(5) For the construction, reconstruction, repair, maintenance, and operation of public buildings, public assembly and meeting places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including, but not limited to, public golf courses, and for all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses.

(6) For the establishment, improvement, and conduct of small boat harbors, marinas, aquatic playgrounds, and similar recreational facilities, and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses, including, but not limited to, snack bars, cafes, restaurants, motels, launching ramps, and hoists, storage sheds, boat repair facilities with cranes and marine ways, administration buildings, public restrooms, bait and tackle shops, chandleries, boat sales establishments, service stations and fuel docks, yacht club buildings, parking areas, roadways, pedestrian ways, and landscaped areas.

(7) For the establishment and maintenance of those lands for open space, ecological preservation, and habitat restoration.

(b) The district or its successors shall not, at any time, grant, convey, give, or alienate those lands, or any part thereof, to any individual, firm, or corporation for any purposes whatever. However, the district, or its successors, may grant franchises thereon for limited periods, not exceeding 66 years, for wharves and other public uses and purposes, and may lease those lands, or any part thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held by the State of California, and with the requirements of commerce and navigation, and collect and retain rents and other revenues from those leases, franchises, and privileges. Those lease or leases, franchises, and privileges may be for any and all purposes that do not interfere with commerce and navigation.

(c) Those lands shall be improved without expense to the state. However, nothing in this section shall preclude expenditures for the development of those lands for any public purpose not inconsistent with commerce, navigation, and fishery, by the state or any board, agency, or commission thereof, when authorized or approved by the district, or preclude expenditures by the district of any funds received for that purpose from the state or any board, agency, or commission thereof.

(d) In the management, conduct, operation, and control of those lands or any improvements, betterments, or structures thereon, the district or its successors

shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith.

(e) The State of California shall have the right to use without charge any transportation, landing or storage improvements, betterments, or structures constructed upon those lands for any vessel or other watercraft, aircraft, or railroad owned or operated by the State of California.

(f) There is hereby reserved to the people of the State of California the right to fish in the waters on those lands with the right of convenient access to that water over those lands for that purpose.

(g) There is hereby excepted and reserved in the State of California all deposits of minerals, including oil and gas, in those lands, and to the State of California, or persons authorized by the State of California, the right to prospect for, mine, and remove deposits from those lands.

(h) Those lands shall be held subject to the express reservation and condition that the state may at any time in the future use those lands or any portion for highway purposes without compensation to the district, its successors or assigns, or any person, firm, or public or private corporation claiming under it, except that in the event improvements, betterments, or structures have been placed upon the property taken by the state for those purposes, compensation shall be made to the district, its successors, or assigns, or any person, firm, or public or private corporation entitled thereto for the value of his or her or its interest in the improvements, betterments, or structures taken or the damages to that interest.

(i) The State Lands Commission, at the cost of the district, shall survey and monument those lands and record a description and plat thereof in the office of the County Recorder of San Diego County.

(j) As to any tide and submerged lands conveyed to the district by a city that are subject to a condition contained in a grant of those lands to the city by the state that those lands shall be substantially improved within a designated period or else they shall revert to the state, that condition shall remain in effect as to those lands and shall be applicable to the district.

As to any tide and submerged lands conveyed to the district by a city that are not subject to this condition contained in a grant by the state and that have not heretofore been substantially improved, those lands, within 10 years from July 12, 1962, shall be substantially improved by the district without expense to the state. If the State Lands Commission determines that the district has failed to improve the lands as herein required, all right, title, and interest of the district in and to those lands shall cease and the lands shall revert and rest in the state. (Amended by Stats. 1963, c. 673; Stats. 1996, c. 399; Stats. 2006, c. 538)

§ 88. PARTIAL INVALIDITY.

If any section, subdivision, sentence, clause, or phrase of this act, or the application thereof to any person or circumstances, is for any reason held invalid, the validity of the remainder of the act, or the application of such provision to other persons or circumstances, shall not be affected thereby. The Legislature hereby declares that it would have passed this act, and each section, subdivision, sentence, clause, and phrase thereof, irrespective of the fact that one or more sections, subdivisions, sentences, clauses or phrases, or the application thereof to any person or circumstance, be held invalid. (Added by Stats. 1963, c. 673)

GOVERNANCE OF SAN DIEGO BAY AND ITS TIDAL LANDS AND REGIONS

SUMMARY

The 2022/2023 Grand Jury (Grand Jury) undertook an investigation of the San Diego Unified Port District (Port District), the County of San Diego and the five Port Cities of Chula Vista, Imperial Beach, Coronado, San Diego and National City to assess how these organizations interact around the governance of San Diego Bay tidal lands and resources. This assessment was undertaken in response to a perception that the Port of San Diego and its unelected seven-member Board of Commissioners is not accountable to either the elected officials or the electorate of its five member cities or the County of San Diego, especially in the planning, development and implementation of projects in those cities. The Port District is an independent governmental agency created by the State of California and approved by voters in Chula Vista, Coronado,[1] Imperial Beach, National City and San Diego in 1962 to manage the tidelands and submerged lands of San Diego Bay.

This report will briefly review previous Grand Jury reports on the Port District and look at its creation, governance, relation to State agencies, and funding. The Grand Jury will also investigate conflicts and issues surrounding the Port District's operations in regard to the equitable representation of residents of the five Port Cities and their governing bodies, as well as the residents of the County of San Diego and its residents. Finally, the Grand Jury will also discuss the Port District's planning process and how its proposed projects have affected the five Port Cities, the County of San Diego and residents of these regions.

The report's recommendations include increasing the Port District's public participation and transparency by:

- Scheduling regular updates and presentations at publicly noticed open meetings of the city councils of its member cities;
- Simplification of the Port Master Plans around the Port District Planning Districts falling within each of the Port City's jurisdictional boundaries and three of the County's supervisorial districts;
- Submitting the Port Master Plan, and all future updates and amendments, to the relevant city council and County Supervisor for discussion and ratification;
- Lobbying the California State Legislature to introduce legislation enabling the County of San Diego to assume oversight of the activities of the San Diego Unified Port District and decisions of the Board of Port Commissioners, and share in the Port District's duty as guardian of the public trust in the tidal and submerged lands of San Diego Bay;
- Depending on the outcome of the legislation recommended above, exploring an alternate form of governance for the Port District, with participation from the County Board of Supervisors and elected officials of the five member cities;
- Encourage a limit of two four-year terms that a Port Commissioner can serve;
- Include staff from each of the five cities on each of the Port District's advisory committees; and
- Post meeting minutes and agendas of each of the Port District's advisory committees on-line.

[1] While the 1962 vote to approve creation of the Port involved tallying the combined votes of the five port cities, voters in the City of Coronado voted against Proposition D by a margin of 3 to 1.

INTRODUCTION

"We can do whatever we want, right?"[2] The words were spoken – and repeated several times-- by a commissioner of the San Diego Unified Port District during a public meeting of the Board of Port Commissioners. A Commissioner went on to describe what was believed to be "the absolute sovereignty of this board to make any decision that we want from this dais at any time." [3] The comment was made during a discussion of the changes proposed for the Port District's policy on Capital Improvement Projects, and while made in the specific context of achieving greater flexibility for capital project funding, inadvertently characterized the broad authority and perceived nature of this organization – led by a seven-member unelected board of commissioners, largely autonomous, self-governing, self-funded and independent of oversight by local elected officials.

The 2022-23 San Diego County Grand Jury (Grand Jury) is not alone in its concern over the lack of oversight, transparency and accountability of an organization with such far reaching power and jurisdiction. Over the last several decades, two separate San Diego County Grand Juries have reached similar conclusions, the earliest being the 1986-87 Grand Jury and more recently the 1997-98 Grand Jury.

