



Chairman

Bill Horn
County Board of
Supervisors

December 7, 2015

9A

Vice Chairman

Sam Abed
Mayor
City of Escondido

TO: LOCAL AGENCY FORMATION COMMISSION

9B

FROM: Executive Officer

Members

Dianne Jacob
County Board of
Supervisors

SUBJECT: Provision of Wastewater Service to the Proposed Coastal Campus on the Naval Base Coronado Silver Strand Training Complex - South (NBC SSTC-S)

Andrew Vanderlaan
Public Member

BACKGROUND

Lorie Zapf
Councilmember
City of San Diego

The Department of the Navy (Navy) is pursuing the development of a Coastal Campus on the Naval Base Coronado Silver Strand Training Complex - South (NBC SSTC-S). The proposed Coastal Campus is located within the City of Coronado and is part of a Special Warfare Command Operations project. The project footprint of the proposed Coastal Campus consists of 169.4 acres within the 548-acre NBC SSTC-S site. At a cost of approximately \$700 million, the federal government considers the Coastal Campus an integral part of the Department of Defense's ongoing Global War on Terrorism, following the events of September 11, 2001. When completed, the Coastal Campus will assist the federal government accomplish a number of nationwide objectives associated with a "congressional mandate" for military readiness, such as improving base training and operations, accommodating base expansion needs and facilities, etc. Construction is proposed over a 10-year period and will add nearly 1.5 million square feet of facilities within the corporate limits of Coronado, north of Imperial Beach on the Silver Strand. Refer to attached map for the location of the Naval Base Coronado site (Attachment 1).

Lorraine Wood
Councilmember
City of Carlsbad

Jo MacKenzie
Vista Irrigation District

Vacant
Special District

Alternate Members

Greg Cox
County Board of
Supervisors

Chris Cate
Councilmember
City of San Diego

Racquel Vasquez
Councilmember
City of Lemon Grove

Ed Sprague
Olivenhain Municipal
Water District

Harry Mathis
Public Member

Executive Officer

Michael D. Ott

The scale of the Coastal Campus project and provision of wastewater services represent major issues for the City of Coronado. With respect to wastewater service, Coronado representatives state that the Navy is relying on a nearly 50-year old out-of-agency sewer service agreement with the City of Imperial Beach for the proposed Coastal Campus (Attachment 2). Coronado believes this service agreement may be invalid because neither Imperial Beach nor the Navy obtained approval from the San Diego Local Agency Formation Commission (LAFCO) before execution of the agreement. Coronado asserts that while State Law

Legal Counsel

Michael G. Colantuono

exempts some out-of-agency contractual service agreements from LAFCO purview, the 1967 agreement between Imperial Beach and the Navy should be subject to LAFCO purview, because it was originally intended to extend service to limited development – not the 1.5 million square feet of training facilities the Navy is currently proposing at the NBC site. Coronado city staff accordingly request that the Commission:

- (1) Determine that Coronado (and not Imperial Beach) be designated as the proper provider of wastewater services to the NBC site;
- (2) Find that since the NBC site is within the Coronado city limits (and outside Imperial Beach city limits and sphere) that Imperial Beach cannot provide wastewater services to the NBC site without LAFCO approval; and
- (3) Undertake review of the provision of sewer services to the NBC site, especially in light of the fact that the City of Imperial Beach recently stated that it will not provide wastewater services beyond the current level to the NBC site without LAFCO approval.

LAFCO staff acknowledges that the City of Coronado has raised a number of important land use and service concerns. However, we believe the concerns do not fall within the Commission's purview to address. While LAFCO has considerable authority over jurisdictional boundary changes, the Commission's authority regarding contractual service agreements is not without limit. In the case of the extension of contractual sewer service to the NBC site, LAFCO staff has determined that a statutory exemption contained in Government Code Section 56133(e) restricts the Commission from exercising purview over the provision of sewer service to the NBC site. This provision exempts the extension of services by contract or agreement outside a jurisdiction's boundaries if the extended service was provided on or before January 1, 2001. Documents obtained by LAFCO staff confirm that the City of Imperial Beach has been extending wastewater service contractually to the federal government since 1967. Refer to Attachment 2 for the contractual service agreement between Imperial Beach and the Navy, and Attachment 3 for the exemption contained in Government Code Section 56133(e).

As discussed in this report and the *Preliminary Determination* reached by LAFCO staff, we have concluded that Coronado's argument that LAFCO must exercise purview over the contractual service agreement between Imperial Beach and the Navy is belied by the plain language in Government Code Section 56133(e). Contrary to assertions made by Coronado, this exemption does not distinguish between service level increases, land use changes and conflicts, or other land use issues such as development density and intensity increases – only whether the services were extended on or before January 1, 2001. Therefore, based on the documentation we obtained from Imperial Beach and the Navy, we conclude that the 2001 "grandfather" provision in Government Code Section 56133(e) is applicable. If the Commission concurs, this would mean that the continued provision of wastewater service by Imperial Beach to the Navy would be exempt from LAFCO purview. The conclusions reached by LAFCO staff were

confirmed and reviewed by LAFCO's Legal Counsel Michael Colantuono. Refer to Attachment 4 for Mr. Colantuono's legal analysis and Attachment 6 for LAFCO staff's *Preliminary Determination*.

Should the Commission disagree with these conclusions, then there would be several consequences. If the Navy still desired to obtain sewer service from Imperial Beach, then Imperial Beach would need to obtain approval from the Commission after submitting an application and processing fees in the amount of \$27,180. However, the Commission should be aware that it is questionable whether such an application could be approved, because provisions in current law require that the subject territory be within the service provider's sphere of influence and that the service extension must be in anticipation of a later change of organization (e.g., annexation). These two conditions currently do not exist with respect to the City of Imperial Beach and the NBC site. Nonetheless, if the Commission decided to exercise purview over the provision of sewer services by Imperial Beach, LAFCO staff would need to research this matter further.

Another possibility if the Commission found that the 1967 agreement between Imperial Beach and the Navy was invalid, would be for Coronado to assume jurisdiction for providing sewer service within its jurisdictional boundaries, or the Navy would be forced to devise an alternative method to dispose of effluent on-site. If the City of Coronado assumed responsibility for providing wastewater service to the proposed Coastal Campus, then this would cost the federal government another \$31 million, according to Navy estimates (\$11 million for internal infrastructure within the NBC site and \$20 million for infrastructure external to the site). The associated sewer infrastructure would also likely traverse through about 8-10 miles of environmentally sensitive habitat and result in the need to prepare supplemental environmental assessment in accordance with the National Environmental Policy Act (NEPA). Estimated additional environmental assessment costs would be approximately \$500,000. It is also probable that the revised project would necessitate congressional approval for supplemental financing. Another option would be for Coronado to enter into a three-way contract with Imperial Beach and the Navy. Such a contract would not be subject to LAFCO purview, but it would require concurrence of all three potential contractual parties.

A summary of the *Preliminary Determination*; an evaluation of Coronado's concerns; reconsideration process; and possible Commission options follow. Pertinent attachments to this staff report include: Attachment 1: vicinity map; Attachment 2: Contractual Service Agreement between Imperial Beach and the Navy; Attachment 3: Government Code Section 56133(e); Attachment 4: LAFCO Legal Counsel Michael Colantuono's analysis regarding the provision of sewer service to Naval Base Coronado; Attachment 5: Coronado's Request for Reconsideration (appeal) of the *Preliminary Determination* submitted by John Bakker of Meyers/Nave; and Attachment 6: *Preliminary Determination*. These documents are also posted on the San Diego LAFCO's website: www.sdlafco.org.

EVALUATION OF CORONADO'S CONCERNS

To evaluate the merits of Coronado's concerns, LAFCO staff reviewed the 1967 wastewater service agreement between Imperial Beach and the Navy in relation to Government Code Section 56133. The pertinent provisions of this State Law are located within subdivisions (b), (c) and (e) of Section 56133. Subdivision (b) requires that the affected service contract territory be located within the sphere of influence of the proposed service provider. Subdivision (c) contains an exception for situations that necessitate a contractual service agreement outside a service provider's sphere of influence to respond to existing or impending threats to the public health and safety of residents of affected territory. Subdivision (e) exempts LAFCO's purview over out-of-agency service agreements whether or not the territory is located within or outside a service provider's sphere of influence, if a city or district was providing the extended service on or before January 1, 2001. Subdivision (e) also exempts contracts or agreements solely involving two or more public agencies in certain circumstances.

In the case of the proposed Coastal Campus, neither subdivisions (b) nor (c) are applicable, because the Coastal Campus is located outside of the City of Imperial Beach's sphere, and the service extension is not related to an existing or impending threat to public health and safety of residents (e.g., failing septic system). However, subdivision (e) applies because the City of Imperial Beach has been extending sewer service to the site since 1967 via a service agreement with the Navy.

While the City of Coronado raises an interesting point that the service demands for the proposed Coastal Campus will exceed the historic level of service provided to the Navy, the exemption language in Government Code Section 56133(e) does not distinguish between service levels or changes in land use – only that the affected city or district was providing the subject service(s) on or before January 1, 2001. LAFCO staff confirmed that Imperial Beach and the Navy first executed the wastewater service agreement in 1967 and last amended it in 1991. The agreement also contains an expansive provision requiring that Imperial Beach receive, transport, treat and dispose sewage at whatever level the federal government desires. The expansiveness of the 1967 wastewater agreement appears to contradict Coronado's argument that the agreement was intended to be used to serve only a limited amount of development. Therefore, based upon the effective date of the agreement (1967) and the expansiveness of the overall agreement, LAFCO staff determined that the continued provision of sewer service to the NBC site satisfies the exemption requirements in Government Code Section 56133(e). On April 9, 2015, LAFCO staff notified the subject agencies regarding this determination.

After the April 9th notification was issued, LAFCO staff provided an opportunity for the local agencies and Navy to submit comments. The Commanding Officer of the NBC issued a letter on June 4, 2015, indicating the Department of the Navy supported LAFCO staff's determination that the provision of sewer service to the NBC Coastal Campus site is exempt from LAFCO's purview. The Navy's Commanding Officer further stated that the existing historic agreement to provide wastewater services by the City of

Imperial Beach to the Navy will remain in effect, and the City of Imperial Beach will simply continue to provide wastewater services as required by the Government in such amounts as the Government desires in accordance with the wastewater service agreement in place since 1967.

On May 26, 2015, the City of Imperial Beach provided comments and stated that the City recognizes the authority of LAFCO to determine the appropriate utility service boundaries for municipalities and would not provide services beyond the current service levels without authorization from LAFCO. This statement was a supplement to earlier comments provided to LAFCO staff on March 30, 2015, in which the City Imperial Beach informed LAFCO staff that the City of Imperial Beach would be willing to continue providing service to the Navy and that authorization for the services has been verified in the official City Council meeting minutes in 1967 authorizing the Mayor to execute the agreement and through several amendments to the agreement from that date forward. On October 20, 2015, the Imperial Beach City Manager informed LAFCO staff that Imperial Beach will perform its obligations to provide sewer service to the NBC site under the terms of the 1967 agreement and that Imperial Beach has obtained special legal counsel services with respect to this matter.

On May 1, 2015 and July 7, 2015, the City of Coronado also provided comments reiterating its request that LAFCO undertake a review of the provision of sewer services to the Coastal Campus project. The City also requested that LAFCO determine that the City of Imperial Beach cannot provide wastewater services without LAFCO approval because the NBC Coastal Campus project is within Coronado's city limits and outside Imperial Beach's city limits and sphere of influence. Lastly, Coronado requested that LAFCO find that the City of Coronado (and not the City of Imperial Beach) is the proper provider of wastewater services to the Proposed Sewer Project.

REQUEST FOR RECONSIDERATION

On August 7, 2015, LAFCO staff formalized its conclusions in the *Preliminary Determination*, after receiving comments from the local agencies and the Navy. Among the conclusions in the *Preliminary Determination* was that the continued provision of sewer service by Imperial Beach to the NBC site within Coronado is not subject to LAFCO purview pursuant to Government Code Section 56133(e). The local agencies and federal government were provided another opportunity for comment and appeal. Agencies were informed that if agreement was not reached regarding the conclusions in the *Preliminary Determination*, that an appeal could be scheduled for consideration by the full Commission (LAFCO).

On September 15, 2015, the City of Coronado filed a request for reconsideration, which is the subject of the December 7, 2015 LAFCO meeting. Refer to letter dated September 8, 2015 from John Bakker of Meyers/Nave in Attachment 5. Coronado's appeal was submitted in a timely manner and was accompanied by a LAFCO filing fee of \$1,030. LAFCO staff believes that Coronado's argument to require LAFCO purview over the contractual service agreement between Imperial Beach and the Navy is belied

by the plain language of subdivision (e) of Government Code Section 56133. The Commission's Legal Counsel has also reviewed this issue and concurs with this conclusion. The Commission should also be aware that this conclusion comports with recent statutory changes to Government Code Section 56133(e) per the Senate Bill 239 (Hertzberg).

Lastly, Coronado representatives object to paying LAFCO's \$1,030 reconsideration filling fee and request that the Commission authorize a refund. The Commission should be aware that the fee was imposed consistent with the Commission's adopted fee schedule and inadequate justification has been provided by Coronado for a fee refund. The cost of LAFCO staff and legal review associated with this contractual service matter far exceeded the amount of the \$1,030 reconsideration fee.

To assist the Commission in providing direction regarding the City of Coronado's request for reconsideration, several options should be discussed, as outlined below.

OPTIONS AVAILABLE FOR COMMISSION CONSIDERATION

Option 1

Accept the conclusions in the August 7th *Preliminary Determination* and disapprove Coronado's Request of Reconsideration. This action would reaffirm that the continued extension of wastewater service by the City of Imperial Beach to the proposed Coastal Campus site at NBC SSTC-S is exempt from LAFCO purview. The basis for this determination is that the continued provision of sewer service by Imperial Beach to the Navy constitutes an existing service that is subject to the 2001 "grandfather" provision in Government Code Section 56133(e). Subsection (e) exempts from LAFCO purview an extended service provided on or before January 1, 2001 and does not distinguish between level of service or land use issues. The documentation provided by Imperial Beach indicates that service has been extended to the federal government prior to 2001 and would continue under the provisions of the 1967 agreement. The 1967 contractual service agreement specifies that Imperial Beach must provide wastewater service at any level desired by the federal government in the future.

Government Code Section 56133(e) also contains an exemption for contracts or agreement involving two or more public agencies where the public services to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider, and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider. Although not cited by LAFCO staff as the basis for the above "grandfather" provision, this exemption may also apply to the Coastal Campus because the 1967 service contract is between Imperial Beach and the Navy, and the Navy could be categorized as "public agency" per Government Code Section 56010.

Option 2

Concur with the City of Coronado and exercise jurisdiction under Government Code Section 56133, if the Commission believes that the provision of sewer services by

Imperial Beach to the Coastal Campus is not exempt from LAFCO purview. This option would result in either Imperial Beach filing an out-of-agency service contract application with LAFCO, or the City of Coronado assuming jurisdiction for the provision of sewer service. Under this option, Imperial Beach would be restricted from directly serving the Coastal Campus, unless LAFCO provided approval. If this option is pursued, the matter should be continued to a subsequent meeting so Imperial Beach could submit an application and processing fees. A LAFCO staff report would also be prepared at that time to address the merits of the associated issues.

Should Imperial Beach not submit an application to LAFCO, then Coronado would assume jurisdiction for providing sewer service within its boundaries. If the City of Coronado assumed responsibility for providing wastewater service to the proposed Coastal Campus, the Navy estimates that the Coastal Campus project costs would increase by about \$31 million (\$11 million for internal infrastructure within the NBC site and \$20 million for infrastructure external to the site). The associated sewer line would also likely traverse through about 8-10 miles of environmentally sensitive habitat and result in supplemental environmental assessment through NEPA at an additional cost of \$500,000. It is also probable that the revised project would necessitate congressional approval for supplemental financing.

Option 3

A third option would be a derivative of both of the above options. This option would involve the affirmation of the conclusion reached in Option 1 and include a Commission recommendation to encourage the three agencies (Imperial Beach, Coronado, and federal government) to make additional efforts to resolve associated local issues. This option could result in more coordination between the affected agencies; however, it is unknown whether resolution of the associated issues would occur.

SUMMARY

In summary, the Commission should provide direction to LAFCO staff regarding any of the above options. The City of Coronado's Special Counsel John Bakker states that Coronado intends on using every means at its disposal, including litigation, to ensure that Coronado decides how sewer service is provided within the City. Based on the potential threat of litigation from Coronado, the December 7, 2015 agenda provides for a Closed Session (if needed) to discuss potential legal issues. The Commission is not obligated, however, to convene to a Closed Session.

RECOMMENDATION:

1. Allow public comment on the Request for Reconsideration, and provide direction as to the disapproval or approval of the Request for Reconsideration (appeal) filed by the City of Coronado.

2. Review the City of Coronado's request for a refund of the LAFCO reconsideration fee of \$1,030 and provide direction to staff on whether the refund should be authorized.

Note: This matter is also noticed for a Closed Session to allow the Commission to receive confidential legal advice, if necessary.

