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

8a

AGENDA REPORT
Business | Action

May 6, 2024

TO: Commissioners

FROM: Keene Simonds, Executive Officer
DeeAnne Gillick, Special Outside Counsel
Chris Cate, Local Government Consultant
Adam Wilson, Local Government Consultant

SUBJECT: **Request for Reconsideration | March 4th Approvals Determining the San Diego Unified Port District is Subject to San Diego LAFCO Oversight and Related Authorizations**

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will consider the merits of a request for reconsideration from the San Diego Unified Port District ("Port") involving approvals made at the March 4, 2024 meeting under Agenda Item No. 8a. The Port is requesting the Commission agree to reconsider its determinations that the Port is an independent special district subject to LAFCO oversight. The Port's request has been submitted under the provisions of LAFCO Rule 3.4(2). This local policy broadens a statutory allowance for affected agencies and persons as defined to request reconsideration involving actions taken by resolution within 30 days and applies a similar allowance involving actions taken without resolution. Although the Port does not qualify as an affected agency or person, the Chair has agreed to sponsor the request as a courtesy. Staff recommends the Commission consider the merits of the request under the Rule 3.4(2) criteria and approve or deny. If the request is approved, the March 4th approvals are tolled and the Commission will take up the reconsideration at the June 3rd meeting. No further action applies if the request is denied. Staff recommends denial.

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BACKGROUND

Preliminary Administrative Assessment

On December 4, 2023, and in response to an earlier request from the dais for a future agenda item, San Diego LAFCO received a draft administrative assessment regarding the applicability of the Commission's oversight as it relates to the Port (Agenda Item No. 7a). The preliminary assessment tentatively concluded the Port is subject to LAFCO oversight while acknowledging the need to consider additional input. The Commission's discussion ended with direction to staff to prepare a final assessment for future consideration.

Final Administrative Assessment

On March 4, 2024, San Diego LAFCO received a final administrative assessment regarding the applicability of the Commission's oversight as it relates to the Port (Agenda Item No. 8a). The final assessment expands on the analysis of the draft and includes evaluating comments provided by the States Lands Commission. The final assessment concludes the Port is an independent special district subject to LAFCO oversight. The Commission's consideration on the final assessment ended with unanimous approval of the following actions:

(a) Accept the final administrative assessment as presented.

(b) Approve a conforming policy statement confirming the Port is an independent district subject to LAFCO's oversight.

(c) Authorize the Executive Officer to effectuate the above policy determination with respect to adding the Port to the annual appointment as well as add the Port as an eligible voter on the Independent Special Districts Selection Committee.

DISCUSSION

This item is for San Diego LAFCO to consider the merits of a request for reconsideration from the Port involving the March 4th approvals as outlined in the preceding section. The Port's request was filed with the Executive Officer on April 3rd and done so to conform with the 30-day reconsideration window allowed under LAFCO Rule 3.4(2). This local policy broadens the standard allowance for affected agencies and persons in statute to request reconsideration involving actions taken by resolution to similarly apply to actions taken without resolution. Although the Executive Officer determines the Port is ineligible to request reconsideration given it does not qualify as an affected agency or person as otherwise required, the Chair has agreed to sponsor the request as a courtesy. Accordingly, the Commission will consider the merits of the request consistent with Rule 3.4(2) and specifically whether any of the following three thresholds apply:

1. Has significant new information been provided in the request that was previously unavailable at the time the Commission originally acted on the item.

2. Have compelling arguments been presented in the request that would justify a reconsideration.

3. Were substantive errors/omissions identified in the Commission's previous action that needs to be corrected through the reconsideration process.

A copy of the April 3rd request for reconsideration submitted by the Port is attached. Also attached are the subsequent correspondence between the Executive Officer (April 5th communication) and the Port's outside counsel (April 18th communication).

ANALYSIS

The item before San Diego LAFCO is limited to considering the merits of the Port's request to reconsider the March 4th approvals under Rule 3.4(2) criteria. This involves Commission assessing whether it believes significant new information, compelling arguments, and/or substantive errors and omissions have been sufficiently forwarded by the Port to merit reconsideration. Whether justification exists to amend or strike the approvals is immaterial at this time and would only become a consideration should the request be approved.

Staff's analysis of the five factors provided by the Port in their April 3rd request for reconsideration follows.

- **Factor No. 1: The Commission was presented with incomplete LAFCO historical information (page 2 of April 3rd letter).** The Port states staff did not inform the Commission that past publications produced by LAFCO staff have stated it has no jurisdiction over the Port. The Port cites LAFCO's publications of "Profiles of Special Districts" in 1996, 2000, and 2011. The Port asserts this "information should have been presented on March 4th in order for the Commission to have an informed discussion."

  Staff respectively disagrees and believes this is not new or compelling information. Staff also believes there are no errors or omissions to remedy. Both the draft and final assessments presented to the Commission in December 2023 and March 2024 directly acknowledge it has been LAFCO's administrative practice not to apply oversight to the Port. Staff also made explicit reference to the historical practice as part of their verbal presentations.

- **Factor No. 2: The Commission lacks authority to make determinations as the to San Diego Port (page 4 of April 3rd letter).** The Port states statute provides an agency is either subject to LAFCO or is not. The Port adds there is no provision in LAFCO law or any other laws granting LAFCO the authority to "supplant the provisions of CKH with its own determinations as to the type of agencies subject to its jurisdiction." The Port proceeds to assert staff did not provide any legal authority supporting the determination that the Port is subject to LAFCO.

Staff respectively disagrees and believes this is not new or compelling information. Staff also believes there are no errors or omissions to remedy. CKH authorizes the Commission to provide direction to staff, to evaluate each existing governmental agency, and to include each independent special district in the annual apportionment. The final assessment presented at the March 4th meeting explicitly connects the staff analysis and the resulting conclusion to the Port meeting the definition of "special district" in CKH.

- **The Commission ignored the legal analysis provided by the San Diego Part and the State Lands Commission on the issue (page 4 of the April 3rd letter).** The Port states staff did not consider the legal analysis provided by the Port and State Lands Commission with reference to letters dated November 27, 2023, January 24, 2024, and March 1, 2024. The Port states the legal analysis provided in these letters align with the administrative practice of LAFCO to not assert oversight on the Port and suggests prior administrations were likely advised accordingly. The Port adds "assuming otherwise would mean the unimaginable: that SD LAFCO shirked its statutory obligations under CKH as to the San Diego Port for decades."

  Staff respectively disagrees and believes this is not new or compelling information. Staff also believes there are no errors or omissions to remedy. LAFCO staff considered all letters as part of the administrative assessment in step with their submittals. The November 27th letter from the Port was received two business days prior to the December 4th meeting and forwarded to the Commission as supplemental correspondence as well as referenced during the staff presentation. The November 27th letter was also discussed directly with Port officials during a meeting held at the LAFCO office on December 1st. The January 24th letter from the State Lands Commission generated a detailed written response by the Executive Officer on February 20th with both documents attached to the final administrative assessment presented to the Commission on March 4th. The March 1st letter from the State Lands Commission was received one business day before the meeting and was immediately forwarded to the Commission with copies provided on the dais. The topic of the State Lands Commission disagreement with LAFCO staff was also a prominent point during the March 4th presentation and discussion on the dais.

- **LAFCO arguments presented at the March 4th meeting are based on mistaken information (page 5 of the April 3rd letter).** The Port states staff provided the Commission incorrect information in the final administrative assessment regarding the need to reconcile annexations to any of its five member cities with the State Board of Equalization. The Port notes its principal act provides any annexations to its member cities are "deemed" annexed to the Port irrespective of LAFCO action to make any filings with the State Board of Equalization. The Port separately adds any disconnect between the Port's current boundaries and the Board of Equalization's records "may be a failure of SD LAFCO" for not advising on the filing process and immaterial to the Port since it does not receive any property tax revenues.

Staff respectively disagrees and believes this is not new or compelling information. Staff also believes there are no errors or omissions to remedy. While the principal act provides the Port's boundaries shall stay current with its five member agencies (Chula Vista, National City, San Diego, Coronado, and Imperial Beach) it does not sideline LAFCO's role to effectuate the actual change concurrently with managing the annexation to any of the five member cities. The topic of "automatic" boundary changes is addressed in Government Code 56120. This statute states "the commission of the principal county of the member district shall have exclusive jurisdiction over such a change in boundaries of the member district and also of any parent district subject to this division." Separately, while the Port may not currently collect property tax, the role of the State Board of Equalization remains material given their records are used to determine voter residency, residency qualifications for person to hold elected office, and local agency boundaries.

- **Legal analysis regarding LAFCO's lack of authority over the San Diego Port (page 7 of the April 3rd letter).** The Port asserts several factors – specifically its uniqueness as a special act district, existing oversight from the State Lands Commission and Coastal Commission, and its services not being "municipal" – in arguing it is not subject to LAFCO oversight.

  Staff respectively disagrees and believes this is not new or compelling information. Staff also believes there are no errors or omissions to remedy. The final administrative assessment states LAFCO statute covers "special act" districts. The final administrative assessment along with supplemental correspondence provided on March 4th received from other LAFCO Executive Officers also confirms several port and harbor districts in other counties are already concurrently overseen by LAFCO, Coastal Commission, and State Lands Commission. The final administrative assessment also addresses the nature of the Port's services and concludes they are municipal in nature.

RECOMMENDATION

It is recommended San Diego LAFCO deny the request for reconsideration.

ALTERNATIVES FOR ACTION

The following alternative actions are available to San Diego LAFCO and can be accomplished through a single-approved motion.

Alternative One (recommended):
Deny the request for reconsideration.

Alternative Two:

(a) Approve the request for reconsideration and toll the March 4th approvals.

(b) Direct the Executive Officer to place the reconsideration on the June 3rd agenda.

Alternative Three:
Continue item to a future meeting.

PROCEDURES

This item has been placed on the agenda for possible action as part of San Diego LAFCO's business calendar. The following procedures, accordingly, are advised.

1) Receive verbal report from staff unless waived.
2) Questions from the Commission.
3) Invite comments from the audience.
4) Commission discussion and potential action.

Respectfully,



Keene Simonds
Executive Officer

Attachments:

1) April 3, 2024 Port Request for Reconsideration
2) April 5, 2024 Email from Executive Officer to the Port
3) April 18, 2024 Port Response to the Executive Officer
4) March 4, 2024 Agenda Item No. 8a (previously provided – available online under Meetings/2024/March)
5) December 4, 2023 Agenda Item No. 7a (previously provided – available online under Meetings/2023/December)

PORT of SAN DIEGO

April 3, 2024

Keene Simonds, Executive Officer
San Diego Local Agency Formation Commission
2550 Fifth Avenue Suite 725
San Diego CA 92103

Mr. Simonds:

Re: Request for Reconsideration of Commission Action on March 4, 2024 (Agenda Item 8a)

The San Diego Unified Port District ("Port District") hereby requests reconsideration of Agenda Item 8a of the March 4, 2024 meeting of the Board of Commissioners of the San Diego Local Agency Formation Commission ("SD LAFCO"), pursuant to SD LAFCO Rule 3.4(2).

The attached letter from the Port District's counsel identifies the compelling arguments for reconsideration, including new information not considered by the SD LAFCO Commission at the March 4, 2024 meeting, and the errors and omissions in the Commission's determination that require correction. For all the reasons set forth in the attached letter, SD LAFCO must vacate in its entirety its March 4, 2024 determination regarding oversight of the Port District.

Reconsideration is necessary because the March 4, 2024 determination is unsupported by law and exceeded SD LAFCO's statutory authority. That decision is also contrary to SD LAFCO's long-standing position that it lacks jurisdiction over the Port District, as repeated in numerous SD LAFCO publications over the past 20-plus years. This sudden reversal is especially disappointing as SD LAFCO failed to provide any meaningful opportunity for input from critical Port District stakeholders – including the State Lands Commission and our five member cities. Moreover, the oversight functions that SD LAFCO provides to agencies within its jurisdiction are simply not applicable to the Port District. The Port District's boundaries automatically change when our member cities' boundaries are amended; accordingly, LAFCO review of boundary modifications and municipal service needs would be redundant.

The Port District is acutely aware of the important role that SD LAFCO plays in encouraging orderly growth and development within San Diego County. The Port District remains committed to contributing to the social, fiscal and economic well-being of the state and the region, as it has done since it was established by the Legislature in 1962. We welcome an opportunity for open dialogue about how the Port District can support SD LAFCO's activities and oversight efforts. Accordingly, we reiterate our prior offer to meet with SD LAFCO senior staff to discuss how our organizations can work together going forward.

Please provide written confirmation of receipt of this request and confirm the date when the reconsideration item is scheduled for hearing.