The 1986-87 Grand Jury Report concluded, "An enterprise of the scope and importance of the Port District must include a strong concern for community relations, public input and accountability … yet, in the public's mind, it conducts itself as does a private company, responsible only to its stockholders. The fact is that it is a public corporation, guarding a public trust and spending public money."[4] Similarly, the synopsis of the 1997-98 Grand Jury report concluded that the seven commissioners of the Port District "are viewed as operating with almost unlimited discretion regarding how they spend money with minimal accountability. Commissioners are not required to gain approval for their actions from the voting public or even from the city councils which appoint them."[5]

In practice, the Port District requires a fiduciary oath of its commissioners to act in the best interests of the Port District, and in its role as guardian of the public trust, to the benefit of the residents of California. As appointees of one of five Port District cities, each commissioner must also represent the perspectives of the city appointing them as commissioner.

In representing the ***interests*** of the Port District but only the ***perspectives*** of the port cities appointing them, a dichotomy is created. The dichotomy allows port commissioners to manage the valuable resources of San Diego Bay in a unified, comprehensive manner but limits elected governments of the Port Cities and their constituents in making their views known or in determining the actions that are in their best interests. As a result, this dichotomy leads not only to voter disenfranchisement, but to a disconnection between elected municipal governments and their constituents, who must subordinate and subject their interests to the interpretations of the unelected Board of Port Commissioners.

---

[2] San Diego Unified Port District Port Commissioners Meeting, September 13, 2022, video recording @ 1:14:25. Board of Port Commissioners on 2022-09-13 1:00 PM (granicus.com)

[3] San Diego Unified Port District Port Commissioners Meeting, September 13, 2022, video recording @ 1:15:50. Board of Port Commissioners on 2022-09-13 1:00 PM (granicus.com)

[4] 1986-87 San Diego County Grand Jury, The County of San Diego and The San Diego Unified Port District Report No. 15, June 30, 1987, page 5-6.

[5] 1997-98 San Diego County Grand Jury, The San Diego Unified Port District: It's Time for Taxpayers and Citizens to Have a Direct Say, Final Report, June 30, 1998, page 103.

Severe as these assessments are, they are rooted in the San Diego Unified Port District Act (Port Act)[6], enacted by the California Legislature in 1962, through which the State of California delegates the power and responsibility for management of the tidelands and submerged lands of San Diego Bay. The Port Act delegates these powers to the Port District from the California State Lands Commission (SLC) as guardian of these tidelands and submerged lands through the public trust doctrine. This doctrine "provides that tide and submerged lands and the beds of lakes, streams and other navigable waterways are to be held in trust by the State for the benefit of the people of California."[7] The Port District acts in this capacity as an independent governmental special district without direct oversight of its seven commissioners by other local city or county agencies. The unsalaried commissioners are appointed to four-year terms by city councils of each of the five cities that border San Diego Bay, (San Diego, Chula Vista, Coronado, Imperial Beach, and National City). While the commissioners must reside in the city that appointed them, they can serve an unlimited number of four-year terms, except in the City of Coronado which limits its port commissioners to two terms. Port commissioners may be recalled by majority vote of the city council which appointed them. Other than these limitations, no oversight by local governmental bodies is authorized by the Port Act, and decisions by the Board of Port Commissioners are not subject to approval, veto or appeal by city councils or voters of the five Port Cities or the county.[8,9]

Democratic theory equates responsible government with popular participation in and control over policy formulation, political equality for the individual, deciding divisions of opinion by majority rule with complete freedom of discussion, and periodically holding free and meaningful elections.[10] Yet by virtue of the legislation that created the San Diego Unified Port District, values such as these that citizens have come to expect in our governmental legislative, regulatory and judicial institutions have not been embraced.

METHODOLOGY

The Grand Jury conducted interviews and requested information from municipal and county governmental organizations affected by the Port Act.

The Grand Jury researched and reviewed these documents:

- California Harbors and Navigation Code, Appendix I, also known as the San Diego Unified Port District Act (Port Act)
- The 1986-1987 Grand Jury report: "The County of San Diego and the San Diego Unified Port District, Report No. 15" and responses
- The 1997-1998 Grand Jury report: "The San Diego Unified Port District: It's Time for Taxpayers and Citizens to Have a Direct Say" and responses from the cities of San Diego, Chula Vista, Coronado, Imperial Beach, and National City
- Meeting Minutes and Agendas from the cities of San Diego, Chula Vista, Coronado, Imperial Beach, and National City as well as the San Diego Unified Port District
- Historical records and articles relating to formation of the Port District (per footnotes)
- Grand Jury Reports on Ports in other California Counties

[6] California Harbors and Navigation Code, Appendix 1, San Diego Port District Act, Document no. 70987, filed March 3, 2020, Office of the District Clerk.
[7] https://www.slc.ca.gov/public-engagement/
[8] California Harbors and Navigation Code, Appendix 1, San Diego Port District Act
[9] The City of Coronado limits the number of terms served by Port Commissioners to two terms
[10] Bachrach, Peter. The Theory of Democratic Elitism (Chicago, 1962), p. 94.

- San Diego Unified Port District Website: www.portofsandiego.org
- Detailed electronic maps showing specific boundaries and areas within the San Diego Unified Port District

DISCUSSION

Creation of the San Diego Unified Port District

When California became a state in 1850, it acquired title to navigable waterways as trustee for the protection of public lands, streams, lakes, marshlands, and tidelands. This is referred to as common law public trust doctrine. Per the State of California State Lands Commission (SLC), "The public's right to use California's waterways for navigation, fishing, boating, natural habitat protection and other water-oriented activities is protected by the Common Law doctrine of the Public Trust." Historically, the Public Trust has referred to the basic right of the public to use its waterways to engage in "commerce, navigation, and fisheries." The SLC further states that the "Public Trust provides that tide and submerged lands and the beds of lakes, streams and other navigable waterways are to be held in trust by the State for the benefit of the people of California."[11]

San Diego Unified Port District: Unique Among California Ports

The San Diego Unified Port District is unique among California's 12 ports in its establishment by state law. According to the Port Act, this was necessary because of the geography and other special characteristics of the locale:

> It is hereby declared to be the policy of the State of California to develop the harbors and ports of this State for multiple purpose use for the benefit of the people. A necessity exists within San Diego County for such development. Because of the several separate cities and unincorporated populated areas in the area hereinafter described, only a specially created district can operate effectively in developing the harbors and port facilities. Because of the unique problems presented by this area, and the facts and circumstance relative to the development of harbor and port facilities, the adoption of a special act and the creation of a special district is required. [12]

With passage of the enabling Proposition D in November 1962, the SLC granted regulation and control of the tidelands and submerged lands of San Diego Bay to the newly created Port District. Following passage of San Diego County's Proposition D, the cities of San Diego, Chula Vista, Coronado, Imperial Beach, and National City were to transfer the management of state tidal and submerged lands in San Diego Bay to the jurisdiction of a newly formed San Diego Unified Port District.