Respectfully Submitted,

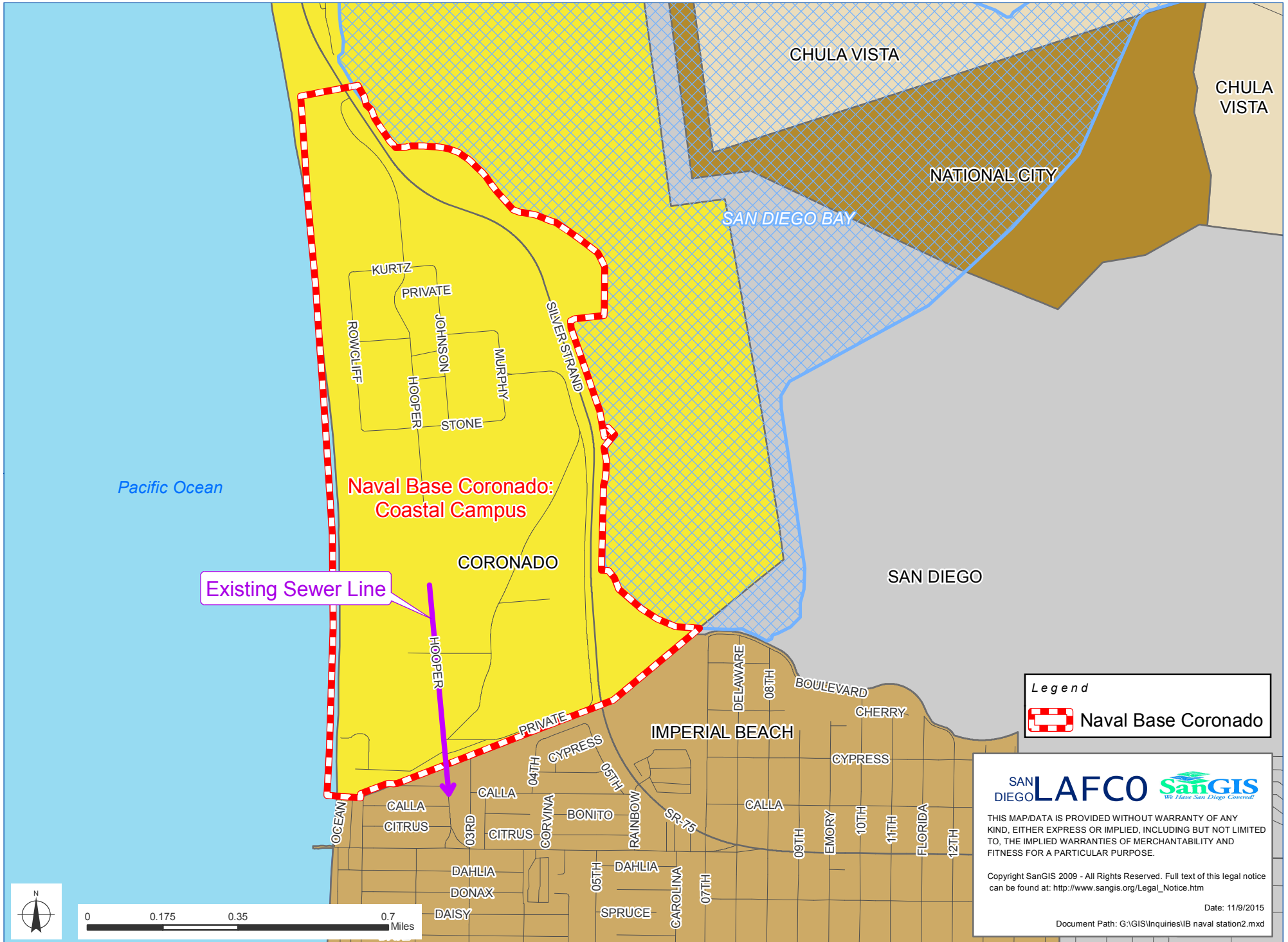


MICHAEL D. OTT
Executive Officer

MDO:ra

Attachments

- (1) Vicinity map
- (2) Contractual Service Agreement
- (3) Government Code Section 56133
- (4) Memorandum from San Diego LAFCO Legal Counsel Michael Colantuono
- (5) Appeal of *Preliminary Determination* from Coronado (John Bakker)
- (6) *Preliminary Determination*



Legend

 Naval Base Coronado

SAN DIEGO LAFCO 

THIS MAP/DATA IS PROVIDED WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

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Date: 11/9/2015
Document Path: G:\GIS\Inquiries\IB naval station2.mxd

Attachment 2: Contractual Service Agreement

9A
9B



DEPARTMENT OF THE NAVY
SOUTHWEST DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
SAN DIEGO, CALIFORNIA 92132

IN REPLY REFER TO:

1123

Sar 7668

SEP 15 1967

City of Imperial Beach
925 Coronado Avenue
P.O. Box 427
Imperial Beach, California 92032

Subject: Letter Agreement N62473-67-M-0002

Gentlemen:

This is in reply to your letter of August 9, 1967 in which you requested that Contract NBy(U)36815 which provides sewer service to Naval Radio Station, Imperial Beach, be renewed for another five (5) year period. To reduce paper work and to conform with existing instructions, this proposed Letter Agreement is forwarded for your consideration. *Recorded*

- a. Effective date - 1 June 1967
- b. Estimated annual costs - \$45.00
 - 4 dwellings - \$40.00
 - 1 guard house - 5.00
- c. Point of Delivery - one 6 inch connection into a City of Imperial Beach constructed manhole at the intersection of the extension of the Silver Strand Blvd. service main with the Government sewer line.
- d. Service to be rendered - The City of Imperial Beach, California, shall provide sanitary sewerage service as required by the Government and shall receive, transport, treat and dispose of all sewage originating at the project in such amounts as the Government desires to release into the City's system and in a manner and by such means as will constitute no hazard to the public health. The City of Imperial Beach shall operate its sewage disposal and treatment facilities in conformity with applicable laws, rules and regulations promulgated by State and Federal governmental authorities.

1123
Ser 7668

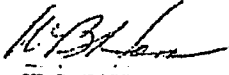
e. Invoicing - The Government will accept annual invoices in arrears and make payment therefor at the rates shown above which are understood to be the lowest rates available to any customers under like conditions of service. The Letter Agreement number shall be inserted on the invoices submitted for the service. Invoices to be submitted in quintuplicate to the Commanding Officer, Naval Communications Station, 937 No. Harbor Drive, San Diego, California 92132, Code 34G. Applicable accounting data will be furnished by the Government upon liquidation of invoices in accordance with existing regulations.

f. Payment - Payments will be made by Commanding Officer, Navy Regional Finance Center, San Diego, California 92132.

This Letter Agreement is processed under the provisions of 10 U.S.C. 2304(a)(10).

Please indicate your acceptance of this Letter Agreement in the space provided therefor on the original and three copies herewith and return the original and two copies to the Commander, Southwest Division, Naval Facilities Engineering Command, Code 1123, San Diego, California 92132.

Sincerely,


W. P. FOSS
For Commander, Naval Facilities
Engineering Command, Contracting
Officer

Accepted CITY OF IMPERIAL BEACH
(Company Name)

By _____
(Name and Official Title)

Date 10-3-67

Attachment 3: Government Code Section 56133

Government Code Section 56133 (Excerpt)

- (a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county.
- (b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.
- (c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:
- (1) The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.
 - (2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.
- d) The executive officer, within 30 days of receipt of a request for approval by a city or district of a contract to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.
- e) This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider. This section does not apply to contracts for the transfer of nonpotable or nontreated water. This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county. **This section does not apply to an extended service that a city or district was providing on or before January 1, 2001 (emphasis added).** This section does not apply to a local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.

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COLANTUONO
HIGHSMITH
WHATLEY, PC

9A
9B

Attachment 4

MEMORANDUM

TO: Chairman Horn and Member of the San Diego Local Agency Formation Commission
FILE NO: 49021.0002

FROM: Michael G. Colantuono, Esq.
Gary B. Bell, Esq. *GBB*
DATE: November 12, 2015

CC: Michael Ott, Executive Officer

RE: City of Coronado's Appeal of Executive Officer's Determination that Commission Lacks Jurisdiction to Review Sewer Service Provided to Naval Base Coronado by the City of Imperial Beach

INTRODUCTION AND SUMMARY OF CONCLUSION

We write to analyze whether the provision of sewer service to Naval Base Coronado by the City of Imperial Beach is subject to approval by the Commission pursuant to Government Code section 53166, as claimed by the City of Coronado in its request for reconsideration of a contrary decision by your Executive Officer.

The Base receives sewer services from Imperial Beach under a 1967 agreement between the two agencies. The agreement provides that the City "shall provide sanitary sewerage services as required by the [federal] Government" and "shall receive, transport, treat and dispose of all sewage originating at the project in such amounts as the Government desires to release into the City's system." The agreement does not limit the volume of sewage the Base may release and the City of Imperial Beach is required to "receive, transport, treat and dispose."

The Base is in Coronado. Over the next ten years, the Base is expected to add nearly 1.5 million square feet of new training facilities with a corresponding increase in sewer demand. Coronado contends this Commission has jurisdiction to determine

Michael Ott, Executive Officer

November 12, 2015

Page 2

whether Imperial Beach should be permitted to serve the wastewater needs of the proposed new facilities.

Generally, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 ("CKH") allows a local agency to provide "new or extended services" by agreement outside its boundaries only with the Commission's approval.¹ However, this requirement does not apply to:

1. contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider, and
2. an extended service that a city was providing on or before January 1, 2001.²

Your Executive Officer determined these two exemptions apply. Coronado has requested reconsideration of this determination. The issue is whether this determination is correct. We conclude that it is and recommend you affirm the Executive Officer's decision.

FACTS

The facts on which our opinion relies follow. If these facts are incorrect or materially incomplete, please let us know, as different facts might require a different conclusion.

On March 30, 2015, Imperial Beach informed the Commission that it was willing and able to continue providing sewer services to the Base as it has since 1967, including flows from the additional training facilities. On April 9, 2015, your Executive Officer informed Imperial Beach, Coronado and the Base that this service arrangement was exempt from LAFCO review under exceptions stated in Government Code section 56133.

¹ Gov. Code § 56133(a).

² Gov. Code § 56133(e).

On April 10, 2015, Coronado disagreed with that conclusion by letter and on May 1 its special counsel requested reconsideration of that decision. On May 26, 2015, Imperial Beach notified the Commission it would not provide sewer service to the Base beyond current service levels without authorization from the Commission, reversing its position of March 30, 2015.³ The City has since orally informed the Executive Officer that it will perform its obligations to the Base under the 1967 agreement.

On June 4, 2015, the Commanding Officer of the Base informed the Commission that the Base agreed with the Executive Officer's determination.

On July 7, 2015, Coronado's special counsel reiterated the City's April 10, 2015 objection to the Executive Officer's decision and made additional arguments for reconsideration. Coronado requested the Commission:

1. review Imperial Beach's sewer services to the Base,
2. find that Imperial Beach cannot provide those services without Commission approval, and
3. find that Coronado is the better provider of sewer service to the Base.

On August 7, 2015, the Executive Officer concluded the provision of sewer services to the Base by Imperial Beach was exempt from approval by the Commission, noting that an interested party could seek reconsideration of his conclusion by your Commission. Coronado has timely done so and the matter is now before you for decision.

ISSUES

While Imperial Beach stated in one letter that it will not provide sewer services to the additional facilities proposed for the Base without the Commission's approval, Coronado has provided the legal arguments for that position. Whether or not Imperial Beach maintains that view, as recent conversations suggest it does not, Coronado argues:

³ This may be viewed as a request for approval to provide extra-jurisdictional services.

1. The Commission may not rely on the exemption for extended services provided before January 1, 2001 because that exemption is not included in the Commission's 2013 LAFCO Procedures Guide;
2. Even if the Commission could rely on that exemption, the exemption does not apply to an "expansion" or "amendment" of existing services;
3. The Commission may not rely on the exemption for contracts solely involving two public agencies because the Base, a federal agency, is not within CKH's definition of "public agency;" and
4. Because the sewer services are provided in Coronado and outside the boundaries and sphere of influence of Imperial Beach, and because the services are not provided in response to an existing or impending threat to the health and safety, Imperial Beach cannot provide the services without Commission approval.

We address, and disagree with, each of these arguments below.

DISCUSSION

The Act provides that a city may only provide "new or extended" services by contract or agreement outside its boundaries with the prior written approval of the Commission.⁴ Within 30 days of a request, the Executive Officer must determine whether the request is complete and, if so, agendaize it for the next Commission meeting not more than 90 days from the date of the request, unless the Commission has delegated approval of requests to the Executive Officer.⁵ The Commission's 2013 LAFCO Procedures Guide provides:

Unless the extension of services is in response to a health or safety threat to property outside an agency's sphere of influence, applicants [for extended services] will be required to submit an annexation/detachment application, or other documentation demonstrating that the agreement is in anticipation of a subsequent jurisdictional change (e.g., irrevocable offer to annex). This dual application

⁴ Gov. Code § 56133(a).

⁵ Gov. Code § 56133(d).

Michael Ott, Executive Officer

November 12, 2015

Page 5

requirement may be waived in certain situations by the Executive Officer if compelling justification is provided.

Here, compelling justification has been provided: the extended services at issue are provided to the Base outside Imperial Beach without plan to adjust the boundary between the two cities, so the application requirements do not apply. Therefore, to the extent Imperial Beach's May 26, 2015 statement it would not serve additional facilities on the Base without Commission approval is deemed an application to provide such services, the Executive Officer may waive the application requirements. However, the final determination to "approve, disapprove, or approve with conditions" the application must be made by the Commission because it has not delegated this authority to the Executive Officer.⁶ Thus, if it chose, the Commission could overrule the Executive Officer's conclusion that it need not act on this extension of service, and instead, treat Imperial Beach's letter as notification of the City's intention to file an application, and grant or deny it on its merits. If the Commission takes that approach, we recommend you continue your hearing to allow Imperial Beach to formally submit an application and processing fees. However, we note that it is questionable whether such an application could be approved by the Commission, because current law requires that new or extended services be provided within a service provider's (Imperial Beach) sphere of influence in anticipation of a later change of organization, or in response to an existing or impending threat to the public health or safety of residents of the affected territory. Neither of these two conditions currently exist with respect to the Naval Base Coronado site, according to documents we reviewed. Nonetheless, continuance will allow the Executive Officer to prepare a staff report addressing the merits of the service issue.

Coronado Argument 1. Coronado first argues that the Commission may not rely on the exemption for extended services provided before January 1, 2001 because that exemption is not included in the Commission's 2013 LAFCO Procedures Guide. This amounts to a claim that the Commission's Guide can amend CKH. It cannot. Moreover, the preface to the Guide states:

The summaries and statutes provided in the *Procedures Guide* are intended to serve as general information only. For more

⁶ Gov. Code § 56133(d); *SD LAFCO Procedures Guide*, 2013 Special Edition, at 85-87.

Michael Ott, Executive Officer

November 12, 2015

Page 6

detail, refer to the referenced sections of the applicable state code.⁷

Thus, the Guide is controlled by CKH and not the reverse. Thus, the provision of the Act that exempts from the Commission's approval extended services provided before January 1, 2001 is part of the Guide by implication.

Coronado Argument 2. Coronado next argues this exemption does not apply to an "expansion" or "amendment" of existing services. It argues that principles of statutory construction require that a more limited interpretation apply because other exemptions address an increase in services, but this one does not.⁸ However, this interpretation essentially reads out the word "extended" from the statute requiring the Commission's approval: "A city or district may provide new **or extended** services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives approval from the commission in the affected county."⁹

The phrase "extended services" contemplates a service that is not new and is reasonably read to include the increased services the Base proposes. As Coronado acknowledges, no authority interprets "extended services" in section 56133. Furthermore, that section's exemption for extended services provided before January 1, 2001 states no requirement for the volume of service provided. If the Legislature had intended to limit the scope of this exception to existing service levels, it would have said so. As it did not, your Commission ought not to read that requirement into the statute.

Coronado Argument 3. Coronado also argues the Commission may not rely on section 56133's further exemption for contracts involving only "public agencies" because the Base is not within CKH's definition of "public agency." CKH defines "public agency" as: "the state or any state agency, board, or commission, any city, county, and city and county, special district, joint powers authority, or other political subdivision."¹⁰ However, CKH also provides that its definitions apply "[u]nless the provision or context otherwise requires."¹¹ The exemption provides:

⁷ *SD LAFCO Procedures Guide*, 2013 Special Edition, at v.

⁸ See Gov. Code § 56133(e).

⁹ Gov. Code § 56133(a) (emphasis added).

¹⁰ Gov. Code § 56070.

¹¹ Gov. Code § 56010.

This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.¹²

The apparent purpose of this exception is to limit Commission jurisdiction to review inter-agency service agreements which do not have implications for land use intensity, as do the out-of-service-area contracts with which section 56133 is primarily concerned. That purpose need not distinguish between the local agencies within the Legislature's power and federal agencies, which are not, as CKH must in most other settings. Accordingly, we conclude that section 56133's provisions and their context require a broader definition of "public agency" to include federal agencies than is stated in section 56070 for other provisions of CKH.

Coronado also argues the level of service to be provided to the Base is not "consistent with the level of service by the existing service provider." True, but this ignores the language of the exception. New services need not be consistent with old services but with "the level of service contemplated by the existing service provider." Imperial Beach stated by its City Manager's March 30, 2015 letter that it was willing and able to serve the new training facilities. Thus, Imperial Beach "contemplates" this level of service so as to trigger this exception to Commission review under section 56133.

Coronado Argument 4. Finally, Coronado argues that because the services do not respond to an existing or impending threat to the health and safety, Commission approval is required before Imperial Beach may provide them. The Commission's 2013 LAFCO Procedures Guide provides:

LAFCO may **approve** a request for out-of-agency services if the affected territory is within the agency's sphere of influence and is in anticipation of a later change in organization [or if such services] respond to an existing or impending threat to the health and safety of the public or the

¹² Gov. Code § 56133(e).

Michael Ott, Executive Officer

November 12, 2015

Page 8

affected residents [if certain requirements are met].
(Emphasis added.)

However, these requirements apply to the **approval** or authorization of a request for Commission approval of new or extended services. They do not address whether such a request is required. As stated elsewhere here, we conclude the Executive Officer correctly determined no such request is required on the current facts.

CONCLUSION

We conclude the Executive Officer correctly determined that Imperial Beach does not require advance approval of your Commission to continue to serve the Base under the 1967 Agreement and to serve the new training facilities the Base proposes for either or both of two reasons: the services predate 2001 and involve only two public agencies.

Your Commission should allow public comment on this matter and then exercise one of these options:

1. Accept your Executive Officer's conclusion and deny Coronado's request for reconsideration.
2. Grant Coronado's request and exercise jurisdiction under section 56133 to approve (with or without conditions) or disapprove Imperial Beach's services to the Base. If you pursue this option, we recommend you continue this item to a subsequent meeting so Imperial Beach could formally submit an application and processing fees to the Commission. This will also allow your Executive Officer to prepare a staff report to address the merits of these issues, including the implications for Imperial Beach and LAFCO if services are not provided as required by the 1967 Agreement.

This matter is also agendized for closed session to allow your Commission to receive confidential legal advice should you feel the need for it. If you have questions or concerns before the December 7th meeting, please contact Mr. Colantuono.