Sincerely,

Randa Coniglio
Acting President and Chief Executive Office

cc: San Diego LAFCO Chair Stephen Whitburn
San Diego LAFCO Commissioners
California State Lands Commission Executive Officer Jennifer Lucchesi

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April 3, 2024

Keene Simonds, Executive Officer
San Diego Local Agency Formation Commission
2550 Fifth Avenue Suite 725
San Diego CA 92103

Re: Request for Reconsideration of Commission Action on March 4, 2024 (Agenda Item 8a)

Dear Mr. Simonds:

Best Best & Krieger LLP represents the San Diego Unified Port District ("San Diego Port District") as special counsel. The San Diego Port District hereby requests reconsideration of Agenda Item 8a of the March 4, 2024 meeting of the Board of Commissioners of the San Diego Local Agency Formation Commission ("SD LAFCO"), pursuant to SD LAFCO Rule 3.4(2). The San Diego Port District appreciates the role of SD LAFCO in furthering the California Legislature's policy of "encouraging orderly growth and development which are essential to the social, fiscal, and economic well-being of the state" and in ensuring the logical formation and modification of the boundaries of local agencies within San Diego County pursuant to the Cortese-Knox-Hertzberg Local Agency Government Reorganization Act of 2000 (Gov. Code § 56000 *et seq*.) ("CKH"). The San Diego Port District would further like to make very clear that it desires to work with and not against SD LAFCO to provide information that will no doubt enhance SD LAFCO's review of the services, spheres of influence, and boundaries of agencies within the statutorily proscribed boundaries of the San Diego Port District, as set out in the San Diego Unified Port District Act (Harbor & Nav. Code App. 1) ("Port District Act").

The above notwithstanding, the San Diego Port District respectfully requests that SD LAFCO reconsider and vacate in its entirety the determinations made and all ancillary actions taken by the Commission at its March 4, 2024 meeting with regard to the San Diego Port District. Specifically, at its meeting on March 4, 2024, the SD LAFCO Commission acted to approve the SD LAFCO staff recommendation included in the Agenda Report for Item 8a, as follows:

> **RECOMMENDATION**
>
> It is recommended San Diego LAFCO accept the final administrative assessment and determine the Port is subject to Commission oversight. This recommendation and related authorizations are consistent with Alternative One outlined below.
>
> **ALTERNATIVES FOR ACTION**
>
> The following alternative actions are available to San Diego LAFCO and can be accomplished through a single-approved motion.

Alternative One (recommended):

(a) Accept the final administrative assessment as presented.
(b) Approve a conforming policy statement confirming the Port is an independent district subject to LAFCO's oversight.
(c) Authorize the Executive Officer to effectuate the above policy determination with respect to adding the Port to the annual appointment as well as add the Port as an eligible voter on the Independent Special Districts Selection Committee.

Critically, the oversight functions that SD LAFCO provides to agencies within San Diego County are not applicable to the San Diego Port District. Reconsideration is therefore merited pursuant to LAFCO Rule 3.4(2)(c) in light of the following points, which identify (a) significant new information not considered by the Commission at the March 4, 2024 meeting and (b) substantive errors and omissions in the Commission's determination that require correction through reconsideration.[1] The San Diego Port District further asserts that the process leading up to the March 4, 2024 SD LAFCO meeting was unduly rushed in that SD LAFCO did not take the time to seek input from important stakeholders such as the San Diego Port District's own member cities (Chula Vista, Coronado, National City, Imperial Beach and San Diego).

SUPPORT FOR RECONSIDERATION REQUEST

1. The Commission was Presented with Incomplete SD LAFCO Historical Information.

The recent change in SD LAFCO's position as related to the San Diego Port District is inconsistent with SD LAFCO's long history of not only acknowledging, but also affirmatively asserting in its publications for over two decades, that the San Diego Port District is not within SD LAFCO's purview.

The Commission's March 4th agenda materials and the recording of that meeting make it clear that the Commission was deprived of full information. Those materials omitted the historical fact that SD LAFCO did not just fail to assert jurisdiction over the San Diego Port District for multiple decades but rather affirmatively and repeatedly acknowledged it didn't have any such jurisdiction. This acknowledgment was included in SD LAFCO's own publications, one of which remains as a resource for agencies and the public on SD LAFCO's website (https://www.sdlafco.org/home/showdocument?id=3114). Nothing in the March 4, 2024 agenda materials presented this background to the Commission for its consideration. Instead the issue was presented as if it were an issue of first impression for the Commission's consideration—presented as if the issue had just never come up in the past decades despite decades of SD LAFCO records indicating otherwise.

[1] Nothing in this letter is to be construed as an admission that the San Diego Port District acknowledges or agrees that SD LAFCO has any oversight role over the San Diego Port District.

For example, in its "Profiles of Special Districts in San Diego County" published in 2000 (which was a revision of its predecessor 1996 edition), SD LAFCO included the following in the introduction section:

> certain types of agencies over which LAFCO has no jurisdiction. These include school districts, library districts, improvement districts, lighting and landscape maintenance districts, **the Unified Port District**, the San Diego Area Wastewater Management District, and the San Diego County Flood Control District, and Joint Powers Authorities (JPAs).

(Profiles of Special Districts in San Diego County (2000), page i (emphasis added).) The introduction went on to state that information regarding some of the above referenced entities was included in the publication to "enhance coverage of this document" "in the section designated 'Miscellaneous Special Services Not Subject to LAFCO Review.'" (*Id*.) As indicated in the footnote of the introduction section, SD LAFCO made this and other "useful" SD LAFCO publications available for purchase.

In 2011, the Profiles of Special Districts publication was updated and renamed the "Directory of Special Districts in San Diego County," which again was made available by SD LAFCO for purchase. The introduction section of the 2011 version stated that the "extensive records that LAFCO maintains in its oversight function provided a base for the Directory, which was augmented by staff research and special district contributions." The 2011 Directory document again included information of the San Diego Port District in the "Agencies with Restricted LAFCO Oversight" section, noting specifically that:

> *LAFCO does **not** have purview over the Unified Port District of San Diego; however, reorganizations involving the Cities of Chula Vista, Coronado, Imperial Beach, National City and San Diego, including tidelands within those jurisdictions generally must be approved by LAFCO.*

(2011 Directory, p. 108 (emphasis in the original).) The San Diego Port District fails to believe that SD LAFCO would including this type of information in publications it has made available for over two decades without justification. A copy of the above referenced sections of the 2000 publication is attached to this letter as Exhibit "A." As previously noted, the 2011 publication can be found at the following SD LAFCO website link: https://www.sdlafco.org/home/showdocument?id=3114

SD LAFCO publications were the topic of the Commission's "FY 2012-13 Strategic Plan Meeting" discussion at its February 2012 meeting, for which the minutes reflect that then Executive Officer, Michael Ott indicated that "LAFCO provides important services to the public and other agencies by publishing documents, such as the LAFCO Procedures Guide, Annual MSR and Sphere Report, and updated application forms." At its April 2012 meeting, the meeting minutes reflect that the Commission approved a budget option that included approximately $35,000 of funding for "Reports and Publications," with the understanding that "some of the

associated costs would be recovered through publication charges." Notably the 2011 Directory remains on the SD LAFCO website today as a resource for the public and other agencies.[2]

In light of this background and SD LAFCO's past stance as to the San Diego Port District (a stance with which the San Diego Port District concurs as addressed in detail below), this information should certainly have been presented to the Commission at its March 4, 2024 meeting in order for the Commission to have an informed discussion.

2. SD LAFCO Lacks Authority to Make a Determination as to the San Diego Port District.

Except for a local agency formation commission's determination on "district status" pursuant to Government Code sections 56127 and 56128 (which applies to specified agencies not including the San Diego Port District), a local agency formation commission lacks authority to make a determination on whether it has jurisdiction over an agency. By statute, an agency is either subject to the jurisdiction of a local agency formation commission or it is not. No provision in CKH or any other law grants a local agency formation commission the authority to supplant the provisions of CKH with its own determinations as to the types of agencies subject to its jurisdiction. The agenda materials do not provide any references to legal authority supporting the new determination the Commission was asked to make at its March 4, 2024 meeting.

3. On March 4, 2024, SD LAFCO Ignored the Legal Analysis Provided by the San Diego Port District and the State Lands Commission on the Issue.

Both the San Diego Port District and the State Lands Commission have provided legal analyses as to SD LAFCO's lack of authority over the San Diego Port District given its unique legal obligations and duties. However, SD LAFCO has ignored the analyses even though they comport with SD LAFCO's historical treatment of the San Diego Port District. These various opinions are attached again for the Commission's review and consideration. (See Exhibit "B" attached.) Under LAFCO's reconsideration rules, these should be considered new information, and will no doubt be received in a different light given the above historical context, which was not before the Commission at its March 4th meeting. It is quite conceivable that the conclusions in these legal analyses are similar to the bases for SD LAFCO's prior acknowledgement and practice regarding its lack of authority over the San Diego Port District. Assuming otherwise would mean the unimaginable: that SD LAFCO shirked its statutory obligations under CKH as to the San Diego Port District for decades. Given the legal analyses provided previously by both the San Diego Port District and the State Lands Commission, SD LAFCO's decision to reverse its decades-long position of no jurisdiction cannot be justified by the newly made arguments supporting oversight of the San Diego Port District. For the avoidance of doubt, we provide a summary of the legal bases for the San Diego Port District's legal position in Section 5, below.

[2] The 2011 Director is oddly listed on the same webpage as a 2023 document titled "Local Agencies Directory" which lists the San Diego Port District's "service functions" as "Pending Municipal Service Review," despite no change in legislation to so warrant, and despite the fact that the Commission had yet to discuss the matter.

4. SD LAFCO Arguments Presented at the March 4th Meeting are Based on Mistaken Information.

The basis for SD LAFCO's recent interest in the San Diego Port District—the stated harms SD LAFCO's jurisdiction over the San Diego Port District purport to cure, as both described in the agenda materials for Item 8a and discussed at the March 4th meeting, are based on mistaken information:

- *The San Diego Port District's boundaries will not match its city members' boundaries[3] if SD LAFCO is not involved.*

  This is incorrect for at least two reasons:

  - First, the San Diego Port District's boundaries are those of its member cities regardless of whether a statement of boundary changes is filed with the California Board of Equalization by SD LAFCO. Stated another way, the San Diego Port District's boundaries are set by statute. (Harbor & Nav. Code App. 1, §5.) Territory is "deemed" annexed into the San Diego Port District following the completion a SD LAFCO action to annex territory into one of the cities within the San Diego Port District's statutorily established boundaries.

  - Second, agencies other than a local agency formation commission can file statements of boundary changes with the California Board of Equalization pursuant to Government Code section 54900.[4]

  Any current disconnect between SD LAFCO's understanding and the San Diego Port District's official Board of Equalization boundaries may be due to a failure of SD

[3] The San Diego Port District's "member" cities are the cities of Chula Vista, Coronado, National City, Imperial Beach and San Diego.

[4] Government Code section 54800 provides as follows:

> When there is a change in boundaries (1) of a city, (2) of a district, or special zone thereof, within a city the tax levy of which is carried on the regular city assessment roll, or (3) of a district, or special zone thereof, the tax or special assessment levy of which is carried on the regular county assessment roll, or when a city or any district, or special zone thereof, is created the tax or special assessment levy of which is carried on the regular county assessment roll, or when a district previously levying and collecting taxes or special assessments based upon its own assessment utilizes the regular city or county assessment roll, the tax or assessment levying authority of the city or district shall file or cause to be filed a statement of the creation or change, or of the exterior boundaries of the district and the special zones therein newly utilizing the regular city or county assessment roll. The city or district shall prepare the statement and forward it to the tax or assessment levying authority for filing.
>
> Any filing as required by this section by the executive officer of a local agency formation commission pursuant to Section 57204 shall be deemed to satisfy the requirements of this chapter.

LAFCO to provide the Port information regarding the changes in order for the San Diego Port District to make follow-on filings to the State. ***Regardless***, the purpose of filing a statement of boundary changes with the Board of Equalization is to update the "Tax-Rate Area System" the State Board of Equalization administers. The Tax-Rate Area System, which is used by counties for the proper allocation of property tax revenues between counties and taxing agencies within a county, has no impact on the San Diego Port District because it receives no property tax revenues through the tax roll.

- **If SD LAFCO does not act to ensure the San Diego Port District's boundaries match its city members' boundaries, then each member city may inadvertently appoint a member that is not an elector within the San Diego Port District's boundaries.**

  This concern is based on incorrect premises. First, as stated above, the San Diego Port District's boundaries are coterminous with the boundaries of its member cities—so the stated concern could never occur. Additionally, under the Port District Act, members of the San Diego Port District Board of Commissioners are required to be residents of the city making the appointment rather than an elector within the boundaries of the San Diego Port District. San Diego Port District Commissioners represent the particular city from which they are appointed. (Harbor & Nav. Code App. 1, §16.)