Proposition D Controversy

Passage of Proposition D was not obtained without controversy. Prior to the election, the city councils of Coronado, Imperial Beach and Chula Vista opposed formation of the Port District. Supporters of the proposition focused on the economic benefits made possible by the combined efforts of Port Cities on such projects as construction of South Bay channel and the resulting job growth from expansion of industrial development and maritime activities. Opponents of the proposition focused primarily on the potential control wielded by an unelected board of port commissioners who would have the power to

[11] https://www.slc.ca.gov/public-engagement/

[12] California Harbors and Navigation Code, Appendix 1, San Diego Port District Act, §2, pg 7. https://pantheonstorage.blob.core.windows.net/administration/San-Diego-Unified-Port-District-Act.pdf, March 3, 2020.

issue bonds, levy taxes and develop local tideland resources without input from individual Port Cities. Another concern was the unequal number of commissioners allocated to each of the Port Cities; the City of San Diego would get three commissioners while each of the remaining four Port Cities would get one commissioner each, potentially allowing San Diego to exert dominance over Port Commission resources and priorities.[13]

A study commissioned by the Coronado Chamber of Commerce three months prior to the 1962 election suggested that instead of the simple majority required by the Port Act to constitute a quorum for Commissioners to conduct business, the act be amended to require a quorum of at least two commissioners from the four Port Cities of Coronado, Imperial Beach, Chula Vista and National City. An additional change in the make-up of the port commission was also suggested to include only two San Diego Commissioners, one commissioner from San Diego County, and one each from the four other Port Cities, allowing appointment of a commissioner representing interests of unincorporated bay front areas of the county.[14]

While Proposition D was approved by a majority of voters in the cities of San Diego, Chula Vista, Imperial Beach and National City, the proposition was defeated in Coronado by a 3 to 1 margin. An unsuccessful lawsuit filed by Coronado, Imperial Beach and Chula Vista attempted to make acceptance of membership in the Port District optional, resulting in a temporary delay, but formation of the Port District was completed on December 18, 1963, following certification of the votes cast for Proposition D in the November 6, 1962 election.[15]

Port District Funding of Operations

Port District operations are financed primarily through leases and fees generated through its real estate operations, parking, harbor police and other services or fees provided to public or commercial customers of the Port District. As a landlord, the Port District generates most of its revenue from tenants and subtenants who pay rent or fees to conduct business on tidelands. The list includes hotels, restaurants, retail shops, marinas, landings, yacht clubs, shipyards, cargo operators, aerospace firms and cruise ships. While allowed by the Port Act to do so, the Port District does not collect taxes. Various provisions of the Port Act also allow the Port District to issue general obligation, revenue bonds or levy property or other forms of taxation.

In the Fiscal Year ending June 30, 2022, over $90 million, or 55% of the Port District's operating revenue were generated by leases and other Real Estate revenue, while parking, maritime and other fees provided another $77 million in operating revenue, or approximately 45% of operating revenues.

Like commercial business entities that are dependent on revenue streams to remain viable, economic activities that support the Port District's operations have also represented a significant source of economic risk. Recently, impacts of the COVID-19 pandemic on Port District operations severely limited most revenue generating Port District activities, resulting in a $19.3 million loss in the fiscal year ending June 2021 and prompting one Port Commissioner to consider the need to "analyze and

[13] San Diego County Registrar of Voters, Arguments for and Against Proposition D, San Diego County General Election, November 7, 1962.
[14] The Wyatt Report: Here's Text of Advisory on United Port, San Diego Evening Tribune, August 22, 1962, A14-**A15**.
[15] Ibid.

understand options for potential taxation."[16] However, the Port District qualified for $29 million in stimulus fund assistance in the following year, leading to the generation of a $68.3 million income in the fiscal year ending June 2022.[17]

While these tidelands-associated revenue streams allow the Port District to operate free of budget constraints typical of other state or local government agencies, the need to generate such revenue can lead to a significant source of bias in the deliberations of Port Commissioners and obscure motives and objectives of staff at all levels of the organization. In a recent informal briefing by the Port District, a sizeable, expected return on investment from a proposed project was praised as a justification for the large public investment of tax dollars needed to fund the project, with less emphasis placed on the project's other characteristics.

Balanced Interests?

The Grand Jury investigation revealed many concerns by the Port District's stakeholders. Smaller Port Cities reported a lack of follow through or investment in their cities proportional to the revenue generated for the Port District by tidelands activities occurring in their municipal boundaries. Others cite a lack of prioritization for projects not associated with lucrative leasing contracts or other significant revenue sources. The Grand Jury acknowledges such views, and sees the dilemma faced by the Port District in balancing the many diverse and potentially competing municipal, state and public interests it must manage as both nuanced and complex in ways less understood by the public in general, and in some cases by the city and county governments it serves.

How does a port commissioner balance or prioritize the needs or interests of separate communities, neighborhoods or municipalities against one another or against the interests of the Port District itself? As the adage goes, actions speak louder than words; perhaps recent activities by the Port District and votes by the Board of Port Commissioners can help to answer such questions.

Chula Vista Hotel and Convention Center

The key piece of the Chula Vista Bayfront Master Plan is the Gaylord Pacific Resort and Convention Center, a $1.1 billion project that broke ground in 2022 for a 1,600-room hotel alongside a 275,000 square foot convention center on a 36.5-acre site. In 2012, after almost a decade of planning, the City of Chula Vista and the Port District received approval from the California Coastal Commission for this project allowing for the conversion of 535 acres of vacant and industrial property into a Resort Hotel and Convention Center, RV Park, and parking structure. An existing motel, also part of the project sits on land adjacent to Port District boundaries.

The project is important because both the City of Chula Vista and the Port District collaborated on the Master Plan and were involved in seeking its approval, and both parties consider the development project a great success. The Grand Jury investigation revealed an alignment of interests of both parties centered on the regional economic benefits from development of these underused and undervalued tideland assets. Both parties were fully engaged, fully committed and enjoyed the support of the community during all phases of the project, from the initial master plan approval to selection of the

[16] Jennifer Van Grove, San Diego's Bayfront is Controlled by a Little-understood Agency With Power That Will Be Tested in The New Year, February 5, 2021, page 13; San Diego's bayfront is controlled by a little-understood agency with power that will be tested in new year - The San Diego Union-Tribune (sandiegouniontribune.com)

[17] San Diego Unified Port District, Annual Comprehensive Financial Report, Fiscal Years Ended June 30 2022 and 2021. Page 48, CAFR-2022 (window https://pantheonstorage.blob.core.windows.net/administration/2022-ACFR-final.pdfs.net)

operator and developer, as well as the formation of multiple financing agreements. Both parties are to share in the public infrastructure costs expected to approach $370 million, but also retain shares of excess revenues.

Dole Fruit Company Contract

First signed in 2002, this agreement leased portions of San Diego's 10th Avenue terminal to Dole Fruit Company for imports of fruit into the U.S. west coast market. Primary operations centered on long-haul trucking operations delivering fruit to many sites in the Southern California region, as well as short-haul trucking operations to sites in San Diego County. The short-haul local operations involved many more trips by smaller-sized trucks and were perceived to create a more significant source of air pollution than long-haul operations which involved larger loads and fewer trips on semi-trailer trucks.

Following negotiation for a 25-year lease extension through 2036, terms were not released until three days prior to the proposal's approval by the Board of Port Commissioners on August 14, 2012. The agreement not only extended Dole's lease, but also moved its short-haul trucking operation out of San Diego's Barrio Logan neighborhood. This move was perceived to reduce pollution in an area already affected by significant pollution from the nearby freeway and industrial maritime and manufacturing activities. However, the short-haul trucking operation was only relocated to a location in the neighboring city of National City, thereby increasing pollution that potentially affected the health and well-being of nearby residents of that city.

The actions taken by the Port District in approving the Dole Fruit Company lease, reduced potential health hazards for residents of San Diego's Barrio Logan neighborhood at the expense of the health of National City residents.

Mitsubishi Cement Factory

The Port District recently considered an application by Mitsubishi Cement Corporation (Mitsubishi) for a Coastal Development Permit (CDP) that would allow Mitsubishi to construct and operate a cement import, storage, loading and distribution facility within the Tenth Avenue Marine Terminal.[18]

Beginning in 2015, Mitsubishi had been negotiating with the Port District to ship cement-making materials to the Port-operated Tenth Avenue Marine Terminal warehouse for storage and shipment to Southern California construction sites. Nearby residents perceived the project would have introduced a new significant source of pollution to surrounding neighborhoods already experiencing pollution from maritime and industrial activities and freeways in the area.