Attachment 5: Appeal of Preliminary Determination



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er
Attorney at Law
Direct Dial: (510) 808-2000
jbakker@meyersnave.com

9A
9B

September 8, 2015

Via E-mail and U.S. Mail

Michael D. Ott, Executive Officer
San Diego Local Agency Formation Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123

Re: Appeal of Executive Officer's August 7, 2015 Preliminary Determination on the Provision of Wastewater Service to Naval Base Coronado Coastal Campus

Dear Mr. Ott:

As you know, I represent the City of Coronado in this matter. My client and I have carefully reviewed your preliminary determination—that LAFCO has no authority over Imperial Beach's provision of sewer service to the Coastal Campus. The City disagrees in the strongest possible terms with your preliminary determination. It would have LAFCO abdicate its obligation to ensure the logical formation of local agency boundaries. (See Gov. Code, § 56001.) It is tough to imagine a situation that calls out for LAFCO intervention more than one city providing service within another city without the city's consent.

Accordingly, the City—reserving its rights to challenge the unlawful process that has been established—hereby appeals your preliminary determination, for the reasons set forth below. While City under separate cover is providing a check for the “filing fee,” the payment is made under protest because the City can find no basis in state law or LAFCO policy for LAFCO to charge a “reconsideration” fee for reconsidering a preliminary statutory interpretation of the Executive Officer.

1. **The City Does Not Oppose the Coastal Campus Project Itself.**

Initially, we must correct the record about the City's motivations. You misrepresent the City's position on the Coastal Campus project. (See pp. 1, 8.) The City does not oppose the Coastal Campus project. Rather, it opposes the Navy's proposal that another municipality provide sewer service to the Coastal Campus—despite it being in Coronado—without the consent of Coronado. Your gratuitous insinuations (see pp. 1 and 8) that the City's concerns about the impacts of the project on the City are what is motivating its request to LAFCO is mistaken.

The City's position in this matter is based on the following principles, with which LAFCO should agree:

- Coronado, not another city, should make decisions about Coronado.
- LAFCO has identified Coronado as the service provider for the Coastal Campus property—unsurprisingly given the Coastal Campus's presence in Coronado. (See LAFCO Resolution, dated May 5, 2014, Affirming Coronado's Sphere of Influence.)
- If Imperial Beach serves the Coastal Campus, it would permanently link part of Coronado with Imperial Beach (even if the Navy later sells the property for private development) and will fragment the full service municipality of Coronado.
- Two different service providers will result in two different levels of service within Coronado.

2. Specific Areas of Reconsideration

Although this is a dispute about whether LAFCO will comply with its statutory obligation under Government Code section 56133, you have conjured an administrative process where one does not exist. We can find nothing in state law or LAFCO policies that would justify the determination and appeal process that you have established.

While the City has no issue with again expressing its views in writing and then being heard by the commission, two process issues are important. First, despite your efforts to establish an administrative process, the City does not believe that anything about this proceeding would subject it to the "exhaustion of administrative remedies" doctrine in a later legal proceeding. LAFCO cannot use this process to dodge its responsibility to comply with applicable law. Coronado reserves the right to raise any arguments in later legal proceedings, even those not raised herein. (We are reacting in particular to your statement that the appeal "need to . . . cite the specific area(s) of reconsideration.") If you have some authority to the contrary, please advise us in sufficient time before the commission meeting so that we might be able to reconsider our position. Second, the filing fee you demand for access to the commission is unlawful. The fee you demand is for reconsideration of commission decisions on changes of organization under Government Code section 56895. It is not due here, where the City is merely asking LAFCO to comply with its statutory obligation. In order to move this process along, though, the City is paying the fee under protest, reserving all of its rights to challenge the fee's legality, and hereby asks the commission to authorize you to refund it.

With those formalities out of the way, we turn to the City's "specific areas" on which it is seeking "reconsideration."

a. **Government Code Section 56133 Requires LAFCO to Disapprove Imperial Beach's Proposed Provision of Sewer Service to the NBC Coastal Campus.**

Your preliminary determination asserts that Government Code section 56133, which requires LAFCO approval for an agency to provide "new or extended services" outside of its boundaries, does not apply. You conclude that the following two exemptions apply:

- *First Exception.* "agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider"
- *Fourth Exception.* "an extended service that a city or district was providing on or before January 1, 2001."

We explain below that neither exception applies and that therefore LAFCO would have to disapprove any request from Imperial Beach to serve the Coastal Campus.

i. **If Section 56133 Applies, LAFCO Cannot Authorize Imperial Beach to Serve the Coastal Campus Because It Is Outside of Imperial Beach's Sphere of Influence.**

Government Code section 56133 prohibits Imperial Beach from providing "new or extended services by contract or agreement outside its jurisdictional boundaries" unless LAFCO provides its written approval. (subd. (a).) It goes on to prohibit LAFCO from authorizing Imperial Beach to provide "provide new or extended services . . . outside its sphere of influence" unless it is "to respond to an existing or impending threat to the public health or safety of the residents of the affected territory." (subd. (c).) The Coastal Campus site, being in Coronado, is outside of Imperial Beach's sphere of influence, there are no residents, and there are no known public health and safety concerns motivating the Navy's proposal. No one would argue that this exception to the LAFCO approval requirement applies.

Thus, unless one of the two exceptions you cite applies, the Coastal Campus may not receive sewer service from Imperial Beach except with Coronado's consent.

ii. **Service to the Coastal Campus is Not Being Provided at Present and Therefore is Not Exempt under the Fourth Exemption.**

You assert that any expanded service that occurs pursuant to the 1967 contract is "an extended service that" Imperial Beach "was providing on or before January 1, 2001." You therefore argue that LAFCO has no power to consider the project. Your position is incorrect for three reasons.

First, you read the existing service exemption too broadly. The exemption (for “*an expanded service*”) merely grandfathers service to existing development rather than grandfathering future development on land previously served by contract. Unlike some of the other exemptions in Government Code section 56133, this exemption makes no mention of contracts or agreements, expressly applying to “*an extended service*” rather than to service provided under “*an existing contract.*” We carefully reviewed the legislative history of section 56133, and we could find no support for the expansive reading you give the fourth exception. Under your reading, any expanded services on property served prior to 2001 would be exempt from LAFCO’s purview. We do not need to make slippery slope arguments, since the absurd results of your interpretation are right in front of us: it would have the effect of grandfathering a massive 1,500,000 square foot development project that will generate orders of magnitude more sewage than the miniscule abandoned Navy development presently served by Imperial Beach. This broad reading of the Fourth Exemption has the result of limiting LAFCO’s ability to ensure the logical formation of local agency boundaries.

Second, even if your expansive interpretation of the Fourth Exemption is correct, you are mistaken that the 1967 agreement obligates Imperial Beach to serve the NBC Coastal Campus development. The 1967 agreement requires Imperial Beach to provide sewer service “as required by the government.” However, you ignore the fact that the 1967 agreement pertained to a specific project, the Naval Radio Station. There is a vast difference between agreeing to serve a tiny outpost and serving a 1,500,000 square foot institutional facility. The only reasonable reading of the agreement is that the obligation to serve is limited to the needs of the Naval Radio Station. The initial paragraph of the agreement states that the agreement pertains to service to the Naval Radio Station and not to the property more generally. Furthermore, the handle-all-sewage language you rely upon references “the project,” demonstrating that Imperial Beach’s obligation to serve is limited to the Naval Radio Station project. Thus, the 1967 agreement does not require Imperial Beach to serve NBC Coastal Campus.

Finally, your conclusion is premised on an invalid agreement. Imperial Beach lacks the legal authority to provide sewer service outside of its boundaries. In general, cities cannot provide services outside of their corporate boundaries in the absence of constitutional or statutory authorization. (See *City of Oakland v. Brock* (1937) 8 Cal.2d 639, 641.) Cities are specifically authorized to provide certain other utility services, including water and electrical services but not sewer service, outside of their boundaries, but they cannot do so within the boundaries of another city without the city’s consent. (See Cal.Const., art. XI, § 9.) But our research disclosed no statutory provision that allows a city to provide sewer service outside of its boundaries. We did find provisions that authorize extraterritorial *operation* of sewer utilities, but only to the extent necessary to supply its residents with sewer service. (See, e.g., Pub. Util. Code, § 10004.)

The lack of legal authority provides yet another ground to compel LAFCO to exercise its responsibility under section 56133 or otherwise to order Imperial Beach not to serve the Coastal Campus without the consent of Coronado.

iii. **The Navy is Not a “Public Agency” Under the First Exception and Therefore the First Exception Does Not Apply.**

You take the position that the first exemption “may” apply. Coronado had previously argued that the first exception is inapplicable because federal agencies are not among the agencies defined as “public agencies” under Government Code section 56070. You disagree noting that Cortese-Knox’s definitions apply “[u]nless the provision or context otherwise requires. . . .” (Gov. Code, § 56010.) You then go on to explain your view that section 56133 was “intended to reserve LAFCO’s review for those out-of-boundary service agreements that are likely to implicate the purposes for which LAFCO was formed” and that agreements between public agencies are not one of them “because [they] are subject to NEPA and CEQA.” Therefore, you conclude that the context may require that “agency” as used in section 56133 “include federal agencies which are otherwise immune from LAFCO’s authority.”

Initially, it is unclear whether you have made a determination on this particular issue. You indicate that the primary basis for your conclusion is the Fourth Exemption, and you also indicate that the First Exception “may be applicable.”

In any event, your tentative preliminary determination is mistaken. First, LAFCOs were not created to address the issues that CEQA and NEPA address. LAFCOs exist to ensure “the logical formation and determination of local agency boundaries” so as to encourage “orderly growth and development.” (See Gov. Code, § 56001.) As we noted above, one would be hard pressed to find a more appropriate circumstance for LAFCO intervention than, as here, one city providing service within another city. Second, the fact that the federal government is involved has nothing to do with this question. While the federal government may not be regulated by LAFCO, the local agencies that might serve it—such as Imperial Beach as is proposed here—are. Third, the First Exemption exempts only agreements between public agencies where one public agency agrees to provide a “public service” that the contracting public agency (“the existing service provider”) already has the authority to provide. It is unlikely that the federal government would ever have the authority to provide “public services.” So, it is unsurprising that federal agencies are not covered by the exemption.

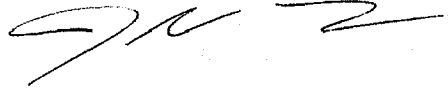
For all these reasons, Coronado believes that LAFCO is compelled by law to order Imperial Beach not to serve the Coastal Campus without the consent of Coronado.

The foregoing implies that Coronado intends to use every means at its disposal to ensure that Coronado decides how sewer service is provided in Coronado. But, in order to ensure that the commission may meet in closed session, the City hereby “threatens litigation”

Michael D. Ott
September 8, 2015
Page 6

explicitly. We look forward to continuing discussions with you and the commission so that this matter can be resolved without the need for legal proceedings.

Very truly yours,



John Bakker
Attorney at Law

c: Andy Hall, City Manager, Imperial Beach
Captain Stephen Barnett, Commanding Officer, Naval Base Coronado

JB:jb
2515602.2

ITEM 9 A/B

ATTACHMENT 6

**Provision of Wastewater Service to
the Proposed Coastal Campus on
the Naval Base Coronado Silver
Strand Training Complex –
South (NBC SSTC-S)**

**Preliminary Determination
Naval Base Coronado –
Coastal Campus
Wastewater Service Agreement
August 7, 2015**

**PRELIMINARY DETERMINATION
NAVAL BASE CORONADO – COASTAL CAMPUS
WASTEWATER SERVICE AGREEMENT
August 7, 2015**

SUMMARY OF PRELIMINARY DETERMINATION

Background

The Department of the Navy (Navy) is pursuing the development of a Coastal Campus on the Naval Base Coronado (NBC) Silver Strand Training Complex - South (NBC SSTC-S) as part of a Special Warfare Command Operations project. The acreage for the NBC SSTC-S consists of 548 acres of land, and the total footprint within NBC SSTC-S for the Coastal Campus project is approximately 169.4 acres. This Coastal Campus project is designed to respond to base training activities, operations, facilities, and expansion needs to meet a "congressional mandate" for military readiness. Construction of the Coastal Campus is proposed over a 10-year period and will add nearly 1.5 million square feet of facilities within the corporate limits of Coronado, just north of Imperial Beach on the Silver Strand. The Coastal Campus will cost approximately \$700 million and is considered an integral part of the Department of Defense's ongoing Global War on Terrorism, following the events of September 11, 2001. A map of the NBC SSTC-S site is attached (refer to vicinity map at end of report).

Although the Coastal Campus site is located within the corporate limits of Coronado, it is currently receiving wastewater service under an existing service agreement between the City of Imperial Beach and the Navy. On April 9, 2015, the Executive Officer of the San Diego Local Agency Formation Commission (LAFCO) determined that the ongoing provision of sewer service by the City of Imperial Beach to the Coastal Campus is exempt from LAFCO purview per Government Code Section 56133(e). Subsection (e) of Government Code Section 56133 exempts from LAFCO purview extended services that a city or district was providing on or before January 1, 2001. The existence of the contractual service agreement was recently documented by the City of Imperial Beach and has been in place between Imperial Beach and the Navy since 1967. The written agreement specifies that Imperial Beach "...shall provide sanitary sewerage services as required by the Government" and the City "shall receive, transport, treat and dispose of all sewage originating at the project in such amounts as the Government desires to release into the City's system..."

Since the intensity of land uses within NBC will increase with the Coastal Campus project, the City of Coronado is concerned about potential offsite impacts. Coronado believes that the City's concerns were not adequately addressed during the federal Environmental Impact Statement (EIS) process and has turned to LAFCO to address

this issue by exercising discretionary authority over the provision of wastewater services. LAFCO's Executive Officer indicated that provision of sewer services appears to be exempt from LAFCO purview, but would reconsider this associated determination after providing the two cities and Navy an opportunity to submit comments.

In response to the Executive Officer's request for comments, the Commanding Officer of the NBC issued a letter on June 4, 2015, indicating the Department of the Navy supported the Executive Officer's determination that the provision of sewer service to the NBC Coastal Campus site is exempt from LAFCO's purview. The Navy's Commanding Officer further stated that the existing historic agreement to provide wastewater services by the City of Imperial Beach to the Navy will remain in effect, and the City of Imperial Beach will simply continue to provide wastewater services as required by the Government in such amounts as the Government desires to release in accordance with the wastewater service agreement in place since 1967. As such, the Navy supports the Executive Officer's decision that the NBC Coastal Campus wastewater service is exempt from LAFCO purview because the extended service has been provided to the Federal Government before January 1, 2001.

On March 30, 2015, the City Imperial Beach informed LAFCO that the City of Imperial Beach is willing to continue providing service to the Navy and that authorization for the services has been verified in the official City Council meeting minutes in 1967 authorizing the Mayor to execute the agreement and through several amendments to the agreement from that date forward. On May 26, 2015, the City of Imperial Beach changed this position and stated that Imperial Beach recognizes the authority of LAFCO to determine the appropriate utility service boundaries for municipalities and would not provide services beyond the current service levels without authorization from LAFCO.

On May 1, 2015 and July 7, 2015, the City of Coronado reiterated its request that LAFCO undertake review of the provision of sewer services to the Coastal Campus project. The City also requested that LAFCO determine that the City of Imperial Beach cannot provide wastewater services without LAFCO approval because the NBC Coastal Campus project is within Coronado's city limits and outside Imperial Beach's city limits and sphere of influence. Lastly, Coronado requests that LAFCO find that the City of Coronado (and not the City of Imperial Beach) is the proper provider of wastewater services to the Proposed Sewer Project.

The Executive Officer indicated that a meeting would be scheduled, if necessary, after reviewing the comments provided by Imperial Beach, Coronado, and the Navy. The local agencies and Federal Government were also informed that, if concurrence was reached by all parties regarding the Executive Officer's preliminary determination, no further LAFCO action would be taken. However, if any of the parties disagreed with the preliminary determination, then a subsequent appeal could be docketed for consideration by the full Commission (LAFCO). An appeal would need to be made in writing and cite the specific area(s) of reconsideration. A filing fee of \$1,030 would also be necessary.

Summary of Executive Officer's Preliminary Determination

In summary, Coronado's argument that LAFCO purview is mandatory in order for the City of Imperial Beach to continue providing sewer service to the NBC Coastal Campus site is belied by the plain language of subdivision (e) of Government Code Section 56133. Subdivision (e) states that section 56133 does not apply to an extended service that a city or district was providing on or before January 1, 2001. That section further exempts from LAFCO review "contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider."

In the case of the NBC Coastal Campus site, sewer service has been provided via a service agreement between the City of Imperial Beach and the Navy since 1967. The executed service agreement, as last amended in 1991, states that the City of Imperial Beach "...shall provide sanitary sewerage services as required by the Government" and that the City of Imperial Beach "...shall receive, transport, treat and dispose of all sewage originating at the project in such amounts as the Government desires to release into the City's system..." The fact that the volume of sewage is likely to increase given the development of the Coastal Campus does not alter the conclusion that the provision of sewer service to the Coastal Campus site is exempt from LAFCO purview based on the existence of a pre-2001 service agreement.

The statute also contains an exception for when "the level of service to be provided is consistent with the level of service contemplated by the existing service provider." Given that the City of Imperial Beach agrees to receive, transport, treat, and dispose of sewage generated by the Navy via the 1967 sewer agreement, the existence of the 1967 agreement represents evidence that both Imperial Beach and the Navy have contemplated a potential level of service increase, and that Imperial Beach is able to provide and wishes to provide increased services. This fact would enable LAFCO to determine that the level of service associated with the NBC Coast Campus project is consistent with the level of service contemplated by Imperial Beach pursuant to Government Code Section 56133(e). Moreover, Government Code Section 56010 also states that the definitions provided for the Cortese-Knox-Hertzberg Act apply "[u]nless the provision or context otherwise requires..." Because section 56133 is intended to reserve LAFCO's review for those out-of-boundary service agreement which are likely to implicate the purposes for which LAFCO was formed; and because government agencies — whether federal, state or local — are subject to NEPA and CEQA and exist to address concerns like those which animated the creation of LAFCOs, the San Diego LAFCO concludes that the context of section 56010 requires that the word "agency" as used here include federal agencies which are otherwise immune from LAFCO's authority under the Cortese-Knox-Hertzberg Act.