One last item of note:

- The March 4, 2024 Agenda Report for this item includes the following statement in the opening paragraph, related to the Commission's decision options:

  > "It is recommended the Commission accept the assessment and approve a conforming policy statement. Alternatively, and as contemplated, should it separately determine the Port is performing functions exclusively for the benefit of the State, the Commission should accept the assessment and approve a substitute policy statement that the Port is not subject to LAFCO oversight."

(SD LAFCO March 4, 2024 Agenda Report for Item 8a.) The San Diego Port District is unaware of any such standard as the basis for determining whether an agency is or is not subject to LAFCO oversight. As stated above, an agency is statutorily either subject to the jurisdiction of a local agency formation commission or it is not.

5. Summary Legal Analysis Regarding SD LAFCO's Lack of Authority over the San Diego Port District

A. Background: The San Diego Unified Port District Act and Other Relevant State Law

The San Diego Port District is unique to other port districts in California. Unlike other port districts, which are generally formed pursuant to provisions of the Harbor and & Navigations Code that lay out the framework for the local establishment of a port district, the San Diego Port District was created directly by the California Legislature pursuant to its adoption of the Unified Port District Act (Harbor & Nav. Code App. 1). The San Diego Port District is the only agency that can operate under the Port District Act. Stated another way, there is only one, and can be only one, San Diego Port District.

Under the Port District Act, the San Diego Port District is charged by the State of California as the owner and operator of tidelands and submerged lands in San Diego Bay (which are held in public trust), but it is also a U.S. Port of Entry and has various responsibilities and duties which directly impact intrastate, interstate, and international commerce. In this way the San Diego Port District is like the Ports of Long Beach, Los Angeles and Oakland and not like an inland port or harbor district. But unlike the Ports of Long Beach, and Los Angeles and Oakland, the San Diego Port District operates as a standalone public corporation, as opposed to departments of those cities.

San Diego Port District activities are subject to the requirements and obligations of the Coastal Act and the Public Trust Doctrine and, where applicable, the oversight by both the Coastal Commission and the State Lands Commission. To that end, the San Diego Port District is charged, under the Port District Act, with the "development, operation and regulation of harbor works and improvements, including rail and water, for the development, operation, maintenance, control, regulation, and management of San Diego Bay for the promotion of commerce, navigation, fisheries, and recreation…[.]" (Harbor & Nav. Code App. 1, § 4.) Public Resources Code section 6009 establishes that the "purposes and uses of tidelands and submerged lands is a *statewide concern*" and further provides that grantees of tidelands and submerged lands, such as the San Diego Port District, must manage them in a manner "consistent with the terms and obligations of their grants and the public trust, *without subjugation of statewide interest, concerns, or benefits to the inclination of local or municipal affairs, initiatives, or excises*."

1. San Diego Port District Boundaries and Services

The San Diego Port District's boundaries are also set by the provisions of the Port District Act:

- Section 5 of the Port District Act establishes that its boundaries include the corporate areas of San Diego, Chula Vista, Coronado, National City, and Imperial Beach, and any contiguous unincorporated territory in the County of San Diego "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."

- Section 53 of the Port District Act, "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." (Emphasis added.) Stated plainly, under the Port District Act territory is "deemed" annexed into the San Diego Port District following (and not concurrently with) completion LAFCO's action to annex territory into one of the cities within the San Diego Port District's statutorily established boundaries.

- The San Diego Port District is a U.S. Port of Entry directly responsible for compliance with applicable Federal Laws related thereto, competes and serves in the same market as other cargo and passenger ports along the west coast of the U.S., and serves international businesses and carriers from around the world. As a result, its service area likely includes the entire western United States.

As noted above, the Port District Act provides the purpose and powers granted to the San Diego Port District by the legislature, "for the development, operation and regulation of harbor works and improvements, including rail and water, for the development, operation, maintenance, control, regulation, and management of San Diego Bay for the promotion of commerce, navigation, fisheries, and recreation…[.]" (Harbor & Nav. Code App. 1, § 4.) While the San Diego Port District owns and operates the tidelands and submerged lands granted to it by the State, it holds these lands in public trust. And in *Colberg, Inc. v State of California ex rel. Dept. Pub Wks* (1967) 67 Cal.2d 408, 417 (*Colberg, Inc.*), the court concluded:

> The nature and extent of the trust under which the state holds its navigable waterways has never been defined with precision, but it has been stated generally that acts of the state with regard to its navigable waters are within trust purposes when they are done 'for purposes of commerce, navigation, and fisheries for the benefit of all the people of the state.

(Citations omitted.) In addition to other provisions of the Port District Act, Section 87 more particularly provides specific purposes for the use of the tideland and submerged lands held in public trust by the San Diego Port District. (Harbor & Nav. Code App. 1, § 87.)

2. Master Plan Requirements and State Agency Oversight

The Port District Act requires that the Board of Port Commissioners ("Commission") draft and adopt "a master plan for harbor and port improvement for the use of all the tidelands and submerged lands" conveyed to the San Diego Port District pursuant to the Port District Act. (Harbor & Nav. Code App. 1, § 19.) The California Coastal Act ("Coastal Act") further provides specific regulations for a master plan ("Master Plan") for the "Ports of Hueneme, Long Beach, Los Angeles, and *San Diego Unified Port District* located within the coastal zone" because they "constitute one of the state's primary economic and coastal resources and are an essential element of the national maritime industry." (Pub. Res. Code, §§ 30700 [emphasis added], 30701.) The Coastal Act expressly states the Legislature's intent for the specific regulation of these commercial ports as follows:

> The location of commercial port districts within the State of California … are well established, and for many years such areas have been devoted to transportation and commercial, industrial, and manufacturing uses consistent with federal, state and local regulations. Coastal planning requires no change in the number or location of established commercial port districts. Existing ports … should be encouraged to modernize and construct necessary facilities within their boundaries in order to minimize or eliminate the necessity for future dredging and filling to create new ports in new areas of the state.

(Pub. Res. Code, § 30701.)

To implement the policy of the State as codified, port-related development for the above-listed commercial ports, including the San Diego Port District, is subject to oversight by both the Coastal Commission and the State Lands Commission. The Coastal Act requires the Coastal Commission to "adopt, certify, and file with each port governing body a map delineating the present legal geographic boundaries of each port's jurisdiction within the coastal zone." (Pub. Res. Code, § 30710.) This additional oversight by the Coastal Commission belies SD LAFCO's conclusion and action on March 4, 2024 that the San Diego Port District is subject to SD LAFCO. While the San Diego Port District is certainly subject to oversight by the State Lands Commission, its role as an established commercial port means that it is also subject to oversight by the Coastal Commission for both development (including the San Diego Port District's legal geographic boundaries) as well as uses within those boundaries.

B. The San Diego Port District is Not Subject to LAFCO Jurisdiction or Oversight

Under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Gov. Code, § 56000 *et seq*. ("CKH")), local agency formation commissions primarily establish spheres of influence for agencies over which they have jurisdiction, prepare municipal service reviews in order to prepare and updates those spheres of influence, and process proposals for changes of organization (like annexations and detachments) or reorganizations (applications involving one or more change of organization). Any changes of organization or reorganization must be consistent with an agency's sphere of influence. All such activities are inapplicable to the San Diego Port District.

1. Municipal Service Reviews, Spheres of Influence and Annexations

Under CKH, a service review is required only "in order to prepare and to update spheres of influence in accordance with Section 56425." (Gov. Code, § 56430 (a).) A sphere of influence is defined in CKH as a "plan for the probable physical boundaries and service area of a local agency[.]" (Gov. Code, § 56076.) A local agency formation commission uses spheres of influence to assist it in carrying out its purposes and responsibilities "for planning and shaping the logical and orderly development and coordination of local governmental agencies subject to the

jurisdiction of the commission to advantageously provide for the present and future needs of the county and its communities." (Gov. Code, § 56425.)

The San Diego Port District has no sphere of influence because it would be unnecessary for it to have one given that the Legislature has already determined its probable physical boundaries and service area in Section 5 of the Port District Act and also proscribed the specific scope and purpose of the San Diego Port District's services and powers in other provisions of the Port District Act. Additionally, a plan for the San Diego Port District's services is already provided for by law in the Port District Act, and the review and approval of that Master Plan is already provided by the California Coastal Commission with adoption procedures similar to those provided for in CKH. (See Pub. Res. Code, § 30711 *et seq*.)

If the San Diego Port District does not have or need a sphere of influence, a municipal service review to inform a sphere of influence is simply not applicable to it given that the governance of State lands held in public trust is already statutorily subject to oversight by both the State Lands Commission and the Coastal Commission. "Grantees are required to manage the state's tidelands and submerged lands consistent with the terms and obligations of their grants and the public trust, *without subjugation of statewide interest, concerns, or benefits to the inclination of local or municipal affairs, initiatives, or excises*." (Pub. Res. Code, § 6009 (d) [emphasis added].)

In *Mallon v. City of Long Beach* (1955) 44 Cal. 2d 199, the California Supreme Court considered a State statute which attempted to appropriate half of the oil and gas revenues derived from the sale of oil and gas produced from the tide and submerged lands granted in trust to the City of Long Beach to a City fund for public improvements. The Court held that the expenditures of tideland trust funds for public purposes that were matters of a "municipal" character, e.g., "storm drains, a city incinerator, a public library, public hospitals, public parks, a fire alarm system, off street parking facilities, city streets and highways" were not "of such general state-wide interest that state funds could properly be expended thereon." (*Id.* at p. 211.) The Court concluded such expenditures would violate the Gift Clause of the California Constitution. (*Id*. at p. 212.)

While CKH broadly defines "service" to mean "a specific governmental activity established within, and as a part of, a function of a local agency"[5] and defines "function" to mean "any power granted by law to a local agency to provide designated governmental or proprietary services or facilities for the use, benefit, or protection of persons or property,"[6] these terms are distinguishable from the purposes of the services and functions provided by the San Diego Port District under the San Diego Port District Act, as described above. The San Diego Port District's activities are expressly not municipal in nature (though we concede akin to services provided by other agencies within the jurisdiction of SD LAFCO), but are rather of a statewide concern, so are therefore beyond the scope of what CKH contemplates.

Last, and as stated above, annexations into the San Diego Port District are already covered by the express provisions of the San Diego Port District Act in that Section 53 provides that "any

[5] Gov. Code, § 56074.
[6] Gov. Code, § 56040.

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." No SD LAFCO involvement is required for San Diego Port District annexations.

CONCLUSION

In light of the above, and in order to preserve the San Diego Port District's rights to pursue all available legal remedies at its disposal, the San Diego Port District submits this request for reconsideration of the Commission's March 4, 2024 action on Agenda Item 8a making determinations related to the San Diego Port District. This request for reconsideration is made pursuant to Article III, Section 3.4 (2) of SD LAFCO's Rules regarding requests for reconsideration of a Commission determination for which a resolution was not adopted. Pursuant to Article III, Section 3.4 (2)(c)(1) of SD LAFCO's Rules, the above information serves as the basis for the San Diego Port District's request.

Pursuant to Article III, Section 3.4 (2)(c)(2), the San Diego Port District respectfully requests the Commission rescind entirely the determinations made on March 4, 2024, and that it instead direct SD LAFCO staff to work with the San Diego Port District to identify areas where the San Diego Port District can be of service to SD LAFCO in undertaking its activities under CKH as to agencies over which it does have authority. The San Diego Port District reserves the right to augment this request with additional information as appropriate.

Sincerely,



Paula C. P. de Sousa
of BEST BEST & KRIEGER LLP

Attachments: Exhibits "A" and "B"

EXHIBIT "A"

EXCERPTS FROM SAN DIEGO LOCAL AGENCY FORMATION COMMISSION "PROFILES OF SPECIAL DISTRICTS IN SAN DIEGO COUNTY"

PUBLISHED IN 2000

PROFILES OF SPECIAL DISTRICTS

IN SAN DIEGO COUNTY

Published by San Diego LAFCO:

Michael D. Ott
Executive Officer

Prepared by:

Tita J. Mandapat
Administrative Aide

2000

INTRODUCTION

This publication is a revision of the 1996 edition of Profiles of Special Districts. Reflecting changes in special district jurisdiction and services in San Diego County as of June 2000, this document includes information about formations of new districts, consolidations of existing districts, and district dissolutions. For agencies that have been dissolved or consolidated since 1988, relevant information, the name of the successor agency, and a listing of dissolved districts have been included in the index.