While the Port District has approved a Maritime Clean Air Strategy (MCAS) to replace diesel fuel burning trucks with electric vehicles by 2030, the technology supporting zero emission electric power for vehicles the size of cement trucks was not yet available, and the Port District announced in a press release that negotiations with Mitsubishi "were not moving forward," but expressed a willingness to re-consider the proposal, "should the day come when they want to re-open negotiations."[19]

[18] San Diego Unified Port District, Ordinance 2936, February 25, 2019, https://pantheonstorage.blob.core.windows.net/administration/Ordinance-No-2936.pdf

[19] San Diego Unified Port District, Port of San Diego Issues Statement on Mitsubishi Cement Proposal, General Press Release, February 1, 2023, https://www.portofsandiego.org/press-releases/general-press-releases/port-san-diego-issues-statement-mitsubishi-cement-proposal

The process for evaluation of such projects by the Port District is well established and logical in its progression from the proposal, preliminary approval, planning, development, environmental and coastal commission review phases. Yet consideration of the project by a local elected governmental entity might have given greater priority to the health concerns of community members and resulted in a more equitable balance between economic and health concerns earlier in the project's evaluation process.

Coronado Cottages at the Cays

Recent decisions by the Port District surrounding the proposed Cottages at the Cays Project on Coronado's North Grand Caribe Isle exemplify the disconnection and disenfranchisement of the voting public and elected governmental bodies resulting from the Port District's independence from local governmental oversight. The Port District had considered a development application from a lessee of property on Coronado's North Grand Caribe Island to build 41 two-bedroom short stay units limited to six guests per unit. In a letter addressed to the Board of Port Commissioners dated December 23, 2022, the Mayor of Coronado expressed strong opposition to the project, stating, "this project does not reflect the will of the community or the Coronado City Council." Specific objections to the project cited in the letter included:[20]

- A unanimous vote by the Coronado City Council in opposition to the proposed project.
- Opposition from community groups such as the Coronado Cays Homeowner's Association and community members who provided petitions in opposition.
- Reversal of the Port District policy refined in the 2021 Port Master Plan Update (PMPU) to "expressly disallow the development of more hotel rooms and to convert the land use designation to Recreational Open Space, which preserves the area for environmental preservation and complete public access."
- The project would create "preferential access to those that can afford what will most likely be costly room rates similar to other hotel rates in the area."
- The project contravenes the PMPU commitment for the "protection and management of natural resources that best reflect environmental stewardship for present and future generations", on property expected to be highly vulnerable to sea level rise in the decades to come.
- The project would "create a hotel use which is not compatible with the surrounding residential area…," posing significant traffic impacts and safety concerns on the community of approximately 1,200 homes which can only be accessed through a single entrance.

Due to policies governing the rights of lessees, The Port District was obligated to present this development proposal for a vote to the Board of Port Commissioners. In addition, the Port District viewed the land use designation of Recreational Open Space for the parcel reflected in the 2021 Port Master Plan Update as being unbinding and preliminary, pending approval by the California Coastal Commission. Had it been approved, this land use would have represented a land use inconsistent with the Coronado Cays development proposal which required a Commercial Open Space designation currently in place for the property. On February 14, 2023, the Board of Port Commissioners approved the Cottages at the Cays Project by a vote of 4-3 in favor of initiating a California Environmental Quality Act (CEQA) review, followed by consideration of a Port Master Plan Amendment to add the project to the Port Master Plan, prior to application by the developer for a coastal development permit.

[20] Mayor Richard Bailey, Letter of Opposition to Cottages at the Cays Development Project Proposal, December 23, 2022.

Who Watches the Watchers? California Coastal Commission and State Lands Commission
In response to the Grand Jury's concern that the Port District is largely autonomous, self-governing, self-funded and independent of oversight by local elected officials, the Port District views the oversight of its decisions and activities provided by the California State Lands Commission (SLC) and the California Coastal Commission as more than adequate.

The SLC oversight is to ensure Port District activities are consistent with the public trust doctrine. In this role the Port District consults with the SLC on an as needed basis, to seek clarification, advice and guidance in matters affecting the Port District's role as guardian of the public trust for San Diego Bay. If determined to be inconsistent with this doctrine, the SLC could direct the Port District to stop, discuss and resolve the issues causing such concern.

In addition to the State Lands Commission and California Coastal Commission approvals, the CEQA requires that "state and local agencies consider environmental protection in regulating public and private activities and should not approve projects for which there exist feasible and environmentally superior mitigation measures or alternatives." In the absence of any documented exemptions provided for in the act, CEQA requires the publication of detailed Environmental Impact Reports for projects approved by the Port District for public review and comment.[21]

Requirements of the California Coastal Commission and CEQA also affect Port District activities relating to the approval of the Port Master Plan, Master Plan Updates or Amendments. In addition, Port District approved projects often require a coastal development permit from the California Coastal Commission.

While members of port city councils or San Diego County Supervisors have no direct oversight of Port District activities or ability to appeal decisions of the Board of Port Commissioners, the Port District indicated the existence of multiple venues to make their views known, and commissioners as a whole place a very high value on the desires of member cities. In addition, the public has access to most of the public meetings of the SLC, California Coastal Commission and also to regular meetings of the Board of Port Commissioners, as well as access to the public websites of these organizations. Also, decisions of the three-member California Coastal Commission can be appealed with the agreement of two of three commissioners to first hear the appeal and then vote to reverse their decision.

Public Participation and the Port District of San Diego
The Grand Jury noted meetings of the Board of Commissioners are posted on the Port District's website and that public participation is allowed. Meeting agendas are posted, and minutes are made available. In addition, the Board of Port Commissioner meetings are recorded, and recordings are available for public viewing. The Port District's policy regarding public participation is spelled out in Board of Port Commissioners Policy 060 which was adopted June 10, 2008.[22]

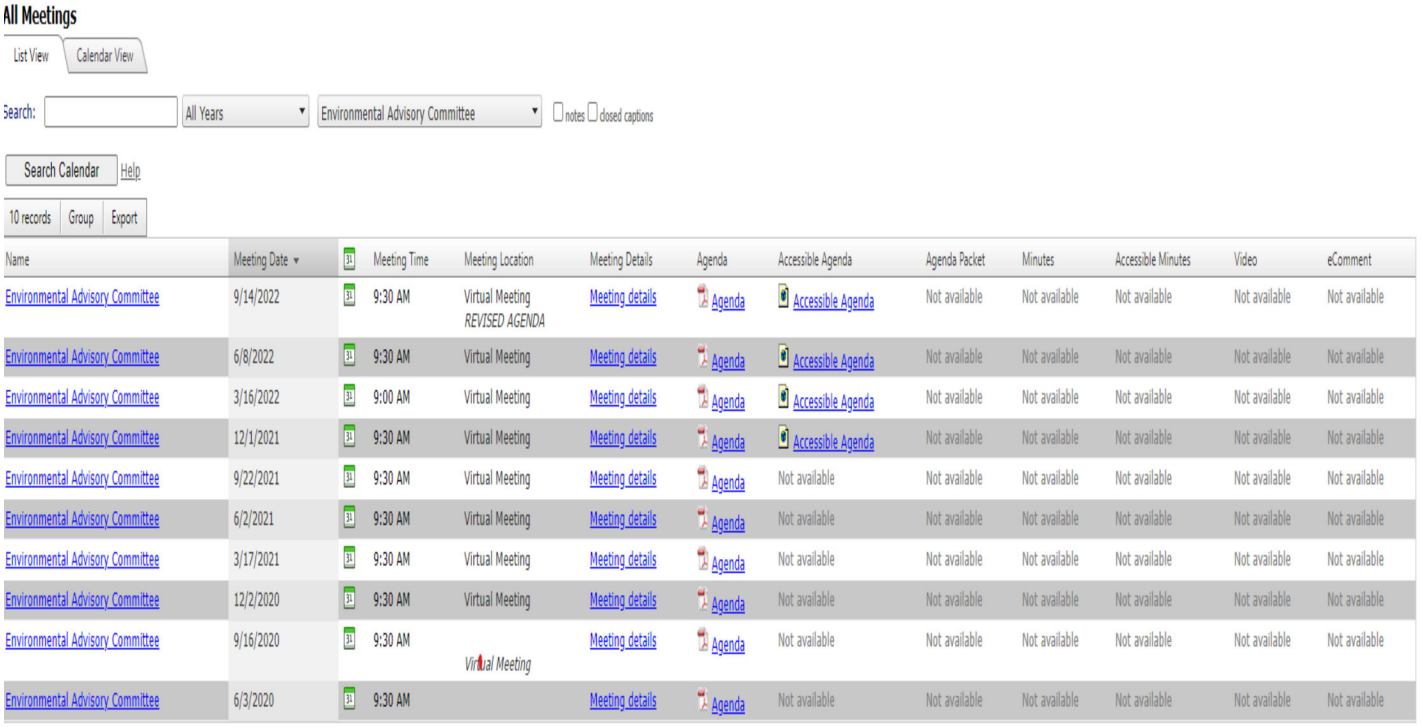
The Board of Port Commissioners also formed several subcommittees, forums, or working groups to solicit public input in the Board's decision-making process. "In setting policies for our dynamic waterfront, the Port District of San Diego seeks to make decisions that are in the public interest. To that end, the Board of Port Commissioners has formed various committees, forums and working