In summary, given the fourth exemption contained in Government Code Section 56133(e) for an extended service provided on or before January 1, 2001, and/or the first

exemption involving two or more public agencies as described above, the Executive Officer's April 9, 2015 determination is hereby reaffirmed. This means the ongoing provision of sewer service by Imperial Beach to the NBC Coastal Campus project site is exempt from LAFCO purview. Below are the pertinent facts and conclusions regarding the provision of wastewater service to the NBC Coastal Campus site.

Facts

1. Government Code Section 56133(e) states that LAFCO's contractual service agreement authority does not apply to an extended service that a city or district was providing on or before January 1, 2001. It further exempts from LAFCO review "contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider." That language also supports an exemption here as detailed below.
2. The City of Imperial Beach executed a written contract/agreement with the Navy in 1967 specifying that Imperial Beach "...shall provide sanitary sewerage services as required by the Government" and the City "shall receive, transport, treat and dispose of all sewage originating at the project in such amounts as the Government desires to release into the City's system..." Sewer service has accordingly been provided by Imperial Beach to the Navy since 1967.
3. The 1967 contract was last amended in 1991 and incorporates the provision requiring Imperial Beach to provide sewerage service to the Navy at levels required and desired by the Federal Government. The 1967 contract, as amended, does not appear to contain a termination, amendment, or opt-out provision for either Imperial Beach or the Navy.
4. On March 30, 2015, Imperial Beach City Manager Andy Hall notified LAFCO's Executive Officer that Imperial Beach is willing to continue providing sewage service to the Navy and that authorization to provide service had been verified in the official City Council meeting minutes in 1967 authorizing the Mayor to execute the sewage agreement and through several amendments to the agreement from that date forward. The latest amendment to the agreement is dated and signed September 18, 1991, and Imperial Beach states that it has been operating in accordance with the agreement.
5. On April 9, 2015, LAFCO's Executive Officer informed Coronado, Imperial Beach, and the Navy that the provision of sewage service to the NBC Coastal Campus site is exempt from LAFCO purview because documentation exists showing that sewer service has been provided by Imperial Beach to the Navy since 1967.
6. On May 1, 2015 and July 7, 2015, the City of Coronado's then-legal counsel (Burke, Williams & Sorenson, LLP) submitted correspondence requesting reconsideration of the above determination and requested that LAFCO assume jurisdiction for the provision of

sewer service to the NBC Coastal Campus site pursuant to Government Code Sections 56375(p) and 56133.

7. On May 4, 2015, Imperial Beach's legal counsel Jennifer Lyon informed the Executive Officer that her law firm (McDougal, Love, Eckis, Boehmer & Foley) will not be representing Imperial Beach on the NBC Coastal Campus matter because the law firm also represents the City of Coronado.

8. On May 26, 2015, Imperial Beach City Manager Andy Hall notified LAFCO's Executive Officer that Imperial Beach will not expand wastewater service beyond the current service levels unless otherwise authorized by LAFCO.

9. On June 4, 2015, the Department of the Navy submitted written documentation supporting the determination that the provision of sewer service to the NBC Coastal Campus is not subject to LAFCO purview and that the proposed Coastal Campus project is consistent with the existing historic 1967 agreement between Imperial Beach and the Navy.

Conclusions and Recommendations

1. Government Code Section 56133(e) exempts from LAFCO purview extended services that a city or district was providing on or before January 1, 2001 and further exempts from LAFCO review "contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider." That language also supports an exemption here as detailed below. A contractual service agreement was executed between the City of Imperial Beach and the Navy beginning in 1967 providing the Navy with contractual rights for sewage treatment, transport, and disposal services from Imperial Beach as required and desired by the Navy. Sewer service has accordingly been provided by Imperial Beach to the Navy since 1967.

2. The San Diego LAFCO only has those powers which are specifically granted to it by statute, and does not have authorization to assume contractual service agreement authority for extended services exempted by Government Code Section 56133(e); therefore, based on the existence of the 1967 contractual service agreement between Imperial Beach and the Navy, the Executive Officer's April 9, 2015 determination concluding that the provision of sewer service to the Navy is exempt from LAFCO purview pursuant to Government Code Section 56133(e) is reaffirmed.

3. The City of Imperial Beach City Manager's statement that Imperial Beach will not expand wastewater service beyond current levels represents a contractual and legal matter between Imperial Beach and the Navy, and not LAFCO. LAFCO has no authorization under State Law to assume jurisdiction regarding this contract issue,

because the 1967 wastewater service agreement is exempt from LAFCO purview per Government Code Section 56133(e).

4. Since Imperial Beach may not have legal counsel representation regarding this contractual service issue due to a conflict of interest with its current legal counsel, it is recommended that the City obtain outside legal counsel to avoid a potential breach of contract issue with the Navy.

5. In the event that wastewater service is discontinued through the lawful termination of the 1967 wastewater service agreement between Imperial Beach and the Navy, then LAFCO purview over a subsequent new agreement may be required pursuant to Government Code Section 56133. However, since the NBC Coastal Campus site is outside of the corporate limits of Imperial Beach and its sphere of influence, LAFCO approval for a contractual agreement may be problematic because Government Code Section 56133(b) requires that the Commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries, only if the territory is within the sphere of influence of the local agency and is in anticipation of a later change of organization (e.g., annexation). Given that the NBC Coastal Campus contract territory is within the Coronado city limits, it is unlikely that the territory would qualify for inclusion in Imperial Beach's sphere of influence, unless the Commission adopted overlapping sphere designations for both Imperial Beach and Coronado.

DISCUSSION: NAVAL BASE CORONADO (NBC): CONTRACTUAL WASTE WATER SERVICE

Naval Base Coronado Coastal Campus

In 1997, Naval Base Coronado (NBC) was created, incorporating and consolidating eight separate naval installations under one Commanding Officer. Today, NBC comprises the following installations in San Diego and Los Angeles Counties: Naval Air Station North Island (NASNI); Naval Amphibious Base (NAB) Coronado; the Silver Strand Training Complex (SSTC), formerly known as the Naval Radio Receiving Facility; Naval Outlying Landing Field Imperial Beach (NOLFIB); Naval Auxiliary Landing Field; San Clemente Island (NALF SCI); Camp Michael Monsoor (CMM); Remote Training Site Warner Springs; and Camp Morena. These facilities encompass more than 57,000 acres and make NBC the largest command in the southwest region of the U.S. employing over 36,000 military and civilian personnel. NBC accounts for over 30% of the Region's total workforce, and represents the largest workforce in San Diego County.

The Navy is moving forward with construction of a \$700 million Coastal Campus on the south end of the Silver Strand to support special warfare training. The Global War on Terrorism, following the events of September 11, 2001, signaled the need for, and ultimately led to, an increase in the demand for Special Operations Force (SOF) capabilities, including Naval Special Warfare, the maritime component of the U.S. Special Operations Command (USSOCOM). The Navy was directed to support an increase in Special Warfare Operators or Sea, Air, and Land (SEAL) team personnel

and to develop riverine (river-type environments) warfare capabilities. The Naval Surface Warfare Command (NSWC) experienced substantial growth to meet the global operational demands for special operatives, which resulted in the need for new facilities to support logistics, operations, training, and administration. The Navy is accordingly pursuing the Coastal Campus as part of a Special Warfare Command Operations project to respond to base training activities, operations, facilities, and expansion needs to meet what the Navy describes as a "congressional mandate" for military readiness at Naval Base Coronado.

Construction is proposed over a 10-year period and will add nearly 1.5 million square feet of facilities just north of Imperial Beach. The site is home to a World War II-era bunker that would be demolished to make way for construction. This project allows the Navy to create a state-of-the-art campus that meets the evolving needs of Naval Special Warfare Command. It will consolidate training and operational activities to support growth of special warfare forces on the West Coast and maintain the required levels of operational readiness. The acreage for Naval Base Coronado Silver Strand Training Complex - South (NBC SSTC-S) comprises 548 acres of land. The total footprint within NBC SSTC-S for the Coastal Campus project is approximately 169.4 acres.

This Coastal Campus project will adjoin communities within Coronado and Imperial Beach. The City of Coronado is concerned about this project and has asked the Department of Navy to partner with surrounding communities and take a responsible, pro-active approach to the proposed project and associated environmental impacts. The Navy recently completed an Environmental Impact Statement (EIS) for the Coastal Campus project. The Department of the Navy issued a Record of Decision (ROD) for the EIS for the NBC Coastal Campus on June 12, 2015. The purpose of the campus is to provide adequate facilities to support future growth of NSWC on the west coast and maintain the required levels of operational readiness of special warfare forces, as mandated by Section 167 of Title 10 U.S.C. After weighing the strategic, operational, and environmental consequences of the proposed action, the Department of the Navy announced its decision to support the current and future operations readiness of NSWC personnel by constructing, operating, and maintaining the Coastal Campus at the Silver Strand Training Complex – South (SSTC-South), as set out in Alternative 1 of the Final EIS for the NBC Coastal Campus.

Implementation of Alternative 1 will include design and construction of logistical support buildings, equipment use and maintenance training facilities, classroom and tactical skills instruction buildings, storage and administrative facilities, utilities, fencing, roads, and parking. A new controlled entry point would be provided for immediate access to/from State Route 75 and Building 99, a World War II-era bunker eligible for listing in the National Register of Historic Places (NHRP), would be demolished to facilitate campus construction.

The ROD, signed on June 12, 2015, by Steven R. Iselin, Principal Deputy Assistant Secretary of the Navy (Energy, Installations and Environment) can be found at: www.NBCCoastalCampusEIS.com. It has also been published in the Federal Register.

The ROD identifies all the alternatives that were considered and analyzed in detail, describes applicable mitigation measures, and discusses relevant factors considered by the DON in making its decision. In addition, the ROD describes public involvement conducted as part of the project and provides a response to comments that were received on the Final EIS. The publication of the ROD comes after a 30-day wait period that followed the release of the Final EIS on April 3, 2015. Various federal, state, and local agencies, and other interested individuals and organizations have been notified that the ROD has been published.

Coronado is concerned about traffic impacts on all major arterials leading to and from the NBC site, as well as ongoing impacts from existing naval bases. Coronado cites noise from traffic and aircraft activities at North Island and associated degraded air quality (residual soot from traffic, truck and airplane exhaust). Impacts also include emergency support services such as fire and police for enforcing traffic laws and responding to incidents; and diminishing public access along coastal shorelines due to training activities and endangered biological resources. Coronado states that the increased impacts to these already stressed resources due to the Coastal Campus project will undoubtedly result in additional significant, and adverse cumulative environmental impacts to the community.

The City of Coronado believes the congressionally mandated needs and directives of the Navy will lead to increased personnel, facilities, activities, training, and infrastructure within a relatively small geographic area, and within the City of Coronado. While the City of Coronado's concerns are varied, it has recently focused some attention on the existing contractual sewer service agreement between the City of Imperial Beach and the Department of Navy. Consequently, Coronado has recently learned of LAFCO's contractual service agreement authority under Government Code Section 56133, and is asking the San Diego LAFCO to assume jurisdiction to review and approve the agreement.

Provision of Sewer Service to Naval Base Coronado Coastal Campus

Sewer service has been provided since 1967 to the SSTC-South area via an out-of-agency agreement between the City of Imperial Beach and the Naval Facilities Engineering Command. A copy of the agreement is attached. As previously stated, the Coastal Campus project is located within the Coronado corporate limits, but has been receiving sewer service from Imperial Beach because of the proximity of Imperial Beach infrastructure to the site. The last amendment to the sewer service contract with Imperial Beach was in 1991 and no further amendment is proposed for service to the new facilities, suggesting no contract is to be approved that could trigger LAFCO review under Government code section 56133 even if exceptions to that section did not apply here, as LAFCO has concluded.

At its peak, the City of Imperial Beach provided sewer service to four dwellings and one guard house. The dwellings and guard house are also physically located in the City of Coronado, and outside of both the City of Imperial Beach and its sphere of influence.

The executed service agreement, as amended in 1991, states that the City of Imperial Beach must provide sanitary sewerage services "as required by the Government" and "receive, transport, treat and dispose of all sewage originating at the project in such amounts as the Government desires to release into the City's system and in a manner and by such means as will constitute no hazard to public health." The fact that sewer service has historically been provided by Imperial Beach to the Navy for limited uses within Coronado does not appear to void the Navy's contractual rights to receive additional wastewater treatment, transport, and disposal services from Imperial Beach. The scope of the exception to section 56133 quoted above also turns on the level of service contemplated by Imperial Beach and/or the Federal Government, as explained above, the level of service required here is within that scope.

Wastewater service is proposed to be provided to the Coastal Campus site via the existing sewer service agreement by the City of Imperial Beach. Sewage would flow to the City of Imperial Beach's 6-inch wastewater line south of SSTC-South. A new wastewater conveyance system along with a wastewater storage facility and a proposed 450 gallon per minute pump station would be included on-site. A new 6-inch-diameter sewer force main would be proposed extending approximately 4,000 feet from the center of the existing Wullenweber Antenna Array within Hooper Boulevard to the connection to the existing Imperial Beach system. Operational redundancy during emergency conditions would be provided by equipping the new pump station with an emergency storage facility capable of accommodating up to 6 hours of average sewer inflow.

Off-site improvements to the City's system may be required to accommodate the additional wastewater demand. It is assumed that the City's entire sewer main to Pump Station 5 (east of the intersection of 19 Dahlia Avenue and Seacoast Drive) would be replaced. This would include upgrades to the sewer lines within Silver Strand Boulevard, Calia Avenue, and Seacoast Drive to Pump Station 5. Improvements to the sewer line within Imperial Beach Boulevard from 4th Street to East Lane may also be required. The proposed improvements would increase the 6-inch line to an 8-inch or 10-inch line.

STATUTORY REQUIREMENTS: PROVIDING SERVICES OUTSIDE JURISDICTIONAL BOUNDARIES

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (formerly the Cortese-Knox Local Government Reorganization Act of 1985) (§ 56000 et seq.) was enacted to encourage planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns, and to discourage urban sprawl and encourage the orderly formation and development of local agencies based upon local conditions and circumstances. LAFCOs are an administrative body within each county that oversee urban development and have only those express (or necessarily implied) powers which are specifically granted to them by statute. Most of LAFCO's powers are set forth in Government Code Section 56375. Pertinent to the situation involving the Cities of Imperial Beach and Coronado, and the Navy is subdivision (p) of section 56375, stating that a LAFCO has the power and duty "to authorize a city or district to provide new or extended services outside its jurisdictional boundaries pursuant to Section 56133."

Section 56133 provides, in pertinent part:

(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the [LAFCO] in the affected county.

(b) The Commission (LAFCO) may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.

(c) The LAFCO may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:

(1) The entity applying for the contract approval has provided the [LAFCO] with documentation of a threat to the health and safety of the public or the affected residents.

(2) The [LAFCO] has notified any alternate service provider . . . that has filed a map and a statement of its service capabilities with the [LAFCO].

(d) The executive officer of the LAFCO, within 30 days of receipt of a request for approval by a city or district of a contract to extend services outside its jurisdictional boundary, shall determine whether the request is complete When the request is deemed complete, the executive officer shall place the request on the agenda [LAFCO] or executive officer shall approve, disapprove, or approve with conditions the contract for extended services.

Section 56133 concludes with subdivision (e), which describes the circumstances in which the section (56133) does not apply. For example, local agencies are not required to seek LAFCO approval for the following:

- Contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the exiting service provider.

- Contracts for the transfer of non-potable or non-treated water.

- Contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the [LAFCO] in the affected county.

- Extended service that a city or district was providing on or before January 1, 2001.

- A local publicly owned electric utility . . . providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries."

REASONS WHY SERVICES ARE PROVIDED OUTSIDE LOCAL AGENCY BOUNDARIES

Local agencies provide services outside of their jurisdictional boundaries for various reasons. The most common situation involves the extension of public water or wastewater service to individual properties to resolve potential health problems caused by failing onsite wells or subsurface septic systems. These types of service extensions are usually made on an emergency basis and then followed up with a subsequent annexation after the emergency situation is resolved. However, annexation sometimes does not occur, especially if the affected property is not contiguous to a service provider's jurisdictional boundaries. In other cases, a property may be within the boundaries of a city or district that is unable to extend public services, so services may be provided by a different agency that is nearby. There are also other examples of out-of-agency services, where local agencies extend infrastructure to serve new development. This type of service extension is less common. When an out-of-agency service arrangement is necessary, the service provider typically requires that the service recipient sign a binding legal document called a contractual service agreement that spells out the terms of the service, utility rates, surcharges, contract amendment provisions, and conditions of termination and annexation, etc.

Government Code Section 56133 establishes the requirements and LAFCO purview for out-of-agency contractual service arrangements. Section 56133 was first enacted in 1993 as part of Assembly Bill No. 1335 (Gotch). Senate analysis of the bill explained that regulating city and special district boundaries usually also regulate where a city or district provides services. AB 1335 was in response to complaints that some local agencies circumvented the Legislature's original jurisdictional intent by merely signing contracts to serve outside their boundaries without ever changing their boundaries. Enactment of Assembly Bill No. 1335 required cities and districts to first obtain LAFCO approval before they could contract or agree to provide new or extended services outside their boundaries, unless the service was exempt from LAFCO purview. The contractual service provisions contained in AB 1335 were later incorporated into a major re-write of the LAFCO statutes resulting in the enactment of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act).

Exemptions

As with most all governmental regulations, LAFCO statutes contain statutory exemptions for special situations. With respect to LAFCO's contractual service agreement authority in State Law, Government Code Section 56133 (e) currently lists five exemptions. Some of the exemptions cover existing contracts and agreements, while other exemptions cover future ones. Among the first questions that should be asked regarding any out-of-agency service request are: (1) Are services already being provided to the subject territory? (2) Is there a written contract covering the service extension? (3) If a written contract exists, what is the date the out-of-agency services were provided and by whom? For example, if a contractual service was provided on or before January 1, 2001, then LAFCO's contractual service authority per Government Code Section 56133 does not apply. This exemption date is intended to *grandfather* certain service agreements that predated LAFCO's contractual service agreement purview. It also prevents the re-regulation of out-of-agency services that have historical and documented legacy. After these basic questions are answered, then it is advisable to review the other situations covered by the statutory exemptions.