Agencies are listed according to function in this publication. The scope of information for each agency includes factors such as population, service area, district facilities, and water capacity, as well as the Insurance Service Office (ISO) rating for fire districts. As with the previous edition, the special districts listed in this publication fall into three overall categories: (1) "Independent" special district -- a district that has its own independently elected (or appointed) board of directors; (2) "Dependent" special district -- a district that is governed ex-officio by another body, (e.g., County Board of Supervisors or city council); and (3) "Subsidiary" district -- a district that is governed by a city council acting as the ex officio board of directors. Additionally, the total number of districts in each of these categories has been specified.

There are certain types of agencies and entities over which LAFCO has no jurisdiction. These include school districts, library districts, improvement districts, lighting and landscape maintenance districts, the Unified Port District, the San Diego Area Wastewater Management District, the San Diego County Flood Control District, and Joint Powers Authorities (JPAs). To enhance coverage of this document, information pertaining to some of these agencies/public service entities has been provided. The details regarding these service providers is located in the section designated *"Miscellaneous Special Services Not Subject to LAFCO Review."*

Also incorporated into the 2000 edition of the Profiles of Special Districts are updated vicinity maps for those special districts whose boundaries are within San Diego LAFCO's jurisdiction. With the introduction of color, the quality and clarity of the maps have been significantly improved since the last publication.

San Diego LAFCO hopes that readers will find the additions and improvements to this document useful and informative. For more information on the powers and functions of the various types of districts, the reader should refer to the district enabling acts or to our publication, A Guide to LAFCO Procedures.

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Also available for purchase are other useful publications, which San Diego LAFCO has prepared, including: A Guide to LAFCO Procedures, Profiles of Cities in San Diego County, Special Districts Sphere of Influence Survey, and Cities Sphere of Influence Survey. Please contact the San Diego LAFCO office at (619) 531-5400 for further information and publication costs.

MISCELLANEOUS

SPECIAL

SERVICES

NOT SUBJECT

TO LAFCO REVIEW

MISCELLANEOUS SPECIAL SERVICES

NOT SUBJECT TO LAFCO REVIEW

There are certain types of agencies and entities over which LAFCO has no jurisdiction. These include school districts, library districts, improvement districts, lighting and landscape maintenance districts, the Unified Port District, the San Diego Area Wastewater Management District, and the San Diego County Flood Control District, and Joint Powers Authorities (JPAs). To enhance the scope of this document, information pertaining to some of the entities not within LAFCO's purview has been included.

MISCELLANEOUS SPECIAL SERVICES

NOT SUBJECT TO LAFCO REVIEW

FLOOD CONTROL

The Board of Supervisors functions as the board of directors for the flood control district; therefore, inquires should be directed to:

SAN DIEGO COUNTY FLOOD CONTROL DISTRICT
Public Works Department
5555 Overland Avenue, Building 2
San Diego, CA 92123
Telephone: (858) 694-2830
FAX: (858) 694-2499

Description: This District was created by the State Legislature in 1966 and empowered to establish facilities to control and conserve flood and storm waters; to protect harbors, waterways, highways, property, and life from flood and storm waters; and to protect beaches and shorelines from erosion. While the planning and construction of flood control and storm drain systems are the District's primary purposes, it is also involved in monitoring potential flooding problems and issuing warnings to citizens. Until 1985, LAFCO made decisions regarding boundary changes to the San Diego County Flood Control District. However, in 1985, Senate Bill 2228 was enacted which removed the Flood Control District from LAFCO's purview.

Service Area: The District encompasses all of the unincorporated territory in San Diego County.

MISCELLANEOUS SPECIAL SERVICES

NOT SUBJECT TO LAFCO REVIEW

PORT DISTRICT

SAN DIEGO PORT DISTRICT
3165 Pacific Highway
San Diego, CA 92101
Telephone: (619) 686-6200
FAX: (619) 291-0753

Description: This District is a special purpose unit of government created in 1962 by an act of the state legislature with subsequent approval by area voters. Established to manage the harbor, operate Lindbergh Field, and administer the public tidelands, the District is authorized to levy property taxes within the 5 member cities. Between 1963 and 1970 the District imposed a small tax to repay debts incurred for improvements. No tax levy has been required since 1970 because revenues from the principal operational areas -- harbor, airport, and property management -- have been sufficient to support operations, service bonded indebtedness, and permit capital improvements. The Port District does not administer all of the tidelands around San Diego Bay. The Navy, Coast Guard, and Marine Corps occupy and utilize large areas. The District is governed by a seven-member Board of Port Commissioners.

Public recreational facilities are an important component of the District's operation. Fishing piers, parks, bike paths, and boat launching ramps are provided for public enjoyment of San Diego Bay. There are over 250 acres of public recreational and open space areas along the bayfront.

Service Area: The Port District encompasses the Cities of Coronado, Chula Vista, Imperial Beach, National City, and San Diego. The harbor is 14 miles long and contains 23 square miles of water and land.

MISCELLANEOUS SPECIAL SERVICES

NOT SUBJECT TO LAFCO REVIEW

SEWER SERVICE

SEWER MAINTENANCE DISTRICT

The Board of Supervisors functions as the board of directors for this sewer maintenance district; therefore, inquires should be directed to:

WINTERGARDENS SEWER MAINTENANCE DISTRICT
Public Works Department/Wastewater Management
County Operations Center
5555 Overland Avenue
San Diego, CA 92123
Telephone: (858) 694-2212

Description: Formed in 1964, the District serves approximately 3,790 equivalent dwelling units (EDUs) and imposes an annual sewer service charge of $282/EDU. While the system's rated capacity is 1.21 million gallons per day (mgd), average flow is only 0.769 mgd. The District does not treat its sewage but has an agreement with the City of El Cajon that allows the sewage to be disposed of through the City of San Diego Metropolitan Sewer System.

Service Area: The District owns 124,000 feet of sewer mains, and operates and maintains the public sewer system located in the region just north of the City of El Cajon.

MISCELLANEOUS SPECIAL SERVICES

NOT SUBJECT TO LAFCO REVIEW

SEWER SERVICE

JOINT SEWERAGE AGENCIES

ENCINA WASTEWATER AUTHORITY
Encina Water Pollution Control Facility
6200 Avenida Encinas
Carlsbad, CA 92009
Telephone: (760) 438-3941
FAX: (760) 438-3861

Description: The Cities of Carlsbad, Encinitas, and Vista, the Leucadia and Vallecitos County Water Districts, and the Buena Sanitation District have entered into a joint powers agreement to own and operate a common sewer system (Encina Water Pollution Control Facility). In addition, the member agencies entered into a joint powers agreement that created the Encina Wastewater Authority (EWA) to serve as the operator/ administrator of the joint system. The Encina Wastewater Authority Board of Directors consists of two representatives from each of the six member agencies. This 12-member board meets monthly to review plant operations, award contracts, and recommend approval of the annual budget by each of the member agencies.

The Encina Water Pollution Control Facility began operating in 1965 as a primary level treatment plant. In 1983, construction was completed which upgraded the treatment to secondary level. In 1984, the plant was granted a waiver and treated its wastewater to an advanced primary level until 1988 when it returned to full secondary treatment. The present design capacity is 36 mgd (liquid capacity) and 38 mgd (solids capacity). Flows during 1992 averaged about 19 mgd. The EWA is not authorized to incur bonded indebtedness, nor to set and collect sewer service or connection fees. Revenues are provided by the member agencies.

Service Area: Encompassing 125 square miles, the service area includes the Cities of Vista and Carlsbad, and a portion of the City of Encinitas as well as adjacent unincorporated territory.

Facilities: The collective system currently consists of a wastewater treatment plant (Encina Water Pollution Control Facility), and an ocean outfall with a proposed biosolids composting facility planned for future construction. The ocean outfall is 7,800 feet long, terminates at a depth of 150 feet, and has a hydraulic capacity of 58 mgd. The outfall not

only serves the Encina Facility, but also acts as a failsafe discharge for three inland satellite reclamation plants owned by the member agencies. The EWA also operates and maintains two large wastewater-pumping stations for the Cities of Carlsbad and Vista as well as a satellite reclamation plant for the Buena Sanitation District.

SAN ELIJO JOINT POWERS AUTHORITY
San Elijo Water Pollution Control Facility
2695 Manchester Avenue
Cardiff, CA 92007
Telephone: (760) 753-6203

Description: The San Elijo Joint Powers Authority (JPA) is an agency that was established in 1964 to construct and operate a wastewater treatment plant to serve the community of Solana Beach and the Cardiff Sanitation District. The plant was built on 27 acres in a small valley just north of the San Elijo Lagoon. The JPA owns an ocean outfall, which terminates at a depth of 150 feet below the mean high tide line, and disperses the effluent 8,000 feet from the coastline. The City of Escondido leases 79% of the outfall's capacity. Treated wastewater sludge is hauled off-site and composted by a private contractor. Planned capital improvements for the facility include construction of tertiary treatment facilities, which will ultimately treat 3.5 mgd for distribution as reclaimed water for various off-site uses, such as golf course maintenance and flower cultivation. A ballast replacement project was completed on the ocean outfall during FY 1993-94.

Service Area: The service area contains approximately 19 square miles and includes a population of approximately 32,000.

Facilities: Originally providing advanced primary wastewater treatment, the facility was upgraded and expanded in 1993 to provide secondary treatment. Disposal of treated effluent is into the ocean through the San Elijo ocean outfall. Ultimate service capacity of the plant will be 5.25 mgd. The two member agencies share ownership equally and provide service by contract to some areas of Rancho Santa Fe and the City of San Diego.

MISCELLANEOUS SPECIAL SERVICES

NOT SUBJECT TO LAFCO REVIEW

SEWER SERVICE

WASTEWATER MANAGEMENT DISTRICT

SAN DIEGO AREA WASTEWATER MANAGEMENT DISTRICT
C/O PADRE DAM MUNICIPAL WATER DISTRICT
P.O. Box 719003
10887 Woodside Avenue
Santee, CA 91972-9003
Telephone: (619) 448-3111
FAX: (619) 449-9469

Description: This District was formed in 1992 by special legislation -- the San Diego Area Wastewater Management District Act (SB 1225). The purpose of the legislation was to create an intrajurisdictional district to effectively and economically coordinate the development of collective, regional wastewater transportation and disposal systems; water reclamation and reuse systems; and refuse sludge transfer and disposal systems within San Diego County. The District may acquire, construct, and operate facilities for wastewater collection, treatment, storage, and reclamation or disposal; process, sell, and transport reclaimed water, sludge, and other by-products; and construct, operate, and maintain water and sewer lines and other underground facilities. Territory may be included or excluded from the District in conjunction with annexations to or detachments of property from the boundaries of the member agencies.

Service Area: The District encompasses the Cities of Chula Vista, Coronado, Del Mar, Imperial Beach, La Mesa, National City, Poway, and San Diego, and the Lemon Grove, Lakeside, Alpine, and Spring Valley Sanitation Districts, as well as the Wintergardens Sewer Maintenance District, and portions of the Padre Dam Municipal and Otay Water Districts.

MISCELLANEOUS SPECIAL SERVICES

NOT SUBJECT TO LAFCO REVIEW

SCHOOL DISTRICTS

SAN DIEGO COUNTY BOARD OF EDUCATION
6401 Linda Vista Road
San Diego, CA 92111-7399
Telephone: (619) 292-3500
FAX: (619) 268-5864

Description: The San Diego County Board of Education operates as a service agency available to all 43 school districts in the County having kindergarten through 12th grade students.

Service Area: All of San Diego County.

SAN DIEGO COMMUNITY COLLEGE DISTRICT
3375 Camino Del Rio South
San Diego, CA 92108-3883
Telephone: (619) 584-6500
FAX: (619) 584-7311

Description: This District serves approximately 100,000 students each semester at three two-year colleges (Mesa, Miramar, and San Diego City Colleges) and six continuing education centers. The colleges offer associate degrees, arts and sciences programs, as well as certificates in occupational programs that prepare students for entry-level jobs. An additional 45,000 students receive service through programs contracted with the military and operated on military bases.

Service Area: The City of San Diego.

GROSSMONT-CUYAMACA COMMUNITY COLLEGE DISTRICT
8800 Grossmont College Drive
El Cajon, CA 92020-1799
Telephone: (619) 465-1700
FAX: (619) 461-1391

Description: This District has two, 2 two-year colleges -- Cuyamaca and Grossmont Colleges -- with a total enrollment of approximately 20,000.

Service Area: Southeastern San Diego County, including the Cities of El Cajon, La Mesa, and Santee, and the communities of Alpine, Ramona, and Spring Valley.