[21] California Environmental Quality Act, Chapter 1: Policy (archive.org)
[22] BPC-Policy-No-060-Public-Participation-in-Board-of-Port-Commissioners-Board-Meetings.pdf. https://pantheonstorage.blob.core.windows.net/administration/

groups to discuss current issues. These meetings are an important tool for gathering information, exploring ideas, and obtaining feedback for use in decision making by the Board."[23]

These groups include the Accessibility Advisory Committee; Arts, Culture, and Design Committee; Audit Oversight Committee; Bayfront Cultural and Design Committee Chula Vista; Chula Vista Bayfront Facilities Financing Authority; Environmental Advisory Committee; Maritime Forum; San Diego Harbor Safety Committee; Wildlife Advisory Group; and World Trade Center San Diego.

Researching information available on the Port District's website, the Grand Jury notes that agendas and meeting minutes for some but not all the advisory committees are available. The screenshot below documenting the information concerning the Port's Environmental Advisory Committee for all years available.[24]



All Meetings

List View | Calendar View

Search: | All Years | Environmental Advisory Committee | notes | closed captions

Search Calendar | Help

10 records | Group | Export

Name	Meeting Date	Meeting Time	Meeting Location	Meeting Details	Agenda	Accessible Agenda	Agenda Packet	Minutes	Accessible Minutes	Video	eComment
Environmental Advisory Committee	9/14/2022	9:30 AM	Virtual Meeting *REVISED AGENDA*	Meeting details	Agenda	Accessible Agenda	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	6/8/2022	9:30 AM	Virtual Meeting	Meeting details	Agenda	Accessible Agenda	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	3/16/2022	9:00 AM	Virtual Meeting	Meeting details	Agenda	Accessible Agenda	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	12/1/2021	9:30 AM	Virtual Meeting	Meeting details	Agenda	Accessible Agenda	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	9/22/2021	9:30 AM	Virtual Meeting	Meeting details	Agenda	Not available	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	6/2/2021	9:30 AM	Virtual Meeting	Meeting details	Agenda	Not available	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	3/17/2021	9:30 AM	Virtual Meeting	Meeting details	Agenda	Not available	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	12/2/2020	9:30 AM	Virtual Meeting	Meeting details	Agenda	Not available	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	9/16/2020	9:30 AM	*Virtual Meeting*	Meeting details	Agenda	Not available	Not available	Not available	Not available	Not available	Not available
Environmental Advisory Committee	6/3/2020	9:30 AM		Meeting details	Agenda	Not available	Not available	Not available	Not available	Not available	Not available

The Grand Jury notes that only four of the eight meetings had "accessible" agendas, while none of the meetings had minutes posted online. According to the last posted agenda for the Environmental Advisory Committee, the agenda included a discussion with respect to the National City Balanced Plan portion of the proposed updated Master Plan. However, in reviewing the posted membership of the Environmental Advisory Committee there are no staff members listed from National City (nor any of the other Port Cities). This points to a lack of transparency with regards to the coordination of the Port District with the member cities.

[23] https://www.portofsandiego.org/people/other-public-meetings

[24] https://portofsandiego.legistar.com/Calendar.aspx

Master Plan Documents and Updates

Under Section 19 of the Port Act, the Port District was to "draft a master plan for harbor and port improvement and for the use of all of the tidelands and submerged lands which shall be conveyed to the district pursuant to the provisions of this act." This Port Master Plan was approved by the Board of Port Commissioners in 1980 and later certified by the California Coastal Commission on January 21, 1981.[25] Subsequently the Port District approved 41 amendments to the 1980 Master Plan.

In 2019, SB 507 §5.7 was incorporated into the Port Act requiring Port District to "submit to the State Lands Commission a trust lands use plan for trust lands …describing any proposed development, preservation, or other use of the trust lands." Section 5.7 goes on to state that the "State Lands Commission, in its sole discretion, may consider whether the submission of the Port Master Plan…meets the requirements of …a trust lands use plan."[26]

Particular confusion exists among Port Cities leaders and residents regarding the provisions Port Master Plan that is periodically updated by the Port District. Much of the confusion is associated with the size and complexity of the Master Plan document itself—the most recent but-still-unapproved-update (2021) is well over 400 pages in length when including appendices, while the public comments alone comprise another 800 pages. As an indicator of the complexity of information contained in the Plan comments alone, the format for the comments received for the 2021 Master Plan Updade was an electronic PDF flat file format comprising comments from 10 agencies, 19 organizations, 10 businesses or Port Tenants and individuals from all 10 planning districts. Questioned about how the Port District responded to comments, how the comments were used or acted upon, the Port District asserted that copies of the document were provided for public review and comment and multiple public workshops were held and questionnaires provided to collect public comments.

The plan is categorized into 10 geographical Port planning districts. Despite the fact that these planning districts could be organized around each of the Port Cities within which the smaller planning districts exist, this approach has not been used in the past. However, such an approach could foster greater understanding of these plans by residents and leaders alike while greatly simplifying the review and approval process for each Port city's Master Plan.

While the Port Act identifies requirements for development of Port Master Plans and Trust Use Plans, the Grand Jury concluded that the Port Act does not preclude the Port Cities or the County of San Diego from requiring ratification by Port Cities or the county of such plans prior to submission to the appropriate state agency for approval. Further, such ratification by each Port City Council or the County Board of Supervisors would allow elected officials to ensure that these plans are in the best interest of their constituents and aligned with plans and objectives of these government bodies.

To that end, the Grand Jury will recommend that Port Cities and County Supervisors of supervisorial districts fronting San Diego Bay be required to ratify all port master plans, master plan updates, master plan amendments or trust use plans for Port District activities occurring within their boundaries; further, that such ratification be required prior to Port District proceeding with submission of such plans for approval by the California Coastal Commission, State Lands Commission or approval of

[25] California Harbors and Navigation Code, Appendix 1, San Diego Port District Act §19, San Diego Unified Port District, Document 70987, March 3, 2020, page 15.

[26] California Harbors and Navigation Code, Appendix 1, San Diego Port District Act §19, San Diego Unified Port District, Document 70987, March 3, 2020, page 10.

coastal development permits. Finally, once ratified by a Port City or County agency, each Port City's master plan update would become the current Port Master Plan for project planning purposes.

Options: Where to go from here? Port Commissioner Status Reports to City Councils

The recommendations of the 1997-1998 Grand Jury report were directed to the city councils of the five cities affected by the Port District and to the County Board of Supervisors. Recommendation 98-50 to the five city councils were to "create and implement formal policies requiring their port commissioner representatives to report regularly to their respective city councils in a formal manner." The City of San Diego responded to these recommendations saying that policies were already in place governing qualifications for port commissioners as well as formal reporting to the city council. The cities of Coronado and Imperial Beach reported that briefings from their Port Commissioners concerning Port District activities were scheduled as part of each regularly scheduled city council meeting. The City of Chula Vista reported the city council meets with their port commissioner "quarterly, or as often as needed," while National City reported receiving periodic reports from their Port Commissioner on an informal basis.