A second statutory exemption is for contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider. These service arrangements are very common in San Diego County. They occur when one local agency is unable to serve territory within its boundaries and contracts with another local agency to deliver services. The Legislature exempts this type of arrangement because it does not change the area in which authorized services may be provided. Instead, it allows for alternative service arrangement that may be more efficient. In these situations, it is also necessary to determine that the level of service to be provided is consistent with the level of service contemplated by the exiting service provider. Again, the rationale for this exemption is that if one of the agencies has authority to provide services, but for reasons of service efficiency or cost-effectiveness, decides to outsource the provision to another entity, then LAFCO should not be in a position to hamper associated efficiencies.

Government Code Section 56133(e) also exempts contracts for the transfer of non-potable or non-treated water, as well as contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities. This exception applies to projects that also serve conservation purposes or ones that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the local agency must first request and receive written approval from the LAFCO in the affected county.

The last exemption applies to a local, publicly owned, utility providing electric services. For this exception a determination must also be made by LAFCO that the electric service agreement does not involve the acquisition, construction, or installation of electric distribution facilities by the local, publicly owned, electric utility outside of the utility's jurisdictional boundaries.

If any of the above five exceptions exist, then LAFCO purview is not exercised with respect to out-of-agency contractual service agreements. Because there are frequently unique circumstances related to each potential exception situation, local agency officials are encouraged to contact LAFCO staff to obtain confirmation as to the applicability of the exceptions. To make an informed determination, LAFCO staff will usually conduct site visits and review associated documentation, such as executed service contracts. Upon conducting a preliminary review, LAFCO staff can usually determine whether LAFCO oversight is necessary or subject to an exemption per Government Code Section 56133(e).

LAFCO Purview

If a contractual service agreement is not exempt from LAFCO purview per Government Code Section 56133(e), then local agencies must first request and receive approval from LAFCO before executing the service contract. LAFCO may approve, disapprove, or approve the contractual agreement subject to conditions. Two specific determinations must be made in order for LAFCO to be able to approve any agreement. These determinations are based on whether the subject territory is located within or outside of the sphere of influence of the proposed service provider.

If service contract territory is outside of a local agency's jurisdictional boundaries, but *within* the agency's sphere of influence, then LAFCO may authorize the provision of services "in anticipation of a later change of organization." LAFCOs throughout California have latitude with respect to implementing this provision. In the case of the San Diego LAFCO, the Commission requires that a jurisdictional change of organization application (e.g., annexation application) be submitted with the contractual service agreement. This enables the Commission to make a clear determination that the service agreement is "in anticipation of a later change of organization." This practice works well in San Diego County and all local agencies in our county appear to be in agreement with it.

If the service contract territory is outside a local agency's jurisdictional boundary and **outside** of its sphere of influence, then LAFCO may only approve the service contract/agreement if the services are provided in response to *an existing or impending threat to the public health or safety of the residents of the affected territory, and alternate service providers have been notified*. If these conditions are present, then the request for the service extension may be approved or approved with conditions.

For the request to be approved, the subject local agency would be required to provide LAFCO "with documentation of a threat to the health and safety of the public or the affected residents". The most common type of health and safety documentation would be a written statement from the County Department of Environmental Health confirming that an onsite septic system could not be feasibly repaired and that a connection to a public sewer system is necessary to resolve existing or impending health problems. The key here is the threat to health and safety of the public must be existing or impending. A contractual service agreement, for example, that is proposed in order to facilitate or serve new development does not fall within the meaning of "existing" or "impending" threat to public health and safety. Therefore, LAFCO could not approve a contractual service agreement per Section 56133 for a health and safety issue that is not present or not about to occur.

REQUEST FOR LAFCO JURISDICTION

LAFCO Determination

On September 18, 2014, the City of Coronado contacted the San Diego LAFCO staff and requested that LAFCO assume jurisdiction over the provision of sewer services (by Imperial Beach) to the Coastal Campus site. When Coronado first brought this matter to LAFCO staff's attention, neither Imperial Beach staff, nor the Navy's Coastal Campus project staff had in their possession a copy of the sewer service agreement that had been executed in 1967 between Imperial Beach and the Navy. LAFCO staff accordingly informed Coronado and the Navy that unless there was a service contract/agreement in effect, LAFCO purview may be required. This determination was transmitted to the Department of Navy as part of the EIS process being undertaken on the Coastal Campus project.

Several months after that determination was made during the EIS process, the Navy and Imperial Beach located within their archives, a copy of a 1967 wastewater agreement and associated amendments between Imperial Beach and the Navy. On December 9, 2014, the Executive Officer determined that LAFCO does not have purview over the provision of sewer service to the Coastal Campus due to the 1967 sewer service agreement between Imperial Beach and the Navy.

Since Coronado disagreed with the December 9th determination, a process was developed and followed in order to provide affected agencies an opportunity to request reconsideration. The reconsideration process and response to comments received from Coronado are summarized below.

Reconsideration Process

1. Coronado Request for Consideration: Coronado submitted a written request that LAFCO assume discretionary authority over the provision of sewer service to the NBC site. Refer to the May 1, 2015 letter submitted by Coronado.
2. Subject Agency Response: An opportunity was provided for subject agencies and the Navy to respond to whether the provision of sewer service to the NBC site is subject to or exempt from LAFCO purview per Government Code Section 56133. This step has been completed and Imperial Beach and the Department of Navy provided written comments on June 2, 2015 (letter dated May 26, 2015) and June 4, 2015, respectively. Refer to attached letters.
3. Subject Agency Review and Comment: Another opportunity was provided for subject agencies and the Navy to review and comment on responses provided to LAFCO staff. Thirty days (30-days) will be provided for this step. Refer to attached letter from Coronado, dated July 7, 2015.
4. Preliminary Determination: Preparation of a LAFCO staff report containing a preliminary staff determination. The report will be forwarded to all parties.
5. Subject Agency Meeting: A meeting will be scheduled, if necessary.
6. Concurrence: If subject agencies and the Navy concur with the LAFCO staff determination, then no further action will be taken.
7. Lack of Concurrence: Subject agencies and the Navy may appeal the staff determination by filing a request to be heard by the Commission. The request must specify and discuss the areas of disagreement and include a \$1,030 reconsideration filing fee paid prior to docketing.

Response to Comments

On May 1, 2015, the law firm then representing Coronado (Burke, Williams, & Sorensen, LLP) requested that LAFCO staff reverse its determination and conclude that the provision of sewer service to the Coastal Campus is subject to LAFCO purview. Below is a summary and response to the specific issues contained in Coronado's request for reconsideration.

- Applicability of Fourth Exemption: Coronado states that the San Diego LAFCO may not rely on the Government Code section 56133(e) to exempt the provision of sewer service to the Coastal Campus from LAFCO purview. Coronado states that LAFCO staff concluded that the fourth exemption in Government Code Section 56133(e) is applicable because extended service has been provided to the Federal Government before January 1, 2001. Coronado believes that this exemption cannot be properly relied on because the San Diego LAFCO has not included the exemption in its adopted *LAFCO Procedures Guide*. Among other things, Coronado believes that the Cortese-

Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act), requires each LAFCO to establish written policies and procedures and that each LAFCO must thereafter exercise its powers in a manner consistent with those policies and procedures (Government Code Section 56375). Accordingly, the San Diego LAFCO's *Procedures Guide* explains four of the five exemptions set forth in Section 56133(e), but does not list the fourth exemption. Having failed to adopt this fourth exemption in its *Procedures Guide*, Coronado believes that the San Diego LAFCO may not now rely on it to decline to review a city's contract for sewer services outside its boundaries.

LAFCO Staff Response: Coronado incorrectly interprets the CKH Act regarding the adoption of the *LAFCO Procedures Guide*. The Preface to the *Procedures Guide* clearly indicates that the guide is intended to serve as general information only and that, for more detail, the referenced sections of the applicable state code must be consulted. In addition, the *Procedures Guide* cannot be used by LAFCO or interested parties to preempt provisions in State Law. Government Code Section 56133(e) explicitly states that an extended service that a city or district was providing on or before January 1, 2001 is not subject to LAFCO's contractual service purview. In addition, the past tense used in the word "extended" in Section 56133 clearly shows that the Legislature intended that LAFCO's contractual service agreement purview apply only to services "extended" after 2001 and not before. The legislative analysis for the original statute and a subsequent amendment indicates that the Legislature intended that a grandfather provision be an important overarching exemption to LAFCO's discretionary authority. Refer to attached legislative analysis.

• Proper Interpretation of Exemption: Coronado believes a proper interpretation of the LAFCO exemption per Section 56133(e) would require that the new proposed sewer project be considered – if the San Diego LAFCO decides to rely on the fourth exemption. Further, Coronado states that any subsequent amendments to a wastewater service agreement for the Coastal Campus project would not be exempt from LAFCO purview. Coronado could not find any decisional law or legislative history of Section 56133(e) where an expansive reading of the statute had been adopted. In addition, Coronado states that an expansive interpretation is not provided in the San Diego LAFCO's *Procedures Guide*. In analyzing a statute's text, Coronado states that courts are guided by the basic principle that a statute should be read as a harmonious whole, with its separate parts being interpreted within their broader statutory context. The City further states that Canons of Construction require that a term used more than once in a statute ordinarily be given the same meaning throughout. Coronado believes that LAFCO staff interprets the term "extended service" in Section 56133(e) to mean "amended or expanded service". Coronado cites a policy adopted by the Humboldt LAFCO that defines a new service request as an expansion or intensification of outside agency services as further justification for its argument. Coronado adds that the service the City of Imperial Beach was providing outside its borders on or before January 1, 2001 was a sewer service to four dwellings and one guard house, and that sewer service is now proposed to be provided to 1.5 million square feet of facilities, far exceeding and expanding the level of existing service provided by the City of Imperial Beach. Coronado states that this is entirely different from the service previously provided by the City of Imperial Beach. Coronado also states that sewer service to the

Campus College project is not exempt from Section 56133(e) because the service the City of Imperial Beach "was providing before January 1, 2001" is inconsistent with the level of service now contemplated. Thus, Coronado believes the "new or extended services" the City of Imperial Beach now seeks to provide "by contract or agreement outside its jurisdictional boundaries" are subject to the written approval of the San Diego LAFCO.

LAFCO Staff Response: Government Code Section 56133(e) does not authorize LAFCO to regulate land use changes or density increases when deliberating on contractual service agreements or changes of organization. In fact, Government Code Sections 56375 (a)(6) and 56886 explicitly prohibit LAFCO from regulating land use density or intensity, property development, or subdivision requirements. Coronado reaches a highly speculative conclusion and makes an unsubstantiated statement regarding LAFCO staff's interpretation of the phrase "extended service". LAFCO staff has never made an interpretation of this phrase in that manner. Furthermore, a policy adopted by the Humboldt LAFCO does not govern the San Diego LAFCO's implementation of Government Code Section 56133. In addition, Government Code Section 56133(e) does not distinguish between levels of service or land use intensity regarding the grandfather provision for services provided prior to 2001.

Therefore, since sewer service has been provided to the subject territory prior to 2001, the service is exempted from LAFCO purview today, even though the amount of sewage that will be generated in the territory will increase in comparison to 1967 levels. If the Department of Navy requests Imperial Beach to provide a new service, such as police protection, then police protection or any other new type of service, would likely be subject to LAFCO purview, unless documentation can be provided that such service was provided prior to 2001. Provision of sewage service to the NBC Coastal Campus site does not constitute a new service. Lastly, Coronado makes references to service agreements between two local agencies where the contracts or agreements are an alternative to services already being provided by an existing service provider. Although not cited by LAFCO staff as the primary basis for the overall exemption, this exemption may apply to the Coastal Campus because the 1967 service contract is between Imperial Beach and the Navy, and there are some interpretations of Government Code Section 56133 that would categorize the Navy as a public agency. Again, Government Code Section 56133 contains five exemptions to LAFCO purview. Conformance with any one of the exemptions provides the necessary grounds for exempting a service contract from LAFCO purview. LAFCO staff indicated that the primary exemption is that applicable is the one for an extended serviced provided on or before January 1, 2001. Other exemptions may in fact apply, but the primary one pertains to the 2001 service provision date.

Documentation has been provided indicating that a contractual service agreement was executed between the City of Imperial Beach and the Navy before January 1, 2001. This agreement specifies that Imperial Beach must provide sanitary sewerage services "as required by the Government" and "receive, transport, treat and dispose of all

sewage originating at the project in such amounts as the Government desires to release into the City's system..."

Further, Government Code section 56133(e) refers to "the level of service to be provided is consistent with the level of service contemplated by the existing service provider." As Imperial Beach is a party to an agreement specifying that Imperial Beach agrees to receive, transport, treat and dispose of sewage generated from the NBC site in such amounts as the Federal Government desires, this agreement represents evidence that Imperial Beach has planned for the level of service required, is able to provide that level of service, and wishes to do so. It is therefore possible to conclude that the level of service required by the NBC Coastal Campus project is consistent with the level of service contemplated by Imperial Beach.

• Definition of Public Agency. Coronado states that the San Diego LAFCO may not use the first exemption in Government Code Section 56133(e) because the first exemption applies to contracts involving two or more agencies. Coronado states that the U.S. Navy is not a "public agency" within the meaning that term is given in the CKH Act. Government Code Section 56070 defines "public agency" to mean "the state or any state agency, board, or commission, any city, county, city and county, special district, or any agency, board, or commission of the city, county, city and county, special district, joint powers authority, or other political subdivision." The U.S. Navy is not considered a public agency per the unique definitions in the CKH Act. Second, the first exemption of Section 56133(e) requires that the level of service to be provided be consistent with the level of service by the existing service provider. As explained above, the level of service to be provided will be greater than the existing level of service. For both of these reasons, the first exemption of Government Code Section 56133(e) is also inapplicable to the new proposed sewer project.

LAFCO Staff Response: LAFCO staff cited the fourth exemption as the primary basis for exempting the NBC Coastal Campus from LAFCO purview, and not the first exemption referenced by Coronado. The fourth exemption in Government Code Section 56133(e) states that LAFCO purview over contractual service agreements does not apply to an extended service that a city or district was providing on or before January 1, 2001 without respect to whether it was providing service to an agency. Evidence has been submitted to LAFCO documenting that wastewater service has been provided by Imperial Beach to the Navy since 1967.

While not cited as the primary reason for exempting the provision of wastewater service from LAFCO purview, the first exemption may also be applicable. Moreover, Government Code section 56010 states that the definitions provided for the Cortese-Knox-Hertzberg Act apply "[u]nless the provision or context otherwise requires..." Because section 56133 is intended to reserve LAFCO's review for those out-of-boundary service agreements that are likely to implicate the purposes for which LAFCO was formed; and because government agencies — whether federal, state or local — are subject to NEPA and CEQA to address concerns such as those that gave rise to the creation of LAFCOs, we conclude that the context of section 56010 may require that

"agency" as used here may include federal agencies which are otherwise immune from LAFCO's authority under the CKH Act.

- Provision of Sewer Service outside Imperial Beach's City Limits and Sphere Requires LAFCO Approval. Because the Coastal Campus is within Coronado's jurisdictional boundaries and outside Imperial Beach's city limits and sphere of influence, Coronado states that Imperial Beach cannot provide wastewater services to the new proposed project without LAFCO approval. Coronado states that Government Code Section 56133(a) requires that a city seeking to provide extended services by contract outside its jurisdictional boundaries must first receive written approval from its local LAFCO. Coronado states that Imperial Beach is not seeking to contract with another public "agency" as the statute defines that term; the level of service contemplated for the new proposed sewer project exceeds and expands the existing services provided by the City of Imperial Beach. Coronado argues that LAFCOs are essentially the only body existing at an intermediate level between the state and individual local governments with the power to address broad future planning concerns.

Coronado restates portions of the CKH Act which charge LAFCOs with the broad policy mandate to ensure orderly development and ensuring the efficient provision and extension of local government services. In light of these objectives, Coronado believes the Coastal Campus project is the very type of project for which LAFCOs exist and therefore requires LAFCO oversight.

LAFCO Staff Response: As with the previous LAFCO response, the discussion provided by Coronado regarding the five exemptions contained in the CKH Act regarding LAFCO purview over contractual service agreements is preempted by the fourth exemption. The fourth exemption is overarching and clearly states that the CKH Act does not apply to an extended service that a city or district was providing on or before January 1, 2001. If this exemption is applicable, then in many ways, it is unnecessary to review any of the other exemptions in Government Code Section 56133 for applicability. The discussion that Coronado provided in the above discussion is inapplicable with respect to the Coastal Campus, because the City of Imperial Beach has provided sewer service to the subject territory prior to 2001. However, had this service not been provided prior to 2001, or if the Federal Government is not considered a public agency for purpose of the CKH Act, then the prohibitions discussed regarding the provision of services outside a local agency's sphere of influence would likely apply. In this case, absent qualifying for one of the exemptions in Government Code Section 56133(e), or the health and safety provisions in Government Code Section 56133(c), we believe it would be highly unlikely that LAFCO could authorize Imperial Beach to provide wastewater services to the NBC COASTAL CAMPUS site. The reason for this conclusion is that the NBC Coastal Campus site is not located within the Imperial Beach sphere of influence, and it is unlikely that it would be placed in the City's sphere, given its location within the corporate limits of Coronado.

- Review of NBC Coastal Campus Sewer Service and Consistency with LAFCO's Purpose. The City of Coronado indicates that LAFCO must undertake review of the

NBC Coastal Campus sewer service agreement because the provision of sewer service to this site represents the type of situation that LAFCO's were formulated to address. Coronado states that the NBC Coastal Campus sewer project will set in motion an irrevocable course of potential future development within the City of Coronado with significant potential adverse consequences, without participation of the City of Coronado.

LAFCO Staff Response: Government Code Section 56133(e) does not authorize LAFCO to regulate land use changes or density increases when deliberating on contractual service agreements or changes of organization. Coronado's land use and environmental concerns are better addressed via the NEPA environmental review process by agencies which have statutory authority to regulate land use, which LAFCO expressly does not. Subsection (e) of this statute exempts from LAFCO purview extended services that a city or district was providing on or before January 1, 2001. Imperial Beach submitted written evidence showing that a contractual service agreement had been executed in 1967 between the City of Imperial Beach and the Department of Defense (Navy) specifying that Imperial Beach must provide sanitary sewerage services "as required by the Government" and "receive, transport, treat and dispose of all sewage originating at the project in such amounts as the Government desires to release into the City's system..." Coronado's discussion about LAFCO assuming jurisdiction over the NBCC site is inapplicable given that sewer service has been provided to the site via agreement prior to 2001.