MIRACOSTA COMMUNITY COLLEGE DISTRICT
One Barnard Drive
Oceanside, CA 92056-3899
Telephone: (760) 757-2121
FAX: (760) 757-2601

Description: This District has one campus--MiraCosta Community College and serves an estimated 7,000 students.

Service Area: Northern coastal San Diego County.

PALOMAR COMMUNITY COLLEGE DISTRICT
1140 West Mission Road
San Marcos, CA 92069-1487
Telephone: (760) 744-1150
FAX: (760) 744-8123

Description: This District contains one campus--Palomar Community College and serves approximately 15,000 students.

Service Area: North central San Diego County.

SOUTHWESTERN COMMUNITY COLLEGE DISTRICT
900 Otay Lakes Road
Chula Vista, CA 91910-7299
Telephone: (619) 421-6700
FAX: (619) 482-6413

Description: Roughly 12,000 students attend classes at Southwestern College, which is the only community college within this District.

Service Area: Southwestern San Diego County.

MISCELLANEOUS SPECIAL SERVICES

NOT SUBJECT TO LAFCO REVIEW

WATER SERVICE

JOINT POWERS AUTHORITY

SWEETWATER AUTHORITY
505 Garrett Avenue
P.O. Box 2328
Chula Vista, CA 91910
Telephone: (619) 420-1413
FAX: (619) 425-7469

Description: Formed in 1972, the Sweetwater Authority is a public water utility established by a joint powers agreement between the South Bay Irrigation District (ID) and National City. From 1972 until 1977, the Authority operated as a financing vehicle to enable public acquisition of the water system then owned by the California-American Water Company. After a public vote approved authorization of bonds, the South Bay ID purchased the system. In 1977, the Sweetwater Authority began operating the water utility with a commitment to retire the South Bay ID debt and assume ownership. The transfer of ownership occurred in 1990 when the Sweetwater Authority exercised its option to purchase the water system from the District by issuing revenue bonds to finance acquisition of the water system by retiring the bonds issued in 1977. Issuing new revenue bonds also enabled the Authority to finance construction of water system improvements. At that time, South Bay ID and National City amended the Joint Powers Agreement to ensure that the conditions of the agreement would remain in effect until the bonds issued by the Sweetwater Authority are retired. The governing body is a seven-member board of directors, comprised of five representatives elected by voters residing within the South Bay ID, and two representatives appointed by the Mayor of National City with approval by the City Council. The Authority can only sell or dispose of property with the approval of five members of the Board.

Delivered to customers via 400 miles of pipeline, water is procured from three sources: (1) deep freshwater wells location in National City; (2) capture of local runoff in the Sweetwater River with subsequent storage at Loveland Reservoir in Alpine, and Sweetwater Reservoir in Spring Valley; and (3) purchase of imported water delivered by the San Diego County Water Authority and the Metropolitan Water District. Revenues are obtained entirely from water sales, fees for service, and returns on investments. The agency receives no tax revenues.

Service Area: The Sweetwater Authority has a population of approximately 160,000, covers a 32 square mile area, and includes National City, portions of Chula Vista, and surrounding unincorporated areas, such as Bonita, Sunnyside, and Lincoln Acres.

MISCELLANEOUS SPECIAL SERVICES

NOT SUBJECT TO LAFCO REVIEW

COUNCIL OF GOVERNMENTS

SANDAG
401 B Street #800
San Diego CA, 92101
Telephone: (619) 595-5300
FAX: (619) 595-5305

The San Diego Association of Governments (SANDAG) is a voluntary Council of Governments (COG) of each of the 18 cities in the San Diego region and the County of San Diego. The Board of Directors is composed of a mayor or council member representing each city and a county supervisor. CALTRANS, the Department of Defense, and the City of Tijuana are non-voting members. SANDAG's staff is headed by an Executive Director who is appointed by the Board. Exercising authority delegated by the Board, the Director has administrative responsibility for a professional and support staff of 73, as well as contract consultants and staff loaned from other agencies for specific projects.

The agency resulted from a voluntary committee of area agencies formed in the fifties to resolve regional transportation problems, and to ensure qualification for state and federal highway funds. A Joint Powers Agreement (JPA), creating the COG, was signed in 1966 and modified in 1972 to secure financing from member agencies. Approximately 10% of SANDAG's current $7 million budget is from member assessment, with 38% from federal grants and contracts. The transportation sales tax accounts for 12% and the remaining portion flows from various state grants, contracts, and subventions.

SANDAG's function is to provide comprehensive coordinated planning within the San Diego region. In this role, SANDAG prepares area-wide plans for transportation, open space, housing, water quality, air quality, and energy together with development policies and regional growth forecasts. It maintains an extensive data base which is used in the area-wide plans and in special projects for member agencies. SANDAG serves as the Area-wide Clearinghouse (for federal and state grant applications); Regional Criminal Justice Clearinghouse (for crime related data); and Airport Land Use Commission. SANDAG is the designated Regional Transportation Planning Agency, which has the responsibility to administer the half percent local transportation sales tax approved by voters in 1987. More than $2.2 billion will be generated from the sales tax during the next

20 years. The revenues will help fund improvements to the region's highways, and transit systems.

In November, 1988, the region's voters approved an advisory ballot measure proposing establishment of a Regional Planning and Growth Management Review Board (Proposition C). SANDAG has been assigned this responsibility which was confirmed through an amendment to the JPA. The primary responsibility of SANDAG acting as the Regional Planning and Growth Management Review Board is to prepare a growth management strategy to be completed within one year.

MISCELLANEOUS SPECIAL SERVICES

NOT SUBJECT TO LAFCO REVIEW

ROAD IMPROVEMENT AND MAINTENANCE

PERMANENT ROAD DIVISION

(Sections 1160 - 1197, Streets and Highways Code)

On August 30, 1999, the governor signed into law Senate Bill 614, which became effective January 1, 2000. This Bill implemented changes to the State Permanent Road Division Law and enables counties to provide road improvement and maintenance services by means of a county-wide Permanent Road Division (PRD) without reference to a specific road project and with varying assessments. If formed, a PRD may be utilized in lieu of County Service Areas (CSAs) as the method of providing road improvement and maintenance services. Inquiries regarding the PRD for San Diego County should be directed to:

Special Districts Administration
Department of Public Works
County Operations Center
5555 Overland Avenue
San Diego, CA 92123
Telephone: (858) 694-2198

Description: On February 9, 2000, the San Diego County Board of Supervisors established the San Diego County-wide Permanent Road Division. With the creation of this entity, the provision of road improvement and maintenance services was anticipated to be faster, easier, and less expensive for residents of the unincorporated areas of San Diego County. It was expected that citizens would experience a reduction of approximately 80% in both time and expenses associated with the initiation and on-going performance of road services. In addition, the San Diego County Counsel determined that liability protection under Permanent Road Division Law was more comprehensive than that offered under County Service Area Law. On May 1, 2000, LAFCO approved the dissolution of 58 road CSAs with the PRD designated as successor agency. Territory within the CSAs was divided into zones.

Service Area: All unincorporated territory located within San Diego County.

INDICES

AND

LISTS

AGENCIES NOT SUBJECT TO LAFCO REVIEW
OR
SUBJECT TO LIMITED LAFCO REVIEW

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* Subject to limited LAFCO review

EXHIBIT "B"

OPINIONS FROM SAN DIEGO PORT DISTRICT AND STATE LANDS COMMISSION

PORT of SAN DIEGO

November 27, 2023

Mr. Keene Simonds, Executive Director
San Diego County Local Agency Formation Commission
9335 Hazard Way, Suite 200
San Diego, California 92123

Re: **San Diego Unified Port District and San Diego County Local Agency Formation Commission**

Dear Mr. Simonds:

On behalf of the San Diego Unified Port District ("Port District"), I want to express my appreciation with receiving notice that San Diego LAFCO ("SD LAFCO") intends to discuss the Port District and SD LAFCO's role as to the Port District, at its December 4, 2023 meeting. In advance of finalization of the agenda materials for the meeting, the Port District respectfully requests a meeting with you, as Executive Director for SD LAFCO, and/or your staff, so that we can continue to discuss the unique nature of the Port District and its operations, and to discuss SD LAFCO's roles and responsibilities as the agency empowered by the California Legislature on the services and boundaries of local agencies within San Diego County. Additionally, we remember that LAFCO was going to reach out and have a discussion with the State Lands Commission and if that has not happened we think it would be a good additional step. As the Port District pointed out in its response to the recent Grand Jury Report, was the false concept that the Port of San Diego has no oversight. In fact we have comprehensive oversight (as do our sister ports in Los Angeles, Long Beach, Oakland and San Francisco) by the State Lands Commission. We firmly believe that Jennifer Lucchesi, the SLC Executive Director, should be a party to any such discussions given the statewide interests. Our hope is that further discussion and dialogue between the Port District, State Lands Commission and SD LAFCO now, would permit both agencies to have a better understanding of the express authority granted to each by the State of California. If it is not possible to schedule such a meeting prior to the December 4, 2023 SD LAFCO meeting, I request that you consider the information set out below regarding the parameters under which the Port District operates, and also request that you share this letter with SD LAFCO's Commissioners.

The Port District Act and Other Relevant State Law

By way of background, and as stated above, the Port District is unique. Unlike other port districts, which are, based on our understanding, formed pursuant to provisions of the Harbor and & Navigations Code that lay out the framework for the local establishment of a port district, the Port District was created directly by the California Legislature pursuant to its adoption of the Unified Port District Act ("Port District Act") (Harbor & Nav. Code App. 1). The Port District is the only agency that can operate under the Port District Act. Under the Port District Act, the Port District is charged by the State of California as the owner and operator of tidelands and submerged lands in San Diego Bay (which are held in public trust), but it is also a U.S. Port of Entry and has

various responsibilities and duties which directly impact intrastate, interstate, and international commerce. In this way the Port is like the Ports of Long Beach, Los Angeles and Oakland and not like an inland port or harbor district.

To implement the policy of the State as codified, Port District activities are subject to the requirements and obligations of the Coastal Act[1] and the Public Trust Doctrine and, where applicable, the oversight by both the Coastal Commission and the State Lands Commission.[2] Specifically, the Port District is charged, under the San Diego Unified Port District Act, with the "development, operation and regulation of harbor works and improvements, including rail and water, for the development, operation, maintenance, control, regulation, and management of San Diego Bay for the promotion of commerce, navigation, fisheries, and recreation…[.]" (Harbor & Nav. Code App. 1, § 4.) Public Resources Code section 6009 establishes that the "purposes and uses of tidelands and submerged lands is a *statewide concern*" and further provides that grantees of tidelands and submerged lands, such as the Port District, must manage them in a manner "consistent with the terms and obligations of their grants and the public trust, *without subjugation of statewide interest, concerns, or benefits to the inclination of local or municipal affairs, initiatives, or excises*."[3]

The Port District's boundaries are also set by the provisions of the Port District Act. Specifically Section 5 of the Port District Act establishes that its boundaries include the corporate areas of San Diego, Chula Vista, Coronado, National City, and Imperial Beach that established the Port District, and any contiguous unincorporated territory in the County of San Diego ("County"), "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." Further, under Section 53 of the Port District Act, "any territory annexed in accordance with law to a city specified in this

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[1] The California Coastal Act ("Coastal Act") provides specific regulations for a master plan ("Master Plan") for the "Ports of Hueneme, Long Beach, Los Angeles, and *San Diego Unified Port District* located within the coastal zone" because they "constitute one of the state's primary economic and coastal resources and are an essential element of the national maritime industry." (Pub. Res. Code, §§ 30700 [emphasis added], 30701.) The Coastal Act expressly states the Legislature's intent for the specific regulation of these commercial ports as follows:

> The location of commercial port districts within the State of California … are well established, and for many years such areas have been devoted to transportation and commercial, industrial, and manufacturing uses consistent with federal, state and local regulations. Coastal planning requires no change in the number or location of established commercial port districts. Existing ports … shall be encouraged to modernize and construct necessary facilities within their boundaries in order to minimize or eliminate the necessity for future dredging and filling to create new ports in new areas of the state.

(Pub. Res. Code, § 30701.) A copy of the Port District's most current Master Plan can be found at [insert link to Master Plan].

[2] A copy of the Port District's most current Trust Land Use Plan, and draft update, can be found at [Insert link to TLUP].