The current Grand Jury investigated the current practices of the Port Cities in pursuing regular updates in regularly scheduled public forums such as City Council meetings. Communication with Port Commissioners was reported to occur regularly on an informal basis, but confirmation of such informal meetings proved impractical, and such informal meetings do not allow for transparent communications or public comment. As a result, the Grand Jury reviewed readily available public meeting agendas and minutes of the Port City councils during 2022. We discovered the following:

- San Diego: The Grand Jury could not find any minutes or agenda items recognizing that any of its Port Commissioners made presentations regarding Port District activities in public City Council meetings. However, an annual report to the committee on economic development and intergovernmental relations is required by San Diego City Council policy. The most recent report occurred on March 8, 2023.
- Chula Vista: on August 23, 2022, Port Commissioner Moore gave an update of the Chula Vista Bayfront development project at a special City Council meeting. [27]
- Coronado: According to reviewed minutes and agenda items, a single update from the city's commissioner occurred on April 19, 2022.
- Imperial Beach: According to reviewed minutes and agenda items, only one update took place on January 19, 2022.[28]
- National City: An agenda item for reports from their commissioner is created for each City Council meeting. The Grand Jury was unable to learn if that was the result of a published council policy.

In view of the information provided through testimony and surveys of public records regarding Port Commissioner reports and briefings to their city councils on the activities of the Port District, the Grand Jury concluded that such reporting in publicly accessible venues such as city council meetings does not take place on a frequent or regular basis. Combined with a preference for informal channels of communication with their appointed representatives, these tendencies call into question whether Port Commissioners and Port City Councils maintain open and transparent relationships.

[27] Additional appearance by Port Commissioner Moore occurred on January 11, 2022, for reappointment as Port Commissioner, and on June 7, 2022 to receive a proclamation of Port Commissioner Ann Moore Day.

[28] City of Imperial Beach, City Council, Regular Meeting Minutes, January 19, 2022, 6:00 p.m., Virtual Meeting

Re-engagement of Port Cities and County of San Diego

The Grand Jury has concluded that because of the Port District's independence and autonomy from local governmental review or approval of its decisions, voters and elected representatives in the Port Cities and County of San Diego have become disenfranchised. Elected representatives cannot prevent or appeal Port District decisions that adversely affect their constituents, and as a result, voters cannot depend on their elected representatives to act in their best interests. As a result of such shortcomings, accountability of representatives to their constituents is limited when the normal expected prerogatives of elected office holders have been supplanted instead by an unelected entity such as the Port District.

Balancing the rights and interests of diverse coastal cities, communities and neighborhoods throughout the San Diego County region is a significant challenge, even for an elected governing body not motivated by economic incentives. Attempting this task through a largely independent and autonomous organization such as the Port District that is dependent on revenue from development projects and leasing activity may be too much to ask of the organization, especially without the guidance of deliberative elected city councils, county supervisors or other elected government bodies. The Grand Jury concludes that only with the re-engagement of the elected government bodies affected by Port District activities and lands within their jurisdictional boundaries can the interests of residents be equitably balanced with competing Port District goals and objectives.

FACTS AND FINDINGS

Duties, Responsibilities and Powers

Fact: The public trust doctrine provides that tidal and submerged lands, beds of lakes, streams and other navigable waterways are to be held in trust by the State for the benefit of the people of California.

Fact: The Port District Act delegates the power and responsibility for management of the tidelands and submerged lands of San Diego Bay from the State of California to the San Diego Unified Port District.

Fact*:* Many elected officials of Port Cities believe Port Commissioners are to act in the best interest of the cities appointing them.

Fact: The Port Act limits the ability of elected officials to represent the interests of the voters who elect them.

Fact: It is the duty of each Port Commissioner to act as a guardian of the public trust for tidal and submerged lands of San Diego Bay in the interests of all California residents.

Fact: Port Commissioners take a fiduciary oath to act in the best interests of the Port District.

Finding 01: Port Commissioners are only required to represent the perspectives, not the interests of the Port City appointing them to the Board of Port Commissioners.

Finding 02: The Port District acts as an independent special district without direct oversight from local city or county governments.

Fact: The oversight provided by the State Lands Commission and California Coastal Commission of Port District activities is viewed by the Port District as more than sufficient.

Fact: Port Commissioners must live in the Port City appointing them.

Fact: Port Commissioners may be recalled by a majority vote of the city council appointing them.

Fact: Port Commissioners can serve an unlimited number of four-year terms, except in the City of Coronado in which Commissioners can serve a maximum of two terms.

Finding 03: Because the interests of residents of Port Cities and the County of San Diego are subject to the interpretations of the unelected Board of Port Commissioners, their interests may not be heard, prioritized or represented accurately.

Finding 04: Briefings by Port Commissioners to Port City Councils in noticed public meetings regarding issues affecting their jurisdictions, will increase the level of public participation and knowledge regarding Port District activities, Port Master Plans, Master Plan Updates, Port Master Plan amendments or additions.

Finding 05: Currently, the Board of Port Commissioners does not have term limits. Considering term limits would foster democratic principles by providing more opportunities for diverse and talented individuals to serve, prevent the accumulation of influence, and uphold the public trust by keeping the Board representative responsive to its community.

Initial Opposition to Port District Formation

Fact: The City Councils of the cities of Coronado, Imperial Beach and Chula Vista initially opposed formation of the Port District in 1962.

Fact: Formation of the Port District in 1962 occurred despite concerns that an unelected board of Port Commissioners would have the power to issue bonds, levy taxes and develop local tideland resources without input or approval of individual Port Cities.

Fact: Opposition to the formation of the Port District in 1962 involved the unequal number of commissioners allocated to each of the Port Cities; the City of San Diego would get three commissioners while each of the remaining four Port Cities would get one commissioner each, potentially allowing San Diego to exert dominance over the resources, priorities and decisions of the Port District.

***Finding 06*:** With three of seven port commissioners appointed to the Board of Port Commissioners by the City of San Diego, the potential exists for the City of San Diego to exert dominance over the priorities, resources and decisions of the Port District.

Port District Potential Source of Bias

Fact: Port District operations are financed primarily through leases and fees generated through its real estate operations, parking, harbor police and other fees provided by customers of the Port District.

Finding 07: The Port District is incentivized to maximize revenue to fund its operations, a goal that may create conflicts of interest in the priorities, allocation of resources and other decisions made by the Port Commission.

Chula Vista Convention Center and Hotel
Fact: The $1.1 billion Chula Vista Hotel and Convention Center broke ground in 2022.

Finding 08: Success in the development of the Chula Vista Hotel and Convention Center has been obtained because of a close collaboration and alignment of interests between the Port District and the City of Chula Vista.

Dole Fruit Company Proposal
Fact: A 2012 approval of the Board of Port Commissioners for a lease of warehouse space on the Port District's Tenth Avenue Terminal to Dole Fruit Company also moved a staging area for short-haul trucking to the National City area.

Finding 09: The Port Commissioners decision to move short-haul truck staging for local deliveries of Dole Fruit products relocated a source of pollution from the Barrio Logan community to communities in National City.

Mitsubishi Cement Corporation Proposal
Fact: Mitsubishi Cement Corporation's proposal for storage and shipment by truck of cement products to construction sites in the region generated controversy and negative publicity among residents of nearby neighborhoods affected by potential health risks.

Fact: Consideration of the Mitsubishi Cement Corporation project was terminated by mutual agreement of the Port District and Mitsubishi Cement Corporation.

Fact: In its public statement, the Port District expressed a willingness to re-open negotiations related to this proposal with Mitsubishi Cement Corporation in the future.