• Sphere, MSR, and General Plan Consistency of Imperial Beach Wastewater Services. Coronado recites LAFCO's powers and duties regarding initiating and making studies of governmental agencies, plus the inconsistency of the Navy's NBC Coastal Campus project with the Imperial Beach General Plan. Coronado concludes that the most logical solution consistent with the CKH Act is for Coronado to provide sewer services within its own boundaries.

LAFCO Staff Response: LAFCO staff shares some of the concerns and conclusions reached by Coronado regarding the provision of sewer service outside of Imperial Beach corporate limits. However, the purview of the San Diego LAFCO is constrained by the exemption found in Government Code Section 56133(e) exempting from LAFCO purview extended services that a city or district was providing on or before January 1, 2001 and for service agreements between public agencies.

If a contract did not exist and none of the other exemptions applied, then approval of a contractual service agreement between Imperial Beach and the Navy would be highly unlikely and problematic – as section 56133 places emphasis on the sphere of influence of the service provider (Imperial Beach). The key here is for services provided after January 1, 2001. Again, Imperial Beach has provided written evidence documenting that a contractual service agreement had been executed and services have been provided since at least 1967 between the City of Imperial Beach and the Department of Defense. The service agreement further specifies that Imperial Beach must provide sanitary sewerage services "as required by the Government" and "receive, transport,

treat and dispose of all sewage originating at the project in such amounts as the Government desires to release into the City's system..." Coronado's discussion about LAFCO assuming jurisdiction over the NBC site is inapplicable given that sewer service has been provided to the site via agreement prior to 2001.

- Imperial Beach City Manager's Statement that Imperial Beach will not Provide Wastewater Services Without LAFCO Approval. Coronado claims that LAFCO must consider Imperial Beach's City Manager's letter of May 26, 2015 stating that Imperial Beach now will not provide wastewater services to the NBC Coastal Campus site without LAFCO's approval.

LAFCO Staff Response: This issue represents one of the better arguments that Coronado has provided. However, we question the legality and authority of such an administrative action, if taken by the Imperial Beach City Manager. The May 26, 2015 statement from the Imperial Beach City Manager appears to be contradicted by an earlier statement issued on March 30, 2015, indicating that "the City of Imperial Beach is willing to continue providing service to the Navy....and authorization for these services has been verified in the official City Council meeting minutes in 1967 authorizing the Mayor to execute the agreement and through several amendments to the agreement from that date forward..." Moreover, only the Imperial Beach City Council can amend written contracts binding the City. Still further, Coronado's position amounts to an argument that a city can confer authority to LAFCO that the Legislature has withheld. This is not the law.

In addition, the 1967 contract does not appear to contain a termination, modification, or opt-out clause. Should such a clause or clauses exist, and should Imperial Beach be able to lawfully exercise one or more of the clauses, then LAFCO staff should be advised as this could result in a change to the Preliminary Determination. In any event, we would suggest that the City Manager first obtain legal advice as legal issues could result from a deviation from the agreed upon sewer service agreement with the Navy.

If the terms of the sewer service agreement changed in a manner that triggers LAFCO purview, then the prohibitions regarding the provision of services outside a local agency's sphere of influence could apply. In that case, absent qualifying for one of the exemptions in Government Code Section 56133(e), or the health and safety provisions in Government Code Section 56133(c), we believe it would be questionable whether LAFCO could authorize Imperial Beach to provide wastewater services via a new contract to the NBC Coastal Campus site. The reason for this conclusion is that the NBC Coastal Campus site is not located within the Imperial Beach sphere of influence, and it is questionable whether the territory could be placed in the Imperial Beach sphere, given its location within the corporate limits of Coronado.

CONCLUSION

In conclusion, in light of the 1967 wastewater agreement between the City of Imperial Beach and the Department of the Navy, we understand Imperial Beach to be required to receive, transport, and dispose of sewage originating from the NBC site in the amounts

desired by the Navy. Although the amount of sewage that will be generated at the Coastal Campus site will increase compared to historical usage levels, the 1967 wastewater agreement provided the Department of the Navy with the contractual rights for increased sewage treatment, transport, and disposal services from Imperial Beach. Therefore, the provision of sewer service to the Coastal Campus site does not constitute a new service.

The CKH Act exempts from LAFCO purview an extended service provided on or before January 1, 2001. Since the service in question was provided before 2001 with no contractual limitations as to increases in sewage treatment, transport, or disposal quantities – the provision of sewer service to the NBC Coastal Campus site falls within a statutory exemption to LAFCO's purview (Government Code Section 56133(e)). To the extent there may be ambiguity regarding this exemption, legislative history of this law and predecessor statutes seem to support the interpretation and conclusion that provision of sewer service to the Coastal Campus site is exempt from LAFCO purview, because it is subject to an agreement that predates the enactment of section 56133. Further, contracts between public agencies for previously provided services are exempt from LAFCO review under that section and the agreement in issue here is within that exception, too.

As to the legality of the Imperial Beach City Manager modifying the 1967 wastewater services agreement with the Department of the Navy without concurrence of the Imperial Beach Mayor and City Council, this raises potential legal issues. LAFCO is a quasi-legislative agency and has no power to adjudicate such matters. Therefore, if Imperial Beach is still without legal counsel services with respect to this issue, it is recommended that the City obtain outside counsel because the City may be at an increased legal risk if a court finds that it has breached a contract.

If Imperial Beach is not bound by the 1967 agreement, or if both Imperial Beach and the Navy mutually agreed to lawfully terminate the 1967 agreement in order to execute a new contractual service agreement, then the prohibitions per Government Code Section 56133(b) regarding the provision of services outside a local agency's sphere of influence would likely apply. In that case, absent qualifying for one of the exemptions in Government Code Section 56133, it would be potentially problematic for LAFCO to authorize Imperial Beach to provide wastewater services to the NBC Coastal Campus site. The reason for this conclusion is that the NBC Coastal Campus site is not located within the Imperial Beach sphere of influence, and it is unlikely that it could be placed in the City's sphere, given its location within the corporate limits of Coronado.

A meeting may be scheduled to discuss the Preliminary Determination, if requested by any of the local agencies or the Department of the Navy. If concurrence regarding the determination is reached by parties, or if the parties do not desire to further discuss the content of this determination, then no further action needs to be taken. However, if any of the parties disagree with the preliminary determination, and wish to appeal the determination, then an appeal may be made in writing and will be considered by the full Commission (LAFCO). The appeal needs to cite the specific area(s) of disagreement,

and be accompanied with a filing fee of \$1,030. All appeals must be received by LAFCO by the end of the business day on September 11, 2015.



MICHAEL D. OTT
Executive Officer

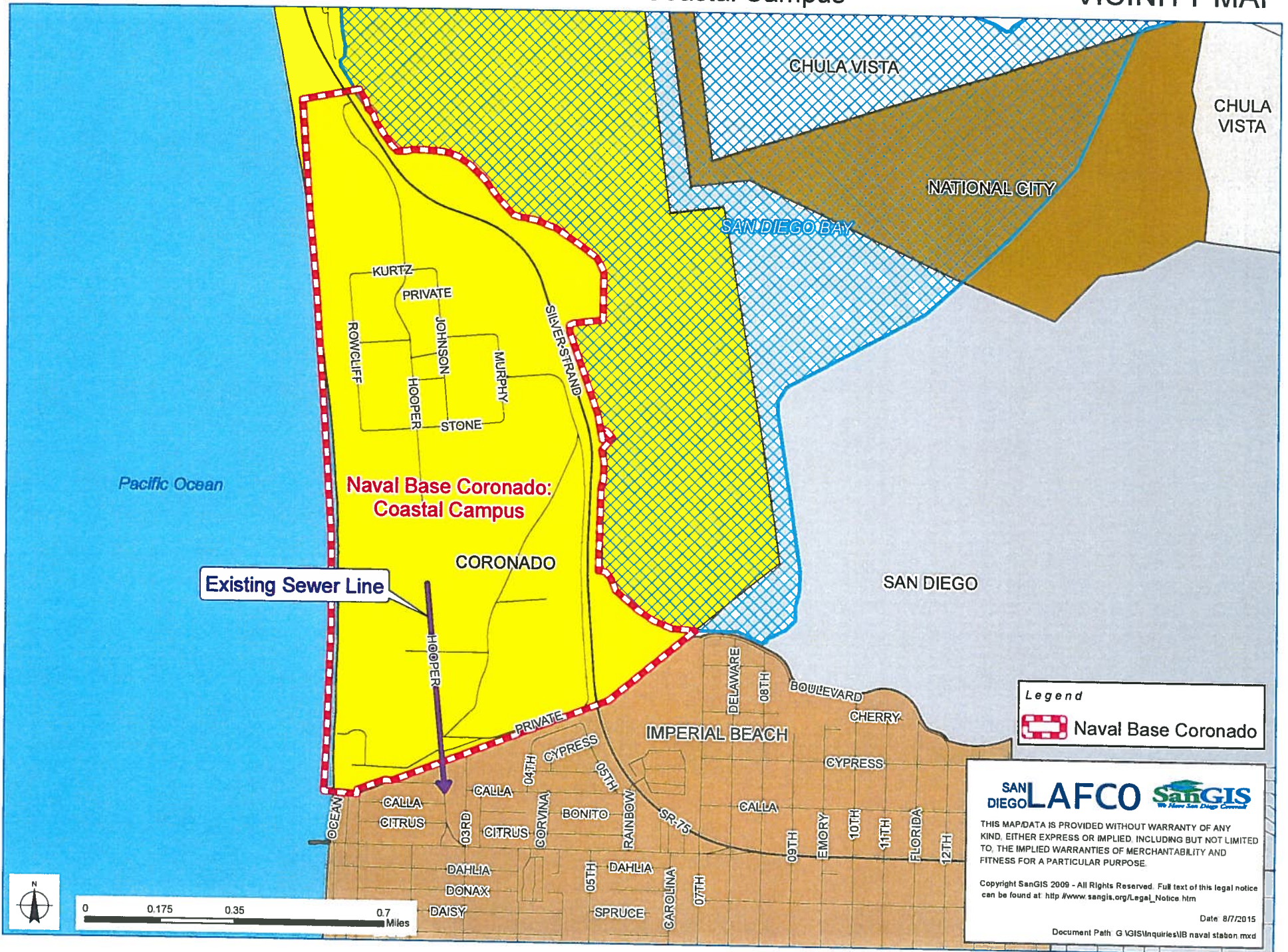
List of Exhibits

Vicinity Map: NBC Coastal Campus

1. Imperial Beach correspondence & wastewater service agreement, March 30, 2015
2. LAFCO correspondence, April 9, 2015
3. Coronado correspondence, April 10, 2015
4. Burke Williams & Sorensen, LLP correspondence, May 1, 2015
5. Imperial Beach correspondence, May 26, 2015
6. Department of the Navy correspondence, June 4, 2015
7. Burke Williams & Sorensen, LLP correspondence, July, 7, 2015

Naval Base Coronado: Coastal Campus


VICINITY MAP



Legend



Naval Base Coronado

SAN DIEGO LAFCO 

THIS MAP/DATA IS PROVIDED WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

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Date: 8/7/2015

Document Path: G:\GIS\Inquiries\IB naval station.mxd



City of Imperial Beach, California

OFFICE OF THE CITY MANAGER

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 423-8303 Fax: (619) 628-1395

March 30, 2015

Mr. Mike Ott
Executive Director
San Diego County Local Formation Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123

Executive Director Ott,

The City of Imperial Beach has been asked to explore the potential of continuing to provide wastewater services to the United States Navy (Navy) for the construction of the Naval Coastal Campus located immediately north of the City of Imperial Beach, but physically located in the City of Coronado. The request is a result of both topography and the fact that Imperial Beach has provided wastewater services to this area since approximately 1967. Therefore, please accept this letter as an indication that the City of Imperial Beach is willing to continue providing this service to the Navy. Authorization for these services has been verified in the official City Council meeting minutes in 1967 authorizing the Mayor to execute the agreement and through several amendments to the agreement from that date forward. The latest amendment to the agreement is dated and signed on September 18, 1991 and we have been operating in accordance to that agreement since that date. I have attached several versions of the agreement for your review.

Therefore, the City of Imperial Beach is prepared to provide wastewater services to the Naval Coastal Campus as requested by the Navy. If you have any questions in this regard, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Andy Hall'.

Andy Hall,
Imperial Beach City Manager

cc: Wes Bomyea, Naval Base Coronado Liaison
Greg Wade, Assistant City Manager
Jennifer Lyon, City Attorney
Blair King, Coronado City Manager

AMENDMENT OF SOLICITATION MODIFICATION OF CONTRACT

UTILITY SERVICE 1 2

2. AMENDMENT/MODIFICATION NO. P00006	3. EFFECTIVE DATE Block 16C	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY Southwest Division (Code 0214.PK) Naval Facilities Engineering Command 1220 Pacific Highway San Diego, CA 92132-5190	CODE N68711	7. ADMINISTERED BY (If other than Item 6)	CODE N68711

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) City of Imperial Beach 825 Imperial Beach Boulevard Imperial Beach, CA 92032 (619) 423-8300	9A. AMENDMENT OF SOLICITATION NO.
	9B. DATED (SEE ITEM 11)
	9C. MODIFICATION OF CONTRACT NO. (SEE ITEM 11) N62474-70-M-1613
	10B. DATED (SEE ITEM 13) 1 OCT 69

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

FUNDS WILL BE CITED WHEN INVOICE CERTIFIED FOR PAYMENT

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACT/ORDER IF IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

<input checked="" type="checkbox"/> A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
<input type="checkbox"/> B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/> C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input checked="" type="checkbox"/> D. OTHER (Specify type of modification and authority) MUTUAL AGREEMENT OF THE PARTIES

E. IMPORTANT: Contractor is not, is required to sign this document and return ~~original &~~ **duplicate** copies to the issuing office.

14. DESCRIPTION OF ~~AMENDMENT~~ **MODIFICATION** (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

SEWER SERVICE AT NAVAL RADIO STATION, IMPERIAL BEACH, CALIFORNIA

Modify the basic agreement and all subsequent modifications to change sewer rates, effective 1 July 1990.

Residential (Single Family) Annual Service Charge **\$258.46**

Total Estimated Annual Service Charge:
4 Dwellings x \$258.46 = \$1,033.84

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) RICHARD S. JUNG- ADMINISTRATIVE SVCS. DIRECTOR	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) M. WILLIAMS CONTRACTING OFFICER
15B. CONTRACTOR/OFFEROR <i>Richard S. Jung</i> (Signature of person authorized to sign)	15C. DATE SIGNED 09/10/91
16B. UNITED STATES OF AMERICA BY <i>M. Williams</i> (Signature of Contracting Officer)	16C. DATE SIGNED

DISTRIBUTION:

- ✓ Contract File
- ✓ Read File
- ✓ 163
- ✓ 1632.JB
- ✓ PWC Code 600
- ✓ PWC Code 611 (invoice office)
- ✓ PWC Code 640
- ✓ Disbursing Office: (Regional Service Dept. (FIPC), Code 801, P.O. Box 23870,
Oakland, CA 94623-2387)

9/18/91 - K.H. Clemens

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

CONTRACT ID CODE: _____ PAGE OF PAGE: **1** | **2**

2. AMENDMENT/MODIFICATION NO. N62474-70-M-1613-P00005		3. EFFECTIVE DATE 1 Oct 1990	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY Commander (Code 0224) Western Division Naval Facilities Engineering Command P.O. Box 727 San Bruno, CA 94066-0727		7. ADMINISTERED BY (If other than Item 6)	CODE	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) City of Imperial Beach 825 Imperial Beach Boulevard Imperial Beach, CA 92032		9A. XXXXXXXXXXXXXXXXXXXXXXXXXXXX For sewer service at: NAVRADSTA Imperial Beach 0224SD
CODE		10A. MODIFICATION OF CONTRACT/ORDER NO. N62474-70-M-1613
FACILITY CODE		10B. DATED (SEE ITEM 13) 1 Oct 69

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

<input checked="" type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THIS CONTRACT ORDER NO. IN ITEM 10A.
<input checked="" type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input type="checkbox"/>	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCP section headings, including solicitation/contract subject matter where feasible.)

Modify the basic contract and modifications thereto as follows:

- Transfer responsibility for execution and administration of subject contract from Commander, Western Division, Naval Facilities Engineering Command, San Bruno, California to Commanding Officer, Southwest Division, Naval Facilities Engineering Command, San Diego, California.
- Revise the Procurement Instrument Identification number for this contract by substituting therein "N68711" for "N62474" to produce the new contract number of N68711-70-M-1613.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Dennis McAuley Head, Utilities Contracts Branch	
15B. CONTRACTOR OFFEROR (Signature of person authorized to sign)		15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY D. J. McAuley (Signature of Contracting Officer)
			16C. DATE SIGNED 22 FEB 91

ATTACHED TO AND MADE A PART OF
CONTRACT MODIFICATION
N62474-70-M-1613-P00005
PAGE 2 of 2

INVOICE ADDRESS:

NAVY PUBLIC WORKS CENTER
CODE 611
P.O. BOX 113
SAN DIEGO, CA 92134

DISBURSING OFFICE:

(DO NOT MAIL INVOICES TO THIS ADDRESS)

NAVAL SUPPLY CENTER
CODE 801
P.O. BOX 23870
OAKLAND, CA 94623-2387

Ref: Imperial Beach Account No. 343076
(This contract superceded Contract Nos. NBy(U)36815 and N62473-69-C-2728.)