[3] We hope that the Port District's response to the 2022/2023 San Diego County Grand Jury Report filed June 7, 2023, regarding Governance of San Diego Bay and Its Tidal Land and Regions (Grand Jury Report or Report) can provide SD LAFCO with further information and insights into the distinctive nature of the Port District's operations. Our response can be found at the following link: https://pantheonstorage.blob.core.windows.net/administration/2023%20Port%20Response%20to%20Grand%20Jury%20Report.pdf

act shall, upon the **completion** of such annexation proceedings, be deemed incorporated into and annexed to the district." (Emphasis added.) Stated plainly, our interpretation of the Port District Act is that territory is "deemed" annexed into the Port District following (and not concurrently with) completion LAFCO's action to annex territory into one of the cities within the Port District's statutorily established boundaries.

Additionally, unlike most special districts routinely reviewed by SD LAFCO, the Port District is a U.S. Port of Entry directly responsible for compliance with applicable Federal Laws related thereto, competes and serves in the same market as other cargo and passenger ports along the west coast of the U.S., and serves international businesses and carriers from around the world. As a result, its service area likely includes the entire western United States.

In light of the novel scope of the Port District's various roles and responsibilities, I reiterate my request to have further discussions with you, as Executive Officer of SD LAFCO, and/or your staff, so that the Port District and its relevant staff can better understand the scope of SD LAFCO's informational needs and its thoughts on the nature of its relationship vis-à-vis the Port District.

I look forward to discussing this matter further you.

Sincerely,

Randa Coniglio
Acting President and CEO
San Diego Unified Port District

cc: Thomas Russell, General Counsel, San Diego Unified Port District
Job Nelson, Vice President, Strategy & Policy, San Diego Unified Port District
Simon Kann, Assistant General Counsel, San Diego Unified Port District

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CALIFORNIA STATE LANDS COMMISSION

Established in 1938

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January 24, 2024

VIA EMAIL AND REGULAR MAIL
Keene.Simonds@sdcounty.ca.gov

Mr. Keene Simonds, Executive Officer
San Diego County Local Agency Formation Commission
2550 Fifth Avenue, Suite 725
San Diego, CA 92103

Subject: LAFCO oversight of the San Diego Unified Port District

Dear Mr. Simonds,

State Lands Commission staff understand that the San Diego Local Agency Formation Commission is considering whether it has jurisdiction over the San Diego Unified Port District (the Port). Commission staff have reviewed correspondence between the Port and San Diego LAFCO and LAFCO's December 4 Agenda Item 7a and share the Port's conclusion that the San Diego LAFCO does not have oversight over the Port.

Based on San Diego LAFCO's December 4 Agenda Item, it appears that some of the interest in jurisdiction over the Port stems from a Civil Grand Jury Report's conclusion that the Port does not have sufficient local oversight. Commission staff have reviewed that Grand Jury Report and believe it misunderstood the Port's role as the State's trustee of public trust lands and resources. Commission staff agree with the Port's response to the Report, which correctly explained the Port's unique obligations as the State's trustee and the oversight provided by the State Lands Commission.

The Port manages tidelands and submerged lands in San Diego Bay on behalf of the State, with oversight by the State Lands Commission. Under the Public Trust Doctrine, the State owns tidelands and submerged lands – also sometimes called public trust lands – as the public's trustee, and must manage them to promote maritime commerce, navigation, fisheries, recreation, and

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other water-dependent uses that benefit the statewide, not merely local, public.[1]

Sometimes, the Legislature grants tidelands and submerged land to local agencies to manage on the State's behalf through grant statutes. The State Lands Commission has "[a]ll jurisdiction and authority remaining in the State as to tidelands and submerged lands as to which grants have been or may be made," and the lands "remain subject to the oversight authority of the state by and through the State Lands Commission."[2] The local grantees continue to be bound by the Public Trust Doctrine, and, in addition, act as the State's trustee in management of the granted land and must abide by the terms and conditions of their grant statute.

The Legislature granted tide and submerged land in San Diego Bay to the Port in 1962, through the San Diego Unified Port District Act (Port Act).[3] The Port Act defined the Port's boundaries, including how those boundaries will change[4]; granted the Port the State's tidelands and submerged lands to be used for purposes in the Statewide interest[5]; and empowered it to act to achieve those interests, including outside of Port property.[6] Where the Port Act contemplates oversight of Port actions, such as expenditures outside of Port boundaries, that oversight is entrusted to the State Lands Commission.[7]

The Port is the State's trustee in managing the tidelands and submerged land granted to it and must manage the lands for the benefit of the statewide public, "without subjugation of statewide interests, concerns, or benefits to the inclination of local or municipal affairs, initiatives, or excises."[8] The Port also has fiduciary duties to the State, including the duty to administer the trust solely in the statewide public's interests, rather than local interests.[9]

The San Diego Unified Port District is different from port and harbor districts formed under the Harbors and Navigation Code. The Port was not formed under the Harbors and Navigation Code's general port district provisions, and not

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[1] Pub. Resources Code, § 6009, subd. (a), see *Marks v. Whitney* (1971) 6 Cal.3d 251, 259–260.
[2] Pub. Resources Code, §§ 6009, subd. (c); 6301.
[3] Harbor and Nav. Code, App. 1, §§ 1 *et seq.*
[4] Harbor and Nav. Code, App. 1, §§ 5, 53.
[5] Harbor and Nav. Code, App. 1, § 87.
[6] Harbor and Nav. Code, App. 1, §§ 4, 30, 81-85.
[7] Harbor and Nav. Code, App. 1, § 30.5.
[8] Pub. Resources Code, §6009, subd. (d).
[9] Pub. Resources Code, §6009.1., subd. (c)(5).

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every harbor or port district manages legislatively granted land.[10] LAFCO oversight of the Port presents different issues than oversight of other port and harbor districts.[11]

LAFCO's review and potential denial of Port boundary changes, services outside of Port property, and other actions authorized by the Port Act contradict the Legislature's intent in creating the Port. The Legislature already approved these actions as necessary to serve the State's interests. If LAFCO could condition or deny them, it would allow LAFCO to impede the Legislature's intent and override the State Lands Commission's oversight. Therefore, Commission staff conclude that the Port is not subject to LAFCO oversight.

Commission staff is mindful that the San Diego LAFCO promotes the Legislature's objective of promoting efficient and effective governance in San Diego County. The Port is required to prepare Trust Land Use Plans and Port Master Plans that define its long-term management of its granted tidelands and submerged lands, and LAFCO may consult these plans to ensure there is no unnecessary duplication of government services. Commission staff are also happy to discuss any concerns LAFCO may have about Port activities.

Commission staff appreciates the San Diego LAFCO's willingness to consider its perspective. If you have any questions, please contact me at Jennifer.Lucchesi@slc.ca.gov.

Sincerely,

DocuSigned by:
Jennifer Lucchesi
A8DE3BBAE92D437...

JENNIFER LUCCHESI
Executive Officer

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[10] For example, the Ventura Port District and Stockton Port District do not have Legislative grants of tidelands and submerged land.

[11] The only district other than the Port formed by a special act contained in the Harbors and Navigation Code Appendix is the Humboldt Bay Harbor, Recreation, and Conservation District. The Legislature explicitly made the Humboldt District subject to LAFCO oversight under a predecessor to the Cortese-Knox-Hertzberg Act. (See Harb. & Nav. Code, § App. 2, § 79.) By contrast, the Port Act predated the predecessor LAFCO laws and was intended to solely govern the Port's organization.

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March 1, 2024

VIA EMAIL
keene.simonds@sdcounty.ca.gov

Mr. Keene Simonds, Executive Director
San Diego County Local Agency Formation Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123

Subject: Agenda Item No. 8a, March 4, 2024 LAFCO Meeting, Final Administrative Assessment, LAFCO Oversight Duties and the Port of San Diego

Dear Mr. Simonds,

State Lands Commission staff received your February 20, 2024 letter, and appreciates your explanation of San Diego County Local Agency Formation Commission (SD LAFCO) staff's reasoning. After reviewing the letter, State Lands Commission staff continues to assert that the SD LAFCO does not have jurisdiction over the San Diego Unified Port District (Port). Please share this letter with the SD LAFCO Commissioners for their consideration in connection with Agenda Item 8a at the March 4 SD LAFCO meeting.

It is worth reiterating that the Legislature formed the Port to manage the State's sovereign tidelands and submerged lands in San Diego Bay, and not to provide local municipal services.[1] The Port, as the State's grantee, takes on the same duties and restrictions in managing the tidelands and submerged lands as the

[1] The Legislature formed the Port for the 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…" (Harb. & Nav. Code, § App. 1, § 4, subd. (a). The Port also protects physical access to the bay, the bay's natural resources, and the bay's water quality. (Harb. & Nav. Code, § App. 1, § 4, subd. (b).) The

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State[2]; it may only use sovereign lands, and funds generated by those lands, for uses that benefit the statewide public.[3] This obligation to use trust lands for statewide purposes doesn't apply to only granted tidelands; in fact any property that is acquired by the Port, using funds generated through their administration of the legislatively granted land, becomes "an asset of the public trust" and is held under the same restrictions as granted sovereign land, including the obligation that it be used for statewide, rather than local, benefit.[4] As such, changes in the boundaries and ownership interests of the land held by the Port is actually an extension of the State's ownership rights and responsibilities in the after acquired lands.

The Port's core responsibilities are inherently tied to, and an extension of, the State's obligation to manage sovereign lands, and those after acquired lands, on behalf of the Statewide public under the Public Trust Doctrine.[5] While the Port does have other authorities, including certain regulatory and police powers, they are directly linked to the Port's tidelands and submerged lands management.[6] Consequently, contrary to the assertion that SD LAFCO oversight of the Port's jurisdictional boundaries beyond the granted lands, and lands the Port owns, would not impact the Commission's oversight of the granted and after acquired lands,

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[2] Pub. Resources Code, § 6009, subd. (d) ("Grantees are required to manage the state's tidelands and submerged lands consistent with the terms and obligations of their grants and the public trust, without subjugation of statewide interests, concerns, or benefits to the inclination of local or municipal affairs, initiatives, or excises."); See, e.g., *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 209 ["It is clear in the present case that any interest of the City of Long Beach in the tidelands was acquired not as a 'municipal affair,' but subject to a public trust to develop its harbor and navigation facilities for the benefit of the entire state, and was therefore subject to the control of the Legislature."]

[3] Harb. & Nav. Code, § App. 1, § 87, subd. (a); see *City of Long Beach v. Morse* (1947) 31 Cal.2d 254, 257 ["Whether the fund should be regarded as part of the corpus of the trust or merely as a part of the rents and profits of the land, the city as trustee has no right to devote the proceeds to general municipal improvements unconnected with the trust purposes."]

[4] Harb. & Nav. Code, § App. 1, § 30.5, subd. (e).

[5] See, e.g*., People ex inf. Webb v. California Fish Co.* (1913) 166 Cal. 576, 584 [describing the Public Trust Doctrine as the "well-established proposition that the lands lying between the lines of ordinary high and low tide, as well as that within a bay or harbor, and permanently covered by its waters, belong to the state in its sovereign character, and are held in trust for the public purposes of navigation and fishery."]

[6] For example, the Port may adopt rules and regulations related to "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" – in other words, for the promotion of the Port's duties under the Public Trust Doctrine. (Harb. & Nav. Code, § App. 1, § 56.) It may issue bonds, and collect taxes to pay those bonds, 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[.]" (Harb. & Nav. Code, § App. 1, § 42.) And it may collect assessments, special taxes, and bonds for "waterway construction projects and related operations and maintenance, or operations and maintenance projects[.]" (Harb. & Nav. Code, § App. 1, § 61, subd. (a).) All these authorities are limited to furthering the Port's core purpose of managing the State's tidelands and submerged lands for the benefit of the statewide public.

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Commission staff believes that SD LAFCO oversight could in fact interfere with the Ports obligations to the State, as the State's grantee, by impacting the Port's duty to manage its lands in the State's best interests.

Additionally, Commission staff do not contest that the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 says that LAFCOs have jurisdiction over districts created by special acts or that the Legislature created the Port through a special act. Rather, staff sought to highlight, in the previous letter, that the Legislature's creation of the Port through a special act preceded the SD LAFCO's creation and that the granting statutes for the Port of San Diego differ from port districts created or established after the Cortese Knox Hertzberg Local Government Reorganization Act and the District Reorganization Act of 1965. Staff believes that all of these facts must be considered, alongside the other factors discussed in our letters, as indicators of the Legislature's intent that the Port is not subject to SD LAFCO oversight.