Fact: The Mitsubishi Cement Corporation project was terminated due to technical concerns around the availability of zero emission trucks capable of the loads required for cement deliveries.

Finding 10: The controversy surrounding the Mitsubishi Cement Corporation Project's potential health effects on the Barrio Logan neighborhood and other nearby residents damaged the Port District's community relations with these communities and contributed to the decision to discontinue the project.

Finding 11: Oversight of the Mitsubishi Cement Corporation project by the City of San Diego or San Diego County governments might have given greater priority to the health concerns of community members and resulted in a more equitable balance between economic and health concerns earlier in the project's evaluation process.

Coronado Cottages at the Cays Proposal
Fact: The Cottages at the Cays development proposal met with significant opposition not only from the Coronado mayor and city council, but also from residents and members of the Coronado Cays Homeowner's Association representing the community of 1,200 homes.

Fact: Maintaining free access by California residents to San Diego Bay for recreational use is often cited as an obligation of the public trust by the Port District.

Fact: Three of seven Port Commissioners voted to oppose the Cottages at the Cays development proposal, including the City of Coronado's Port Commissioner, the National City Port Commissioner as well as one of three San Diego Port Commissioners.

Fact: The Cottages at the Cays development proposal was consistent with the property's designation in the Port Master Plan as commercial recreation space as approved by the California Coastal Commission.

Fact: The Cottages at the Cays development proposal was not consistent with the property's designation as recreational open space in the more recent California Coastal Commission-unapproved Port Master Plan Update.

Fact: Without the approval of the California Coastal Commission, the Port District viewed the Coronado Cays Port Master Plan Update land use designation of recreational open space as non-binding and preliminary.

Fact: The Coronado Mayor, City Council members and residents of Coronado affected by the Cottages at the Cays development proposal relied on the property use designation for recreational open space adopted most recently in the Port Master Plan Update document, believing this document should control use of property proposed for the Cottages at the Cays development.

Finding 12: The Port's decision to approve the Cottages at the Cays development proposal could negatively impact access to San Diego Bay and approving the plan favors those willing or able to pay costly hotel rates typical of the Coronado area.

Public Participation

Fact: Port Commissioner reports and briefings to their city councils on the activities of the Port District, in publicly accessible venues such as city council meetings do not take place on a frequent or regular basis.

Finding 13: Given a preference for informal channels of communication by Port City councils and mayors with their appointed Port District representatives, neither Port Commissioners nor Port City Councils maintain completely open and transparent relationships allowing for public involvement or awareness of Port District activities.

Master Plan Documents and Updates

Fact: Ratification of Port Master Plans, Master Plan Updates or Master Plan Amendments by Port Cities or County of San Diego for planning districts with their jurisdiction is not prohibited by the Port Act.

Finding 14: In its current form, the Port Master Plan and Master Plan Update documents published by the Port District are overly complex, difficult to understand and too broad in scope to foster meaningful comprehension by Port City residents, elected municipal or county officials.

Finding 15: Ratification of Port Master Plans, Master Plan Updates or Master Plan Amendments would allow residents of Port City Planning districts and San Diego County to acknowledge and confirm their understanding of Port District development plans and projects within their municipal and county boundaries and provide reliable documents for communities to plan for the future.

RECOMMENDATIONS

The 2022/2023 San Diego County Grand Jury recommends that the City Councils of the cities of San Diego, Chula Vista, Coronado, Imperial Beach, and National City:

23-90: **Enact ordinances or policies placing a two-term limit on the number of terms that a Port Commissioner can serve (as already enacted for the City of Coronado).**

23-91: **Institute ordinances or formal policies requiring the appointed Commissioners from each city be required to give at a minimum, quarterly updates to the City Councils at officially scheduled city council meetings open to the public.**

23-92: **Institute ordinances or formal policies that require ratification of the Port Master Plans, proposed Port Master Plan Updates or amendments to the Port Master Plan for Port District planning districts within each city's boundaries.**

23-93: **In consultation with the San Diego County Board of Supervisors, explore and implement an alternate form of governance for the Port District allowing for participation in, and oversight of Port District activities and decision by the San Diego County Board of Supervisors and the elected city councils of the five Port Cities.**

The 2022/2023 San Diego County Grand Jury recommends that the County of San Diego Board of Supervisors:

23-94: **Institute ordinances or formal policies that require ratification of the Port Master Plans, proposed Port Master Plan Updates or amendments to the Port Master Plan by each of three county supervisors for Port District planning districts within each of three county supervisorial district boundaries.**

23-95: **Direct the County Office of Intergovernmental Relations to lobby California State legislators to introduce legislation enabling the County of San Diego to assume oversight of the activities of the San Diego Unified Port District or decisions of the Board of Port Commissioners and share in the Port District's duty as guardian of the public trust in the tidal and submerged lands of San Diego Bay.**

23-96: **Depending on the outcome of Recommendation (23-XX, above), consider exploring and implementing an alternate form of governance for the Port**

District allowing for participation in, and oversight by the San Diego County Board of Supervisors and the elected city councils of the five port cities.

The 2022/2023 San Diego County Grand Jury recommends that San Diego Unified Port District Board of Commissioners:

23-97: **Institute formal policies or procedures allowing for appeal of any action taken by the Board of Port Commissioners, including decisions, ordinances, or project approvals.**

23-98: **Institute formal policies to enable Port Cities and County of San Diego to ratify the Port Master Plans, proposed Port Master Plan Updates or amendments to the Port Master Plan for Port District planning districts within each city's and county boundaries.**

23-99: **Directly inform each of the five City Councils at officially scheduled City Council meetings open to the public how the proposed updated Port Master Plan affects areas within their jurisdictional boundaries.**

23-100: **To increase the coordination of Port District activities with the Port Cities and their staffs, institute a policy of including staff from each of the five Port Cities and County of San Diego on each of the Port District's advisory committees.**

23-101: **Post meeting minutes and agendas of each of the Port District's advisory committees.**

23-102: **In consultation with the City Councils of San Diego, Chula Vista, Coronado, Imperial Beach and National City, consider placing a two-term limit on the number of terms that a Port Commissioner can serve (as already enacted for the City of Coronado).**

23-103: **Institute ordinances or formal policies requiring the appointed Commissioners from each city be required to give at a minimum, quarterly updates to the City Councils at officially scheduled city council meetings open to the public.**

23-104: **In consultation with the San Diego County Board of Supervisors, explore an alternate form of governance for the Port District allowing for participation in, and oversight of Port District activities and decision by the San Diego County Board of Supervisors and the elected city councils of the five Port Cities.**

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court

on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
    (1) The respondent agrees with the finding
    (2) The respondent disagrees wholly or partially with the finding; in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
    (1) The recommendation has been implemented, with a summary regarding the implemented action.
    (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
    (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
    (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

Responding Agency	Recommendations	Date
City of San Diego, City Council	**23-90 through 23-93**	**8/28/2023**
City of Chula Vista, City Council	**23-90 through 23-93**	**8/28/2023**
City of Imperial Beach, City Council	**23-90 through 23-93**	**8/28/2023**
City of Coronado, City Council	**23-90 through 23-93**	**8/28/2023**

City of National City, City Council	**23-90 through 23-93**	**8/28/2023**
County of San Diego, Board of Supervisors	**23-94 through 23-96**	**8/28/2023**
San Diego Unified Port District, Board of Port Commissioners	**23-97 through 23-104**	**8/28/2023**

Does the S.D. Port have too much power?

Waterfront agency dismisses grand jury's call for county oversight

BY JENNIFER VAN GROVE

Last year, a group of 19 residents, in their post as government watchdogs on the San Diego County Grand Jury, focused their microscope on one of the most powerful — and most misunderstood — agencies in town.

That agency, the Port of San Diego, has relatively unchecked authority over San Diego's bayfront and would benefit from additional supervision, according to the grand jury's report, released in June.