4854W

1. CONTRACT/ORDER NO. **N62474-70-M-1615-P00004** 2. EFFECTIVE DATE **SEE BLOCK 12** 3. FEDERAL AGENCY/ACTIVITY REQUEST NO. _____ 4. PROJECT NO. (If applicable) _____

5. ISSUED BY **Commanding Officer, Western Division
 Naval Facilities Engineering Command
 P.O. Box 727
 San Bruno, California 94066**

6. ADMINISTERED BY (If other than block 5) **WESTDIV 113**
 DISTRIBUTION: ORIGINAL DUPLICATE ORIGINAL CONFIRMED COPY
 WFO CLEVELAND NAVFAC (0212) BRFO SAN
 CONTRACTOR ACTIVITY:

7. CONTRACTOR NAME AND ADDRESS
**CITY OF IMPERIAL BEACH
 825 Coronado Avenue
 P. O. Box 427
 Imperial Beach, CA 92032**

8. AMENDMENT OF SOLICITATION NO. _____
 DATED _____ (See block 9)
 MODIFICATION OF CONTRACT ORDER NO. **N62474-70-M-1613**
 For: **SEWER SERVICE**
 DATED **67 SEP 15** (See block 11)
 At: **NAVRADSTA IMPERIAL BEACH (PWC SDIEGO)**

9. THIS BLOCK APPLIES ONLY TO AMENDMENTS OF SOLICITATIONS
 The above numbered solicitation is amended as set forth in block 12. The hour and date specified for receipt of Offers is extended, is not extended.
 Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation, or as amended, by one of the following methods:
 (a) By signing and returning _____ copies of this amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE ISSUING OFFICE PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If, by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided such telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

Appropriation and Subhead	Obj. Cl.	Bureau Com. No.	Sub-Allot.	Authorization Acct's Act'y	Trans. Type	Property Acct's Act'y	Country	Cost Code	Amount
Applicable funds will be cited on invoices or delivery orders issued against this contract.									

11. THIS BLOCK APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS
 (a) This Change Order is issued pursuant to provisions of basic agreement
 The Changes set forth in block 12 are made to the above numbered contract/order.
 (b) The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation data, etc.) set forth in block 12.
 (c) This Supplemental Agreement is entered into pursuant to authority of _____
 It modifies the above numbered contract as set forth in block 12.

12. DESCRIPTION OF AMENDMENT/MODIFICATION
 (a) Modification of the basic agreement is necessary in order to reflect a change in sewer charges for the housing at the Naval Radio Station, Imperial Beach, California, effective 6 July 1976 as established by the City of Imperial Beach Ordinance No. 384 attached hereto and made a part hereof.
 (b) DELETE paragraph b of the basic agreement in its entirety and substitute the following in lieu thereof:
 "b. 4 dwellings @\$36.00 per year = \$144.00
 (c) Estimated annual increase: \$99.00
 (d) DELETE the billing address in paragraph e. "Invoicing", of the basic agreement and insert the following in lieu thereof:
 "Invoicing: Invoices to be submitted in quintuplicate to the Commanding Officer (Code 601), Navy Public Works Center, Naval Base, San Diego, CA 92136."

Except as provided herein, all terms and conditions of the document referenced in block 8, as heretofore changed, remain unchanged and in full force and effect.

13. CONTRACTOR/OFFEROR IS NOT REQUIRED TO SIGN THIS DOCUMENT CONTRACTOR/OFFEROR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 2 COPIES TO ISSUING OFFICE

14. NAME OF CONTRACTOR/OFFEROR **CITY OF IMPERIAL BEACH** 17. UNITED STATES OF AMERICA
 BY: *[Signature]* BY: *[Signature]*
 (Signature of person authorized to sign) (Signature of Contracting Officer)

15. NAME AND TITLE OF SIGNER (Type or print) **A. GEORGE HARRIS** 16. DATE SIGNED **2/22/77** 18. NAME OF CONTRACTING OFFICER (Type or print) **Commander, CEC USN** 19. DATE SIGNED **8 MAR 77**
 Contracting Officer

ORDINANCE AMENDING ARTICLE 841 OF THE MUNICIPAL CODE -
RELATING TO SEWER CHARGE

The City Council of the City of Imperial Beach does ORDAIN as follows:

SECTION 1: Article 841, Section 8410 is amended to read as follows:

§ 8410. ESTABLISHMENT OF SEWER CHARGE. Commencing July 1, 1976, there is hereby levied and assessed upon each premises within the City of Imperial Beach that discharges sewage into the sewer lines maintained by the City of Imperial Beach a service charge in the following amounts:

	Per Year
.1 HOMES. For each family dwelling unit in a building containing not more than three such units -- per dwelling unit.	\$ 36.00
.11 APARTMENTS. For each family dwelling unit in a building (other than a hotel, motel or auto court) -- per dwelling unit	\$ 36.00
.2 REST HOMES -- per each patient's bed from 1 to 40 inclusive	
-- per each patient's bed over 40	\$ 7.75 \$ 5.60
.3 HOTELS, motels, auto courts	
-- per living unit without kitchen	\$ 13.50
-- per living unit with kitchen	\$ 36.00
31. TRAILER COURT -- per trailer space	\$ 18.00
.4 CHURCHES -- per each unit of seating capacity (a unit being 150 persons or any fraction thereof)	\$ 48.00
.5 CAFE or restaurant -- conducting on-sale liquor sales	
-- not conducting on-sale liquor sales	\$147.00 \$ 81.00
.6 AUTOMOBILE SERVICE STATIONS -- not more than 4 gasoline pumps	
-- more than 4 gasoline pumps	\$ 72.00 \$108.00
.7 SELF-SERVICE LAUNDRIES -- per each automatic washer from 1 to 20 inclusive	
-- per each automatic washer over 20	\$ 24.00 \$ 18.00
.8 OTHER BUSINESS. For each store, office, business or small industrial establishment not listed above	\$ 36.00

Provided, however, in the case of laundries (other than self-service laundries), bottling works, industrial establishments, and other businesses and establishments that have unusual characteristics insofar as sewage is concerned, the rate shall be established in each case by the City Manager subject to approval by the City Council. The rates so established shall be fixed in consideration of the estimated volume and type of sewage from such.

SECTION 2: Sec. 842.1 is hereby added to Article 842 of the Municipal Code to read as follows:

§ 842.1. REFUND OF FEES: In the event an application for the installation of sewer service lateral connections is withdrawn prior to the initiation of construction work on this lateral, a minimum charge of \$5.00 will be made for processing this refund.

SECTION 3: Sec. 841 is hereby added to Article 841 of the Municipal Code to read as follows:

§ 841. SEWER SERVICE STANDBY CHARGE -- ESTABLISHMENT OF. Pursuant to the provisions of Sec. 55501.5 of the Water Code of the State of California and Sec. 38902, Chapter 51 of the Government Code of the State of California, there is hereby established a standby sewer service charge where sewage disposal facilities are available but not yet used by the property owner. Further annual sewer service standby charge on an area,

frontage, or parcel ban or even a combination thereof, regardless of whether sewer service is actually used or not.

Effective and commencing 1 July 1976 there is hereby levied and assessed a Sewer Service Standby Charge for the City of Imperial Beach of \$12.00 per year per parcel of land for all commercial properties. The charges for residential properties will be seventeen percent (17%) of the fee collectible under Sec. 8410 if the property were to be developed to it's potentially "highest and best use".

In computing the charges to be levied against residential properties, the Planning Department shall use the latest official maps furnished by the Assessor's Office, County of San Diego, State of California.

URGENCY DECLARATION: SECTION 4: In accordance with Sec. 36937 of the Government Code this Ordinance shall take effect immediately upon its passage for the following reason: It fixes the amount of money to be raised through taxation for the proper operation and maintenance of sewer facilities within the City of Imperial Beach.

SECTION 5: The City Clerk shall certify to the adoption of this ordinance and cause it to be printed at least once in the Imperial Beach Reminder a newspaper of general circulation in the City of Imperial Beach, within 15 days of its passage.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Imperial Beach held this 6th of July, 1976 by the following vote; to wit:

AYES: BILBRAY, BENNETT, OGLE, MC CARTY, STITES.


NOES: NONE

ABSENT: NONE

APPROVED:


LEEBERT L. STITES
MAYOR
CITY OF IMPERIAL BEACH

ATTEST:


A. GEORGE RAYOS
CITY CLERK
CITY OF IMPERIAL BEACH

Published July 21, 1976
Imperial Beach Reminder
Terry Estrada
Deputy Clerk



9335 Hazard Way • Suite 200 • San Diego, CA 92123
(858) 614-7755 • FAX (858) 614-7766

San Diego Local Agency Formation Commission

Website: www.sdlafco.org

Chairman

Bill Horn
County Board of
Supervisors

April 9, 2015

Vice Chairman

Sam Abed
Mayor
City of Escondido

Wesley E. Bomyea
Community Planning and Liaison
Naval Base Coronado
PO Box 357033
San Diego, CA 92135-7033

Members

Dianne Jacob
County Board of
Supervisors

Subject: Government Code Section 56133(e) Exemption / Naval Base
Coronado (NBC) Coastal Campus

Andrew Vanderaan
Public Member

Dear Mr. Bomyea:

Lorie Zapf
Councilmember
City of San Diego

This is to confirm that I have reviewed the documentation provided by the City of Imperial Beach regarding the provision of wastewater service to the proposed Naval Base Coronado (NBC) Coastal Campus. This documentation indicates that a wastewater service agreement between the City of Imperial Beach and the Federal Government (Department of Navy) was issued beginning in 1967, and last amended in 1991. Based on these facts, the provision of wastewater service by the City of Imperial Beach to the NBC site (which is outside of the Imperial Beach city limits) is not subject to the purview of the Local Agency Formation Commission (LAFCO) per Government Code Section 56133(e). This exemption is applicable because the extended service has been provided to the Federal Government before January 1, 2001. Because the extended service was provided prior to 2001, any subsequent amendments to the 1991 wastewater service agreement would also be exempt from LAFCO purview.

Lorraine Wood
Councilmember
City of Carlsbad

Jo MacKenzie
Vista Irrigation District

Vacant
Special District

Alternate Members

Greg Cox
County Board of
Supervisors

Chris Cate
Councilmember
City of San Diego

If you have any questions regarding this determination, please contact me.

Racquel Vasquez
Councilmember
City of Lemon Grove

Sincerely,

MICHAEL D. OTT
Executive Officer

Ed Sprague
Olivenhain Municipal
Water District

Harry Mathis
Public Member

MDO:ra

Executive Officer

Michael D. Ott

cc: Andy Hall, Imperial Beach City Manager
Jennifer Lyon Imperial Beach City Attorney
Blair King, Coronado City Manager

Legal Counsel

Michael G. Colantuono

Attachment: 1967 Imperial Beach Wastewater Services Agreement with
Department of Navy



City of Imperial Beach, California

OFFICE OF THE CITY MANAGER

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 423-8303 Fax: (619) 628-1395

March 30, 2015

Mr. Mike Ott
Executive Director
San Diego County Local Formation Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123

Executive Director Ott,

The City of Imperial Beach has been asked to explore the potential of continuing to provide wastewater services to the United States Navy (Navy) for the construction of the Naval Coastal Campus located immediately north of the City of Imperial Beach, but physically located in the City of Coronado. The request is a result of both topography and the fact that Imperial Beach has provided wastewater services to this area since approximately 1967. Therefore, please accept this letter as an indication that the City of Imperial Beach is willing to continue providing this service to the Navy. Authorization for these services has been verified in the official City Council meeting minutes in 1967 authorizing the Mayor to execute the agreement and through several amendments to the agreement from that date forward. The latest amendment to the agreement is dated and signed on September 18, 1991 and we have been operating in accordance to that agreement since that date. I have attached several versions of the agreement for your review.

Therefore, the City of Imperial Beach is prepared to provide wastewater services to the Naval Coastal Campus as requested by the Navy. If you have any questions in this regard, please do not hesitate to contact me.

Sincerely,

Andy Hall,
Imperial Beach City Manager

cc: Wes Bomyea, Naval Base Coronado Liaison
Greg Wade, Assistant City Manager
Jennifer Lyon, City Attorney
Blair King, Coronado City Manager

AMENDMENT OF SOLICITATION / MODIFICATION OF CONTRACT

2. AMENDMENT/MODIFICATION NO. P00006	3. EFFECTIVE DATE Block 16C N68711	4. ACQUISITION/PURCHASE REG. NO.	UTILITY SERVICE	7	2
6. ISSUED BY Southwest Division (Code 0214.PK) Naval Facilities Engineering Command 1220 Pacific Highway San Diego, CA 92132-5190		7. ADMINISTERED BY (If other than Item 6)		8. PROJECT NO. (If applicable) N68711	

5. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 92032
(619) 423-8300

CODI: _____ **FACILITY CODE:** _____

9A. AMENDMENT OF SOLICITATION NO.
9B. DATE (SEE ITEM 11)
10A. MODIFICATION OF CONTRACT NUMBER
N62474-70-M-1613
10B. DATE (SEE ITEM 13)
1 OCT 69

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 16, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the closing hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

FUNDS WILL BE CITED WHEN INVOICE CERTIFIED FOR PAYMENT

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:

MUTUAL AGREEMENT OF THE PARTIES

D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this amendment and return ~~original & duplicate~~ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCL section headings, including solicitation/contract subject matter where feasible.)

SEWER SERVICE AT NAVAL RADIO STATION, IMPERIAL BEACH, CALIFORNIA

Modify the basic agreement and all subsequent modifications to change sewer rates, effective 1 July 1990.

Residential (Single Family) Annual Service Charge \$258.46

Total Estimated Annual Service Charge:
4 Dwellings x \$258.46 = \$1,033.84

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

13A. NAME AND TITLE OF SIGNER (Type or print) RICHARD S. JUNG- ADMINISTRATIVE SVCS. DIRECTOR	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) M. WILLIAMS CONTRACTING OFFICER
13B. CONTRACTOR/OFFICER <i>Richard S. Jung</i> (Signature of person authorized to sign)	16B. UNITED STATES OF AMERICA <i>M. Williams</i> (Signature of Contracting Officer)
13C. DATE SIGNED 09/10/91	16C. DATE SIGNED 10/1/69

DISTRIBUTION:

- ✓ Contract File
- ✓ Read File
- ✓ 163
- ✓ 1632.JB
- ✓ PWC Code 600
- ✓ PWC Code 611 (invoice office)
- ✓ PWC Code 640
- ✓ Disbursing Office: (Regional Service Dept. (FIPC), Code 801, P.O. Box 23870,
Oakland, CA 94623-2387)

9/18/91 - K.K. Clemens

N68711-70-M-1613

P00006

Page 2 of 2

AMENDMENT OF SOLICITATION, MODIFICATION OF CONTRACT

2. AMENDMENT/MODIFICATION NO. N62474-70-M-1613-P00005		3. EFFECTIVE DATE 1 Oct 1990	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable) 1 2
6. ISSUED BY Commander (Code 0224) Western Division Naval Facilities Engineering Command P.O. Box 727 San Bruno, CA 94066-0727		7. ADMINISTERED BY (If other than Item 6)		

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) City of Imperial Beach 825 Imperial Beach Boulevard Imperial Beach, CA 92032		(Y) 9A. AMENDMENT/ORDER NO. FOR THIS WORK For sewer service at: NAVRADSTA Imperial Beach
		9B. ORDER NO. FOR THIS WORK 0224SD
		10A. MODIFICATION OF CONTRACT/ORDER NO. N62474-70-M-1613
		10B. DATED (SEE ITEM 10) 1 Oct 69

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

<input checked="" type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT/ORDER NO. IN ITEM 10A.
<input checked="" type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 48.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input type="checkbox"/>	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF action headings, including solicitation/contract subject matter where feasible.)

- Modify the basic contract and modifications thereto as follows:
- a. Transfer responsibility for execution and administration of subject contract from Commander, Western Division, Naval Facilities Engineering Command, San Bruno, California to Commanding Officer, Southwest Division, Naval Facilities Engineering Command, San Diego, California.
 - b. Revise the Procurement Instrument Identification number for this contract by substituting therein "N68711" for "N62474" to produce the new contract number of N68711-70-M-1613.

15A. NAME AND TITLE OF SIGNER (Type or print) Dennis McAuley Head, Utilities Contracts Branch		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Dennis McAuley Head, Utilities Contracts Branch	
15B. CONTRACTOR/OFFEROR <i>(Signature of person authorized to sign)</i>		15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY <i>(Signature of Contracting Officer)</i>
			16C. DATE SIGNED 22 FEB 91

ATTACHED TO AND MADE A PART OF
CONTRACT MODIFICATION
N62474-70-M-1613-P00005
PAGE 2 of 2

INVOICE ADDRESS:

NAVY PUBLIC WORKS CENTER
CODE 611
P.O. BOX 113
SAN DIEGO, CA 92134

DISBURSING OFFICE:

(DO NOT MAIL INVOICES TO THIS ADDRESS)

NAVAL SUPPLY CENTER
CODE 801
P.O. BOX 23870
OAKLAND, CA 94623-2387

Ref: Imperial Beach Account No. 343076
(This contract superceded Contract Nos. NBy(U)36815 and N62473-69-C-2728.)

4854W

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT NO. (If applicable) _____
 2. ISSUED BY: **Commanding Officer, Western Division Naval Facilities Engineering Command P.O. Box 727 San Bruno, California 94066**
 CODE: **N52474**
 3. EFFECTIVE DATE: **SEE BLOCK 12**
 4. DISTRIBUTION (If other than block 5)
 ORIGINAL DUPLICATE ORIGINAL COPIED COPY
 CONTRACTOR NAVPAC (C212) WESTDIV 113 ARPS SAN ACTIVITY

5. CONTRACTOR NAME AND ADDRESS: **CITY OF IMPERIAL BEACH 825 Coronado Avenue P. O. Box 427 Imperial Beach, CA 92032**
 CODE: _____ FACILITY CODE: _____
 6. AMENDMENT OF SOLICITATION NO. _____ DATED _____ (See block 9)
 MODIFICATION OF CONTRACT/ORDER NO. **N62474-70-M-1613**
For: SEWER SERVICE
 DATED **67 SEP 15** (See block 11)
At: NAVRADSTA IMPERIAL BEACH (PWC SDIEGO)

7. THIS BLOCK APPLIES ONLY TO AMENDMENTS OF SOLICITATIONS
 The above numbered solicitation is amended as set forth in block 12. The hour and date specified for receipt of offers is extended, is not extended.
 Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation, or as amended, by one of the following methods:
 (a) By signing and returning _____ copies of this amendment; (b) by acknowledging receipt of this amendment on each copy of the offer submitted; or (c) by separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE ISSUING OFFICE PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If, by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided such telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

Appropriation and Subfund	Obj. Cl.	Bureau Code, Pl.	Sub-Alloc.	Authorization Acct's Acct'y	Trans. Type	Property Acct's Acct'y	Country	Cost Code	Amount
Applicable funds will be cited on invoices or delivery orders issued against this contract.									