Staff does not share SD LAFCO's conclusion that the provision requiring SD LAFCO to defer to the State Lands Commission over boundaries involving tidelands resolves any potential conflicts between State Lands Commission oversight and SD LAFCO oversight. The provision does not address conflicts created by the Ports purchase of after acquired lands, or by the potential for SD LAFCO to deny outside-boundary service changes, annexations, or initiate its own changes of organization, all of which may impact the Port's sovereign land management responsibilities.[7]

We are aware that other harbor and port districts that manage granted lands may be subject to LAFCO oversight. But LAFCO oversight of these districts does not implicate the same concerns as SD LAFCO oversight of the Port.[8] Unlike other harbor and port districts, all land the Port manages is either granted sovereign land, or subsequently acquired land that is held "as an asset of the public trust."[9] This, combined with the Legislature's specific purpose in creating the Port, and the Port's

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[7] As a note, staff does not agree with SD LAFCO staff's interpretation of the phrase "by operation of law" in the Port Act. The phrase "operation of law" means "The means by which a right or a liability is created for a party regardless of the party's actual intent." (OPERATION OF LAW, Black's Law Dictionary (11th ed. 2019).) In other words, this Port Act language refers to situations when an action, like dissolution, is required by another law, not that anther law must provide the Port's mechanism for the action.

[8] Commission staff has not previously analyzed concerns of conflict between LAFCO oversight and those districts' granted lands responsibilities. Even for those entities, staff would likely conclude that LAFCO oversight cannot interfere with a grantee's duties to manage granted sovereign lands on behalf of the statewide public.

[9] Harb. & Nav. Code, § App. 1, § 30.5, subd. (e).

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charge to act solely in the statewide public interest, rather than local, means that SD LAFCO oversight of the Port presents unique and likely unavoidable conflicts.

State Lands Commission staff stand by the initial position that the Legislature's purpose in creating the Port, based on the language of the Port Act and the Port's unique responsibilities to serve the statewide public, militates against a conclusion that the SD LAFCO has jurisdiction over the San Diego Unified Port District.[10] This conclusion is reinforced by the fact SD LAFCO has never before, in the nearly 60 years since LAFCOs were empowered to oversee special districts, exercised jurisdiction over the Port. Therefore, staff supports Agenda Item No. 8a's Alternative Two, confirming that the Port is not subject to SD LAFCO's oversight. Alternatively, if SD LAFCO decides to continue this item to a future meeting consistent with Alternative Three, State Lands Commission staff is available to discuss next steps with SD LAFCO staff.

Sincerely,

DocuSigned by:
Jennifer Lucchesi
A8DE3BBAE92D437...

JENNIFER LUCCHESI
Executive Officer

Attachments

1. Letter from SD LAFCO staff, dated February 20, 2024
2. Letter from State Lands Commission staff, dated January 24, 2024

cc:

Randa Coniglio, President and CEO, San Diego Unified Port District
Job Nelson, Vice President of Strategy and Policy, San Diego Unified Port District
Thomas Russell, General Counsel, San Diego Unified Port District

[10] This letter should not be construed as conceding or otherwise dismissing additional conflicts and issues not mentioned. For example, were SD LAFCO to invoice the Port for contribution to its budget, there may be a conflict with the Port's expenditure restrictions.

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

February 20, 2024

Delivered by Electronic Mail:
Ms. Jennifer Lucchesi, Executive Officer
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825-8202
Jennifer.Lucchesi@slc.ca.gov

SUBJECT: San Diego Unified Port District

Ms. Lucchesi:

Thank you for your letter dated January 24th to the San Diego County Local Agency Formation Commission (LAFCO) regarding the San Diego Unified Port District ("Port"). The letter is well-timed given our current evaluation on whether LAFCO's oversight powers and duties involving special districts apply to the Port. The letter concludes the State Lands Commission (SLC) staff shares "the Port's conclusion that the San Diego LAFCO does not have oversight over the Port."

I have reviewed the letter with the assistance of outside counsel and respectfully believe there are material misunderstandings regarding LAFCO statute undercutting the SLC staff conclusion. Relatedly, there are other material misunderstandings or omissions involving the existing inter-relationships between LAFCO and other State agents – including SLC – in fulfilling our respective tasks creating substantive pause in endorsing the SLC staff conclusion. Accordingly, while it remains possible LAFCO ultimately reaches a similar conclusion – i.e., the Port is not subject to LAFCO – it is my observation the criteria to do so will differ and/or incorporate additional factors.

The following points are offered in support of the preceding statements. These points are numbered to generally – although not entirely – follow the sequence of comments in the SLC letter and prefaced on the open invitation to schedule a meeting to discuss in more detail.

1. LAFCO staff acknowledges and respects SLC's task and exclusive jurisdiction related to "public trust lands," which include tidelands and submerged lands of the State. LAFCO staff similarly acknowledges the Port manages tidelands and submerged lands in San Diego Bay consistent with the oversight by SLC and pursuant to the Port District's enabling statute, the San Diego Unified Port District Act – or Port Act.

Administration
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Harry Mathis, Alt., General Public

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2. Notwithstanding the above acknowledgments, the Port's authority and powers (active and latent) are not bound to managing certain State public trust lands. This is reflected – among other measurements – in the Port's jurisdictional boundary extending inland by more than 20 straight-line miles from the Bay in capturing the entirety of Chula Vista, Coronado, Imperial Beach, National City, and San Diego.

3. LAFCO is a State agency tasked with administering the Cortese Knox Hertzberg Local Government Reorganization Act – or CKH – with delegated oversight to help ensure cities and special districts' boundaries and municipal services are orderly, sustainable, and accountable. The State's delegation includes exclusive authority over local agency change of organizations – like special district annexations, detachments, and dissolutions.[1] CKH also provides cities and special districts must receive LAFCO approval before providing services outside their jurisdictional boundaries by contract or agreement.[2]

4. LAFCO is also tasked with certain planning duties to independently inform its oversight responsibilities. This includes regularly performing studies – e.g., municipal service reviews – to "contribute to the logical and reasonable development of local agencies" and "to shape the development of local agencies to advantageously provide for the present and future needs of each county and its communities."[3] Furthermore, the State empowers LAFCO to initiate certain change of organizations involving special districts if consistent with study recommendations.[4]

5. The SLC letter asserts the establishment of the Port through a special act materially separates it from other port and harbor districts overseen by LAFCOs. CKH does not make this distinction. Instead, CKH defines special districts for the purpose of delineating LAFCO oversight as follows:

   ""District" or "special district" are synonymous and mean an agency of the state, formed pursuant to general law or special act..." [5]

6. SLC's letter asserts the Port Act provides SLC with exclusive oversight of the Port. This position does not seem supported by the provisions presented in the letter; it also counters existing statutes and related procedures. Consider the following.

   a) The SLC letter references the Port Act establishes procedures for how the Port's boundary may change. LAFCO staff concurs. This includes acknowledging the Port Act provides for the ministerial annexation of new territory to the Port in step with remaining coterminous with the boundaries of its five-member cities (Chula Vista, et al.). CKH readily reconciles these types of ministerial or otherwise scripted annexations within special districts' principal acts and provides that these actions proceed while LAFCO retains ultimate oversight.[6]

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[1] CKH defines change of organizations to include city incorporations and disincorporations, district formations and dissolutions, city and district annexations and detachments, mergers and consolidations, and activations and divestitures of district functions and classes (Government Code 56021).
[2] Reference to Government Code 56133.
[3] Reference to Government Code 56301.
[4] Reference to Government Code 56375(a).
[5] Reference to Government Code Section 56306.
[6] Reference to Government Code 56120.

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b) The Port Act states the Port may annex additional territory and/or be dissolved by "operation of law." LAFCO staff is not aware of another State agent authorized to conduct these jurisdictional procedures. Accordingly, it appears the operation in law would fall to LAFCO to effectuate an annexation of additional territory to the Port or dissolution of the Port.

c) CKH addresses the inter-relationship between SLC and LAFCO through complementary and reconciling procedures. Specifically, CKH provides LAFCO must defer to SLC when boundary changes involve tidelands and submerged lands.[7] CKH equally provides SLC shall report its determinations to LAFCO and "thereafter, filings and action may be taken" by LAFCO.[8]

7. The SLC letter states the Port Act predates CKH and its predecessor laws and intended to solely govern the Port's organization. CKH contemplates conflicts and/or omissions with principal acts given – and as cited – many special districts' enabling legislation predate LAFCO with the following remedy:

   "It is not necessary for the principal act of any district to adopt or incorporate this division by reference and any change of organization or reorganization provided for by this division may be made by, or with respect to, any district."[9]

8. The SLC letter asserts LAFCO oversight and the potential to deny or condition Port boundary changes, outside services, and other actions provided in the Port Act contradicts the State's intention in creating the Port in 1962. The letter further asserts LAFCO oversight would negatively impact SLC oversight. These assertions lack harmony with the referenced reconciliations in CKH as well as existing conditions throughout coastal California where several local agencies with granted public trust properties already operate with oversight from both SLC and LAFCO.[10]

As mentioned, the above observations are offered in my role as Executive Officer with the intention of sharpening the ongoing administrative review on the appropriate relationship between LAFCO and the Port going forward. Should SLC staff have additional comments on the topic, please note we anticipate forwarding our final analysis at LAFCO's March 4, 2024 meeting. Additional comments provided prior to the meeting will be forwarded to the LAFCO membership.

Respectfully,



Keene Simonds
Executive Officer

[7] Reference to Government Code 56740.
[8] Reference to Government Code 56740(e).
[9] Reference to Government Code 56119.
[10] The SLC website currently lists more than 50 cities and special districts that have been granted management of public trust properties. This includes the Noyo Harbor District (Mendocino), Moss Landing Habor District (Monterey), Crescent City Habor District (Del Norte), Port San Luis Harbor District (San Luis Obispo), and Santa Cruz Port District (Santa Cruz). All of these special districts are overseen by their respective county LAFCO.

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San Diego LAFCO
February 20, 2024
Letter to SLC Regarding the San Diego Unified Port District

Attachments:

1) SLC Letter, Dated January 24, 2024

cc:

Chair Stephen Whitburn
Vice Chair Barry Willis
Outside Counsel DeeAnne Gillick
AEO Priscilla Mumpower
LAFCO Consultant Chris Cate
LAFCO Consultant Adam Wilson
Port President and CEO Randa Coniglio
Port Vice President of Strategy and Policy Job Nelson

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CALIFORNIA STATE LANDS COMMISSION

Established in 1938

EXECUTIVE OFFICE
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

JENNIFER LUCCHESI, *Executive Officer*
916.574.1800
TTY CA Relay Service: **711** *or Phone* **800.735.2922**
from Voice Phone **800.735.2929**
or for Spanish **800.855.3000**

January 24, 2024

VIA EMAIL AND REGULAR MAIL
Keene.Simonds@sdcounty.ca.gov

Mr. Keene Simonds, Executive Officer
San Diego County Local Agency Formation Commission
2550 Fifth Avenue, Suite 725
San Diego, CA 92103

Subject: LAFCO oversight of the San Diego Unified Port District

Dear Mr. Simonds,

State Lands Commission staff understand that the San Diego Local Agency Formation Commission is considering whether it has jurisdiction over the San Diego Unified Port District (the Port). Commission staff have reviewed correspondence between the Port and San Diego LAFCO and LAFCO's December 4 Agenda Item 7a and share the Port's conclusion that the San Diego LAFCO does not have oversight over the Port.

Based on San Diego LAFCO's December 4 Agenda Item, it appears that some of the interest in jurisdiction over the Port stems from a Civil Grand Jury Report's conclusion that the Port does not have sufficient local oversight. Commission staff have reviewed that Grand Jury Report and believe it misunderstood the Port's role as the State's trustee of public trust lands and resources. Commission staff agree with the Port's response to the Report, which correctly explained the Port's unique obligations as the State's trustee and the oversight provided by the State Lands Commission.

The Port manages tidelands and submerged lands in San Diego Bay on behalf of the State, with oversight by the State Lands Commission. Under the Public Trust Doctrine, the State owns tidelands and submerged lands – also sometimes called public trust lands – as the public's trustee, and must manage them to promote maritime commerce, navigation, fisheries, recreation, and

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other water-dependent uses that benefit the statewide, not merely local, public.[1]

Sometimes, the Legislature grants tidelands and submerged land to local agencies to manage on the State's behalf through grant statutes. The State Lands Commission has "[a]ll jurisdiction and authority remaining in the State as to tidelands and submerged lands as to which grants have been or may be made," and the lands "remain subject to the oversight authority of the state by and through the State Lands Commission."[2] The local grantees continue to be bound by the Public Trust Doctrine, and, in addition, act as the State's trustee in management of the granted land and must abide by the terms and conditions of their grant statute.