The report, which includes 15 findings and 15 recommendations, doesn't obligate the port to change the way it governs, but it does nudge others to elevate the matter to state lawmakers. And it serves as a philosophical indictment on the structure of the local government entity, which essentially gets to play by its own rules, operating outside the jurisdictional authority of the county and neighboring cities.

"There were two themes (in the report), transparency and accountability," said Ed Lopatin, who was the grand jury foreperson during the group's audit of the port. "We have some proposals, some recommendations that there might be some changes to how the port is governed in the future."

Ultimately, the grand jury, which Lopatin described as acting as the eyes and ears of the public, recommended that the county assume, by way of new state legislation, oversight of the activities of the special district or decisions by the port's board, sharing the duty as guardian of San Diego Bay.

The recommendation was rejected outright by the port as contrary to its purpose. Elevating local concerns over statewide concerns would be illegal, the agency said in its 27-page response submitted to San Diego County Superior Court last week.

"(The grand jury) expressed desire for more control from San Diego County and the member cities of San Diego Unified Port by granting San Diego County oversight of the Port through state Legislation, or an alternative form of governance," the port response

states. “However, this desire is at odds with the Public Trust Doctrine, the intent of the Legislature and the legal purpose of the port.”

That’s because, the port points out, it acts as a trustee of state-granted land, administering the district on behalf of all Californians — not just local citizens — according to the Public Trust Doctrine, which is rooted in Roman law. The doctrine holds that states must manage public resources such as tidelands for the common benefit of the people.

Formed by the state Legislature in 1962 and ratified by a countywide vote, the San Diego Unified Port District spans 34 miles of coastline from Shelter Island to the border.

The special district was created to unify the management of tidelands in five cities: San Diego, National City, Chula Vista, Imperial Beach and Coronado. A board of seven commissioners — one per member city except for San Diego, which has three seats — has the authority to set policy for 2,400 acres of land and 3,500 acres of water. Soon, they’ll also have permitting power over an additional 8,000 acres of submerged lands in San Diego Bay.

The agency’s territory spans popular waterfront parks and marinas, bayfront resorts, the USS Midway Museum, Seaport Village, Portside Pier, the Rady Shell, the Coronado Ferry Landing, the Silver Strand, Imperial Beach’s oceanfront and other high-trafficked coastal destinations.

Construction is also under way on the Gaylord Pacific Resort and Convention Center, a $1.2 billion project on a 36.5-acre site on the Chula Vista Bayfront that even the grand jury cited as an example of good governance because of the cooperation between the city of Chula Vista and the port.

Practically speaking, the port acts as landowner and regulator. And it is tasked with generating enough revenue — primarily by collecting rent and fees from hotels, restaurants, retail shops, marinas, landings, yacht clubs, shipyards, cargo operators, aerospace firms and cruise ships — to support operations. The port does not collect taxes.

It is this tension that creates room for potential conflicts of interest as commissioners attempt to balance what’s best for the public and what keeps the lights on.

“While these tidelands-associated revenue streams allow the Port District to operate free of budget constraints typical of other state or local government agencies, the need to generate such revenue can lead to a significant source of bias in the deliberations of Port Commissioners and obscure motives and objectives of staff at all levels of the organization,” the grand jury report states.

The port, which by design lacks direct oversight from local city or county governments, does fall under the watchful eye of California’s State Lands Commission, which is the ultimate authority on whether proposed land uses are consistent with the Public Trust Doctrine. In addition, the California Coastal Commission is required to certify the port’s master plan, as well as any amendments, and can overrule the port on discretionary coastal permit decisions.

Because of its structure, the port can look and feel foreign to all but the agency's closest observers. Even insiders acknowledge a disconnect between the agency and the broader public.

"I think (the grand jury report is) a really important lesson, and that is that we need to do a better job explaining about the port, about the Port Act, about what it is we're set up to do," said Randa Coniglio, who is the port's acting CEO.

Coniglio, who has a long history with the agency, recently came back from retirement to serve as the top executive after previous CEO Joe Stuyvesant was placed on paid administrative leave.

"It was ingrained in me, from the time I started here, that we administer the tidelands for the benefit of the people of the state of California," she said. "And I don't think we do a good enough job educating the general public about that, nor have we done a good enough job educating the grand jury about that."

Even though the port is complex in nature, the idea of county control is preposterous, said Sharon Cloward, who runs San Diego Working Waterfront and represents the business interests of port tenants. In her position, Cloward is a regular speaker at monthly board meetings, where she is often openly critical of policies that would harm tenants.

"The grand jury really didn't understand the port at all, which is surprising," she said. "The county to oversee the port district? Oh my God, no. ... They would never get anything done. It would be just adding another layer. It wouldn't benefit (anyone). The county still is going to have to work under the Public Trust Doctrine."

Member cities — San Diego, National City, Chula Vista, Imperial Beach and Coronado — were all required to submit responses to the grand jury's findings and recommendations.

While many have objected to individual port decisions over the years, the cities expressed no appetite for a new form of governance, nor were they eager to themselves take on additional oversight duties in the form of ratifying port master plans.

"Conferring authority to another agency, the County Board of Supervisors, does not present an enhancement in port cities' authority and control," states the city of Coronado's response, signed by Mayor Richard Bailey.

The sentiment comes even in light of the port commissioners' controversial decision earlier this year to start the environmental review of a plan to develop a bayfront RV resort in Coronado Cays. The project, which has not yet been approved, is opposed by the city of Coronado.

County control of the port was also rejected by the city of Chula Vista, which warned in its response to the grand jury that additional oversight would dilute its own authority.

Even the county seems to want to remain hands-off, although the agency's formal response to the court notes that it will need to further analyze the grand jury's recommendations.

Cities were also not enthusiastic about implementing some of the grand jury's other recommendations, such as mandated term limits for commissioners. Port commissioners are appointed for four-year terms with member cities currently responsible for setting term limits. Coronado is the only city to restrict its port commissioner to a two-term limit.

"Small cities often benefit from continuity, and the pool of qualified and/or interested candidates may at times be limited," the city of Imperial Beach said in its response.

Taken together, the responses suggest that little will come of the grand jury's report, beyond some cities increasing how often their representatives report back to their respective city councils.

San Diego, for instance, will consider asking its three commissioners for more frequent council updates, the city said in a response drafted by the Independent Budget Analyst and still subject to City Council approval. Chula Vista said it will consider adopting a policy requiring semiannual updates from its port commissioner.

"The only requirement that (the port, the cities and the county) have is to respond," Lopatin, the former grand jury foreperson, said.

Maybe that's enough for now.

"I think all agencies can use improvement. I don't think any agency runs really well … but I think the port is doing the best it can," Cloward, who runs the tenant association, said.

jennifer.vangrove

@sduniontribune.com

"District" or "special district"

56036. (a) "District" or "special district" are synonymous and mean an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries and in areas outside district boundaries when authorized by the commission pursuant to Section 56133.

(b) "District" or "special district" includes a county service area, but excludes all of the following:

(1) The state.

(2) A county.

(3) A city.

(4) A school district or a community college district.

(5) An assessment district or special assessment district.

(6) An improvement district.

(7) A community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5).

(8) A permanent road division formed pursuant to Article 3 (commencing with Section 1160) of Chapter 4 of Division 2 of the Streets and Highways Code.

(9) An air pollution control district or an air quality maintenance district.

(10) A zone of any special district.

Blank for Photocopying

"Independent district" or "independent special district"

56044. "Independent district" or "independent special district" includes any special district having a legislative body all of whose members are elected by registered voters or landowners within the district, or whose members are appointed to fixed terms, and excludes any special district having a legislative body consisting, in whole or in part, of ex officio members who are officers of a county or another local agency or who are appointees of those officers other than those who are appointed to fixed terms. "Independent special district" does not include any district excluded from the definition of district contained in Sections 56036 and 56036.6.

Blank for Photocopying