The Legislature granted tide and submerged land in San Diego Bay to the Port in 1962, through the San Diego Unified Port District Act (Port Act).[3] The Port Act defined the Port's boundaries, including how those boundaries will change[4]; granted the Port the State's tidelands and submerged lands to be used for purposes in the Statewide interest[5]; and empowered it to act to achieve those interests, including outside of Port property.[6] Where the Port Act contemplates oversight of Port actions, such as expenditures outside of Port boundaries, that oversight is entrusted to the State Lands Commission.[7]

The Port is the State's trustee in managing the tidelands and submerged land granted to it and must manage the lands for the benefit of the statewide public, "without subjugation of statewide interests, concerns, or benefits to the inclination of local or municipal affairs, initiatives, or excises."[8] The Port also has fiduciary duties to the State, including the duty to administer the trust solely in the statewide public's interests, rather than local interests.[9]

The San Diego Unified Port District is different from port and harbor districts formed under the Harbors and Navigation Code. The Port was not formed under the Harbors and Navigation Code's general port district provisions, and not

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[1] Pub. Resources Code, § 6009, subd. (a), see *Marks v. Whitney* (1971) 6 Cal.3d 251, 259–260.
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[4] Harbor and Nav. Code, App. 1, §§ 5, 53.
[5] Harbor and Nav. Code, App. 1, § 87.
[6] Harbor and Nav. Code, App. 1, §§ 4, 30, 81-85.
[7] Harbor and Nav. Code, App. 1, § 30.5.
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every harbor or port district manages legislatively granted land.[10] LAFCO oversight of the Port presents different issues than oversight of other port and harbor districts.[11]

LAFCO's review and potential denial of Port boundary changes, services outside of Port property, and other actions authorized by the Port Act contradict the Legislature's intent in creating the Port. The Legislature already approved these actions as necessary to serve the State's interests. If LAFCO could condition or deny them, it would allow LAFCO to impede the Legislature's intent and override the State Lands Commission's oversight. Therefore, Commission staff conclude that the Port is not subject to LAFCO oversight.

Commission staff is mindful that the San Diego LAFCO promotes the Legislature's objective of promoting efficient and effective governance in San Diego County. The Port is required to prepare Trust Land Use Plans and Port Master Plans that define its long-term management of its granted tidelands and submerged lands, and LAFCO may consult these plans to ensure there is no unnecessary duplication of government services. Commission staff are also happy to discuss any concerns LAFCO may have about Port activities.

Commission staff appreciates the San Diego LAFCO's willingness to consider its perspective. If you have any questions, please contact me at Jennifer.Lucchesi@slc.ca.gov.

Sincerely,

DocuSigned by:
Jennifer Lucchesi
A8DE3BBAE92D437...

JENNIFER LUCCHESI
Executive Officer

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[10] For example, the Ventura Port District and Stockton Port District do not have Legislative grants of tidelands and submerged land.

[11] The only district other than the Port formed by a special act contained in the Harbors and Navigation Code Appendix is the Humboldt Bay Harbor, Recreation, and Conservation District. The Legislature explicitly made the Humboldt District subject to LAFCO oversight under a predecessor to the Cortese-Knox-Hertzberg Act. (See Harb. & Nav. Code, § App. 2, § 79.) By contrast, the Port Act predated the predecessor LAFCO laws and was intended to solely govern the Port's organization.

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2550 Fifth Avenue, Suite 725
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Subject: LAFCO oversight of the San Diego Unified Port District

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Simonds,Keene

From: Simonds,Keene
Sent: Friday, April 5, 2024 10:47 AM
To: Shiraz Tangri
Cc: Paula deSousa; Mumpower, Priscilla; dgillick@sloansakai.com; Chris Cate; Adam Wilson
Subject: RE: SD Unified Port District - Request for Reconsideration of SD LAFCO Commission Action on 3/4/2024 (Agenda Item 8a)

Hi Shiraz –

Thank you for your email below and subsequent hard copy filing of a request for reconsideration involving LAFCO's approval on March 4th to add the Port to the list of special districts under LAFCO oversight.

As the cover letter provides, the request is being made by the Port under LAFCO Rule No. 3.4(2), which allows any "person or affected agency" to request reconsideration by the Commission of actions taken without resolution.

In reviewing the actual submittal, unfortunately, the request does not qualify for reconsideration by the Commission since the Port does not qualify as an "affected agency" under the applicable definition provided in Government Code Section 56014 as cited below…

CHAPTER 2. DEFINITIONS

Definitions	**56010**. Unless the provision or context otherwise requires, the definitions contained in this chapter govern the construction of this division. The definition of a word applies to any of that word's variants.
"Affected city"	**56011**. "Affected city" means any city that contains or would contain, or whose sphere of influence contains or would contain territory for which a change of organization is proposed or ordered, either singularly or as part of a reorganization.
"Affected county"	**56012**. "Affected county" means any county that contains, or would contain, any territory for which a change of organization is proposed or ordered either singularly or as part of a reorganization or that contains all or any part of a district for which a change of organization or reorganization is proposed with respect to territory outside that county.
"Affected district"	**56013**. "Affected district" means any special district, as defined by Section 56036, that contains or would contain, or whose sphere of influence contains or would contain, any territory for which a change of organization is proposed or ordered either singularly or as part of a reorganization.
"Affected local agency"	**56014**. "Affected local agency" means any local agency that contains, or would contain, or whose sphere of influence contains or would contain, any territory for which a change of organization is proposed or ordered, either singularly or as part of a reorganization or for which a study is to be reviewed by the commission.

Tying eligibility to an affected agency as defined – pertinently – is consistent with the statutory provision in CKH that allows for a limited range of reconsiderations under 56895 and in doing so curbing the potential for all LAFCO approval actions – like policies, legislative positions, fee waivers, budget amendments, and the like – to get caught up in reconsideration uncertainties.

This said, I appreciate the importance of the topic to the Port and LAFCO remains 100% committed to working together and helping each other achieve our statutory purposes.

Look forward to hearing from you.

Keene

From: Shiraz Tangri <stangri@portofsandiego.org>
Sent: Wednesday, April 3, 2024 3:03 PM
To: Simonds,Keene <Keene.Simonds@sdcounty.ca.gov>
Cc: Jennifer.Lucchesi@slc.ca.gov; StephenWhitburn@sandiego.gov; – Baron Willis <bwillis@alpinefire.org>; Desmond, Jim <Jim.Desmond@sdcounty.ca.gov>; Anderson, Joel <Joel.Anderson@sdcounty.ca.gov>; kbecker@cosb.org; – Dane White <dawhite@escondido.org>; mackgroup@cox.net
Subject: [External] SD Unified Port District - Request for Reconsideration of SD LAFCO Commission Action on 3/4/2024 (Agenda Item 8a)

Dear Mr. Simonds –

Please find attached the San Diego Unified Port District's request for reconsideration of the San Diego LAFCO Commission's action on March 4, 2024 on Agenda Item 8a. A hard copy will follow.

Please confirm receipt at your earliest convenience. Thank you.

Shiraz D. Tangri
Deputy General Counsel
Office of the General Counsel

3165 Pacific Highway, San Diego, CA 92101
(o) 619.817.8916 • (c) 619.643.8626

PORT of SAN DIEGO

connect:

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BBK
BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Paula C. P. de Sousa
Partner
(619) 525-1328
paula.desousa@bbklaw.com

April 18, 2024

VIA EMAIL [KEENE.SIMONDS@SDCOUNTY.CA.GOV]

Keene Simonds, Executive Officer
San Diego Local Agency Formation Commission
2550 Fifth Avenue, Suite 725
San Diego, CA 92103

Re: Request for Reconsideration of Commission Action on March 4, 2024 (Agenda Item 8a)

Dear Mr. Simonds:

We represent the San Diego Unified Port District ("San Diego Port District") as special counsel on its April 3, 2024 request for reconsideration ("Request") of the San Diego Local Agency Formation Commission's ("SD LAFCO") March 4, 2024 action on Agenda Item 8a making a determination regarding the San Diego Port District ("LAFCO Determination"). This letter is in response to your email to our client (via Deputy General Counsel Shiraz Tangri) dated April 5, 2024. In that email, you asserted that "the request does not qualify for reconsideration by the Commission since the Port does not qualify as an 'affected agency' under the applicable definition …."

Based on your April 5, 2024 e-mail, we understand that SD LAFCO will not reconsider the LAFCO Determination pursuant to SD LAFCO Rule 3.4(2). Further, SD LAFCO will not include the Request on its May 6, 2024 agenda pursuant to SD LAFCO Rule 3.4(2)(e). We also note that your e-mail did not identify any other basis for reconsideration or other review by SD LAFCO of the LAFCO Determination. Please contact us immediately if you disagree with or need to clarify any of the understandings set forth above.

The San Diego Port District strongly disagrees with your refusal to allow the SD LAFCO Commissioners to reconsider the Request. Your unilateral denial of the Request without a meeting or hearing is incorrect for the following reasons, among others:

First, your denial of the Request is improper because the San Diego Port District is a "person" with standing to seek reconsideration under SD LAFCO Rule 3.4(2). Rule 3.4(2)(a) authorizes requests "for reconsideration of a commission determination for which a resolution was not adopted" pursuant to a written request filed by "[a]ny person or affected agency." Section 28 of the San Diego Unified Port District Act (Harbor & Nav. Code App. 1) provides explicitly that the San Diego Port District "is a public corporation" created for the purposes set out in that Act. California law provides that unless a law specifically limits the powers of a

public corporation, that corporation should be considered a legal "person." (*State v. Marin Mun. Water Dist.* (1941) 17 Cal.2d 699 ["It is a well established doctrine that general words in a statute will not be construed to limit the otherwise valid power of the state or its subdivisions unless that result was specifically intended by the legislature."].) There is nothing in the text of Rule 3.4(2) to suggest that it is intended to deprive public corporations like the San Diego Port District—as legal persons—of the opportunity to seek SD LAFCO redress. We also note that your April 5, 2024 e-mail completely ignores the "any person" language in Rule 3.4(2).

Second, your assertion that the San Diego Port District is not an "affected agency" entitled to seek reconsideration is also flawed. The term "affected agency" is not defined in Rule 3.4(2) or elsewhere in the SD LAFCO rules. Applying the common sense, plain language meaning of that term, there is no question that the San Diego Port District is an affected agency with regard to the LAFCO Determination. That determination specifically addressed SD LAFCO's oversight duties related to the San Diego Port District – and no other agencies. As such, your denial of the Request ignores the plain language of SD LAFCO's own procedural rules.

Your denial cannot be justified by its reference to the definition of "affected local agency" in Government Code section 56014. We note that the statutory definition quoted in your e-mail is not cited or cross-referenced in SD LAFCO Rule 3.4(2), which does not even use the phrase "affected local agency." Instead, Rule 3.4(2) uses the broader term "affected agency" to include any agency seeking reconsideration of a "*commission determination.*" The LAFCO Determination is clearly a "commission determination" under Rule 3.4, even if it is not a change of organization.

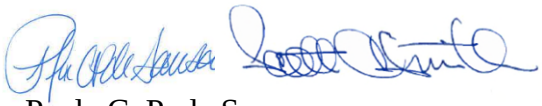
We agree with you that the San Diego Port District is not an "affected local agency" as defined in Government Code section 56014, as one that "contains, or would contain . . . any territory for which a change of organization is proposed or ordered …." This definition, however, is not a valid basis to deny the Request. To the contrary, reconsideration is supported by your position that the San Diego Port District does not meet that statutory definition: if no organizational change is proposed or ordered, what oversight duties does SD LAFCO have with respect to the San Diego Port District?

Third, by denying the Request, SD LAFCO is again failing to provide a meaningful opportunity for input from critical San Diego Port District stakeholders. Such input should have been considered before the LAFCO Determination, which reversed a position publicly stated by SD LAFCO for over 20 years. Your refusal to provide an opportunity for an open discussion on Request by placing it on the May 6, 2024 agenda is confounding.

For these reasons, the San Diego Port District respectfully submits that your denial of the timely reconsideration Request is improper under SD LAFCO's own rules and legally baseless. SD LAFCO's failure to schedule the Request for reconsideration at its May 6, 2024 meeting will serve as confirmation that SD LAFCO has waived any obligation on the San

Diego Port District's part to exhaust its administrative remedies as a precursor to any judicial challenge the San Diego Port District brings to the LAFCO Determination.

Sincerely,



Paula C. P. de Sousa
Scott C. Smith
of BEST BEST & KRIEGER LLP

cc: San Diego LAFCO Chair Stephen Whitburn [via email StephenWhitburn@sandiego.gov]
Priscilla Mumpower (San Diego LAFCO)
[via email Priscilla.Mumpower@sdcounty.ca.gov]
DeeAnne Gillick (Sloan Sakai) [via email dgillick@sloansakai.com]
Shiraz Tangri (San Diego Unified Port District) [via email stangri@portofsandiego.org]