11. THIS BLOCK APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS
 (a) This Change Order is issued pursuant to _____ provisions of basic agreement
 The Changes set forth in block 12 are made to the above numbered contract/order.
 (b) The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation data, etc.) set forth in block 12.
 (c) This Supplemental Agreement is entered into pursuant to authority of _____
 It modifies the above numbered contract as set forth in block 12.

12. DESCRIPTION OF AMENDMENT/MODIFICATION
 (a) Modification of the basic agreement is necessary in order to reflect a change in sewer charges for the housing at the Naval Radio Station, Imperial Beach, California, effective 6 July 1976 as established by the City of Imperial Beach Ordinance No. 384 attached hereto and made a part hereof.
 (b) DELETE paragraph b of the basic agreement in its entirety and substitute the following in lieu thereof:
 "b. 4 dwellings @\$36.00 per year = \$144.00
 (c) Estimated annual increase: \$99.00
 (d) DELETE the billing address in paragraph e. "Invoicing", of the basic agreement and insert the following in lieu thereof:
 "Invoicing: Invoices to be submitted in quintuplicate to the Commanding Officer (Code 601), Navy Public Works Center, Naval Base, San Diego, CA 92136."

13. CONTRACTOR/OFFEROR IS NOT REQUIRED TO SIGN THIS DOCUMENT CONTRACTOR/OFFEROR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE
 14. NAME OF CONTRACTOR/OFFEROR: **CITY OF IMPERIAL BEACH**
 BY: *[Signature]*
 17. UNITED STATES OF AMERICA
 BY: *[Signature]*
 15. NAME AND TITLE OF SIGNER (Type or print): **A. RUSCIG**
 16. DATE SIGNED: **2/2/77**
 18. NAME OF CONTRACTING OFFICER (Type or print): **Commander, CEC USN for Commander Naval Facilities Engineering Command**
 19. DATE SIGNED: **8 MAR 77**
 Contracting Officer

ORDINANCE NO: 394

At 10:11 AM
Cor: 882473-7

ORDINANCE AMENDING ARTICLE 841 OF THE MUNICIPAL CODE -
RELATING TO SEWER CHARGE

The City Council of the City of Imperial Beach does ORDAIN as follows:

SECTION 1: Article 841, Section 8410 is amended to read as follows:

§ 8410. ESTABLISHMENT OF SEWER CHARGE. Commencing July 1, 1976, there is hereby levied and assessed upon each premises within the City of Imperial Beach that discharges sewage into the sewer lines maintained by the City of Imperial Beach a service charge in the following amounts:

	<u>Per Year</u>
.1 HOMES. For each family dwelling unit in a building containing not more than three such units -- per dwelling unit.	\$ 36.00
.11 APARTMENTS. For each family dwelling unit in a building (other than a hotel, motel or auto court) -- per dwelling unit	\$ 36.00
.2 REST HOMES -- per each patient's bed from 1 to 40 inclusive -- per each patient's bed over 40	\$ 7.75 \$ 5.60
.3 HOTELS, motels, auto courts -- per living unit without kitchen -- per living unit with kitchen	\$ 13.50 \$ 36.00 \$ 18.00
31. TRAILER COURT -- per trailer space	\$ 48.00
.4 CHURCHES -- per each unit of seating capacity (a unit being 150 persons or any fraction thereof)	\$ 147.00
.5 CAFE or restaurant -- conducting on-sale liquor sales -- not conducting on-sale liquor sales	\$ 81.00 \$ 72.00 \$108.00
.6 AUTOMOBILE SERVICE STATIONS -- not more than 4 gasoline pumps -- more than 4 gasoline pumps	\$ 24.00 \$ 18.00
.7 SELF-SERVICE LAUNDRIES -- per each automatic washer from 1 to 20 inclusive -- per each automatic washer over 20	\$ 36.00
.8 OTHER BUSINESS. For each store, office, business or small industrial establishment not listed above	\$ 36.00

Provided, however, in the case of laundries (other than self-service laundries), bottling works, industrial establishments, and other businesses and establishments that have unusual characteristics insofar as sewage is concerned, the rate shall be established in each case by the City Manager subject to approval by the City Council. The rates so established shall be fixed in consideration of the estimated volume and type of sewage from such.

SECTION 2: Sec. 841.1 is hereby added to Article 842 of the Municipal Code to read as follows:

§ 8421.1. REFUND OF PPP: In the event an application for the installation of sewer service lateral connections is withdrawn prior to the initiation of construction work on this lateral, a minimum charge of \$5.00 will be made for processing this refund.

SECTION 3: Sec. 841 is hereby added to Article 841 of the Municipal Code to read as follows:

§ 841. SEWER SERVICE STANDBY CHARGE - ESTABLISHMENT OF. Pursuant to the provisions of Sec. 5550.5 of the Water Code of the State of California and Sec. 38902, Chapter 51 of the Government Code of the State of California, there is hereby established a standby sewer service charge, where sewage disposal facilities are available but not yet used by the property owner. Further annual sewer standby charges on an area,

frontage, or parcel ban or even a combination thereof, regardless of whether sewer service is actually used or not.

Effective and commencing 1 July 1976 there is hereby levied and assessed a Sewer Service Standby Charge for the City of Imperial Beach of \$12.00 per year per parcel of land for all commercial properties. The charges for residential properties will be seventeen percent (17%) of the fee collectible under Sec. 8410 if the property were to be developed to its potentially "highest and best use".

In computing the charges to be levied against residential properties, the Planning Department shall use the latest official maps furnished by the Assessor's Office, County of San Diego, State of California.

URGENCY DECLARATION: SECTION 4: In accordance with Sec. 36937 of the Government Code this Ordinance shall take effect immediately upon its passage for the following reason: It fixes the amount of money to be raised through taxation for the proper operation and maintenance of sewer facilities within the City of Imperial Beach.

SECTION 5: The City Clerk shall certify to the adoption of this ordinance and cause it to be printed at least once in the Imperial Beach Reminder a newspaper of general circulation in the City of Imperial Beach, within 15 days of its passage.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Imperial Beach held this 6th of July, 1976 by the following vote; to wit:

AYES: BILBRAY, DENNETT, OGLE, MC CARTY, STITES.


NOES: NONE


ABSENT: NONE

APPROVED:


LEEBERT L. STITES
MAYOR
CITY OF IMPERIAL BEACH

ATTEST:


A. GEORGE RAMOS
CITY CLERK
CITY OF IMPERIAL BEACH

Published July 21, 1976
Imperial Beach Reminder

Terry Estrada
Deputy Clerk

1. AMENDMENT/MODIFICATION NO. **NG2474-70-M-1613-P00003**
 2. EFFECTIVE DATE **72 JUN 67**
 3. ACQUISITION/PURCHASE REQUEST NO.
 4. PROJECT NO. (if applicable)

5. ISSUED BY **COMD: NG2474**
Commanding Officer, Western Division
Naval Facilities Engineering Command
P.O. Box 727
San Bruno, California 94066

6. ADMINISTERED BY (if other than block 3)
 DISTRIBUTION
 ORIGINAL
 DUPLICATE ORIGINAL
 NPC CLEVELAND
 WEST DIV 113
 CONTRACTOR
 NAVFAC (0212)
 CONFORMED COPY
 HRFO SAN
 ACTIVITY

7. CONTRACTOR NAME AND ADDRESS
City of Imperial Beach
825 Coronado Avenue
P.O. Box 427
Imperial Beach, CA 92032

8. FACILITY CODE

9. AMENDMENT OF SOLICITATION NO.
 AMENDMENT OF SOLICITATION NO.
 DATED _____ (See block 9)

MODIFICATION OF CONTRACT/ORDER NO. **NG2474-70-M-1613**
 For: **sewer service**
 DATED **15 SEP 67** (See block 11)
 At: **PMC SDIEGO, CA 92132**

9. THIS BLOCK APPLIES ONLY TO AMENDMENTS OF SOLICITATIONS
 The above numbered solicitation is extended in full faith in block 12. This hour and date specified for receipt of Offers is extended, is not extended.
 Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation, or as extended, by one of the following methods:
 (a) By signing and returning _____ copies of this amendment (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE ISSUING OFFICE PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If, by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided such telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

10	Appropriation and Subject	Obj. Cl.	Display Code, If any	Sub-Alloc.	Authorization Acct's Act'y	Trans. Type	Priority Acct's Amt'y	Country	Cost Code	Amount
Applicable funds will be cited on invoices or delivery orders issued against this contract.										

11. THIS BLOCK APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS
 (a) This Change Order is issued pursuant to _____
 The Changes set forth in block 12 are made to the above numbered contract/order.
 (b) The above numbered contract/order is modified to reflect the administrative changes (ACI) or changes in paying office, appropriation data, etc.) set forth in block 12.
 (c) This Supplemental Agreement is entered into pursuant to authority of 10 USC 2304 (a) (3)
 It modifies the above numbered contract as set forth in block 12.

12. DESCRIPTION OF AMENDMENT/MODIFICATION
 (a) Modification of basic agreement is necessary in order to provide for continuing sewer service at Naval Radio Station, Imperial Beach.
 1. DELETE the first paragraph of Letter Agreement dated 15 September 1967 and substitute the following in lieu thereof:
 "Please provide sewer service to Naval Radio Station, Imperial Beach until written notice of termination is received from the Commanding Officer, Western Division, Naval Facilities Engineering Command, or until service is otherwise terminated under the provisions of your ordinance."
 (b) Renumber modifications P001 and P002 to read P00001 and P00002.
 (c)

13. CONTRACTOR/OFFICE IS NOT REQUIRED TO SIGN THIS DOCUMENT CONTRACTOR/OFFICE IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE
 Original & one

14. NAME OF CONTRACTOR/OFFICE **CITY OF IMPERIAL BEACH**
 BY **A. George Ramos**
(Signature of person authorized to sign)

15. UNITED STATES OF AMERICA
 BY **[Signature]**
(Signature of Contracting Officer)

16. NAME AND TITLE OF SIGNER (Type or Print)
A. George Ramos
City Clerk - TREASURER

17. DATE SIGNED **7-17-74**

18. NAME OF CONTRACTING OFFICER (Type or Print)
for Commander

19. DATE SIGNED **28 JUL 1974**
Naval Facilities Engineering Command

ES:m5

STANDARD FORM 37, MAY 1962
GENERAL SERVICES ADMINISTRATION
FD-226 (REV. 10-1-67)

ANNOUNCEMENT OF SOLICITATION/MODIFICATION OF CONTRACT

PAGE 1 OF 1

1. ASSIGNMENT NUMBER: **N62474-70-N-1613-P002** 2. EFFECTIVE DATE: **5 MAR 1971** 3. FUNDING ORIGIN: **NAVFAC** 4. PROJECT NO. (If applicable):

5. ISSUED BY: **CGOA** 6. REQUESTED BY (If other than 5): CODE:

**Commanding Officer, Western Division
Naval Facilities Engineering Command
P. O. Box 727, San Bruno, CA., 94066**

7. CONTRACTOR NAME AND ADDRESS: CODE: FACILITY CODE: 8. ASSIGNMENT OF SOURCES: NO. DATED: (See block 9)

(Street, city, county, state, and ZIP Code) **City of Imperial Beach
825 Coronado Avenue
P O Box 427
Imperial Beach, CA 92032**

9. MODIFICATION OF CONTRACT NO. **N62474-70-N-1613**
FOR: **sewer service**
DATED: **15 Sep 67** (See block 11)
At: **PWC SDIEGO, CA 92132**

10. THIS SOURCE OFFERS CONTRACT AWARDS TO THE FOLLOWING:

The above source offers to award a contract in block 12. The bid on file with the office of contract administration is is correct, is not correct.
Officers and personnel, a portion of the contract award or to be held and if specified in the solicitation, or to be held, by one of the following methods:

(a) By separate bid openings at the office of contract administration (b) By separate bid openings at the office of contract administration, or (c) By separate bid openings at the office of contract administration.

DATE SPECIFIED FOR BIDDING IN BLOCK 12 OF YOUR OFFICE. If, by means of this award, you desire to charge an award to a separate account, such charge may be made by telegram or letter, provided such telegram or letter makes reference to the solicitation and this award, and is received prior to the closing date and time specified.

Agency or Office	City, St.	Source Code	Fac. Code	Authority Agency Ref.	Trans. Type	Priority Agency Ref.	Comp. Pr.	Gen. Code	Amount
Not Applicable									

11. THIS BLOCK APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS

(a) The Change Order is of payment to _____
The Change Order in block 12 is made to the above number of contract/ord.

(b) The above numbered contract/ord is modified to reflect the following changes: as changes in pricing office, appropriation data, etc.) set forth in block 12.

(c) This Change Order is entered into payment to authority of _____
It shall affect the above numbered contract as set forth in block 12.

12. DESCRIPTION OF SOLICITATION/MODIFICATION

(a) WHEREAS, modification of the basic contract is deemed necessary to change the payment office;

NOW THEREFORE, basic contract is modified in the following respect

1. Effective 5 April 1971, delete in basic contract, "Payment Office, Navy Regional Finance Center, Treasure Island, San Francisco, California 94130," and substitute therefor, "Payment Office, Navy Regional Finance Center, San Diego, California 92132."

(b)

13. CONTRACT DOCUMENTS ARE NOT RECEIVED TO SIGN THIS DOCUMENT CONTRACTS/OFFICER IS RETURNED TO SIGN THIS DOCUMENT AND RETURN TO THE SOURCE OFFICE

14. NAME OF CONTRACTING OFFICE: 15. UNITED STATES OFFICE: 16. DATE: 17. NAME OF CONTRACTING OFFICER: 18. DATE: 19. DATE: 20. DATE:

(Signature of person authorized to sign) LEO EIO, for Contracting Officer 5 Mar 1971

18. NAME AND TITLE OF SOURCE (If applicable) 19. DATE: 20. DATE:

1. AMENDMENT/MODIFICATION NO. **PO02**

2. EFFECTIVE DATE **70JUN01**

3. REQUESTION/PURCHASE REQUEST NO.

4. PROJECT NO. (If applicable)

5. ISSUED BY **Commander, Southwest Division
 Naval Facilities Engineering Command
 San Diego, California 92137**

6. ADVERTISED BY (If other than block 5)

7. CONTRACTOR NAME AND ADDRESS

CODE _____ FACILITY CODE _____

**City of Imperial Beach
 825 Coronado Avenue
 P. O. Box 427
 Imperial Beach, California 92032**

8. AMENDMENT OF SOLICITATION NO. _____

DATED _____ (See block 9)

9. MODIFICATION OF CONTRACT/ORDER NO. **N6-473-67-M-0002**

DATED _____ (See block 11)

9. THIS BLOCK APPLIES ONLY TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in block 12. The hour and date specified for receipt of Offers is extended, is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation, or as amended, by one of the following methods:

(a) by signing and returning copies of this amendment; (b) by acknowledging receipt of this amendment on each copy of the offer submitted; or (c) by separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE ISSUING OFFICE PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If, by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided such telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

10. ACCOUNTING AND APPROPRIATION DATA (If required)

As applicable

11. THIS BLOCK APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS

(a) This Change Order is issued pursuant to _____
 The changes set forth in block 12 are made to the above numbered contract/order.

(b) The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation data, etc.) set forth in block 12.

(c) This Supplemental Agreement is entered into pursuant to authority of _____
 It modifies the above numbered contract as set forth in block 12.

12. DESCRIPTION OF AMENDMENT/MODIFICATION

To implement consolidation of the Southwest Division, Naval Facilities Engineering Command, San Diego, California, with the Western Division, Naval Facilities Engineering Command, San Bruno, California, the subject contract is modified as follows effective 1 June 1970.

(a) Delete reference to Contract No. N6-473-67-M-0002 in basic contract and modifications thereto, and substitute therefor N6-474-70-M-101.

(b) Change payment office to read: Commanding Officer, Navy Regional Finance Center, Treasure Island, San Francisco, California 94130.

(c) Change Officer in Charge of this contract to Commander, Western Division, Naval Facilities Engineering Command, San Bruno, California 94066.

NOTE: By copy of this change order, all activities receiving service under this contract are requested to submit all invoices for payment processing to Commander, Western Division, Naval Facilities Engineering Command, San Bruno, California 94066, on and after 1 June 1970, along with necessary accounting data, and certificates on NAVCOMP Form 2061, or similar certification document.

Except as provided herein, all terms and conditions of the document referenced in block 8, as hereafter changed, remain unchanged and to full force and effect.

13. CONTRACTOR/OFFEROR IS NOT REQUIRED TO SIGN THIS DOCUMENT CONTRACTOR/OFFEROR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE

14. NAME OF CONTRACTOR/OFFEROR

BY _____ (Signature of person authorized to sign)

17. UNITED STATES OF AMERICA

BY W. B. HOSS (Signature of Contracting Officer)

18. NAME AND TITLE OF OFFER (Type or print)

19. DATE ISSUED

20. NAME OF CONTRACTING OFFICE (Type or print)

21. DATE ISSUED

W. B. HOSS, for (Commander, Naval Facilities Engineering Command)

A. DEPARTMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. AMENDMENT/MODIFICATION NO. **FOE**
 2. EFFECTIVE DATE **6/30/67**
 3. REQUISITION/PURCHASE REQUEST NO.
 4. PROJECT NO. (if applicable)
 5. ISSUED BY **CODE 112F**
**Commander, Southwest Division
 Naval Facilities Engineering Command
 San Diego, California 92132**
 6. ADMINISTERED BY (if other than block 5) **1178**

7. CONTRACTOR NAME AND ADDRESS (TYPE) **CITY** FACILITY CODE
**City of Imperial Beach
 829 Coronado Avenue
 Imperial Beach, California 92032**
 (Street, city, county, state, and ZIP Code)
 8. AMENDMENT OF SOLICITATION NO.
 DATED... (See block 9)
 MODIFICATION OF CONTRACT/ORDER NO. **162473-69-C-2725**
 DATED... (See block 11)

9. THIS BLOCK APPLIES ONLY TO AMENDMENTS OF SOLICITATIONS
 The above numbered solicitation is amended as set forth in block 12. The hour and date specified for receipt of offers is a) entered, not entered.
 Offers not acknowledge receipt of this amendment prior to the hour and date specified in the solicitation, as amended, by one of the following methods:
 (a) by signing and returning _____ copies of this amendment; (b) by acknowledging receipt of this amendment on an original copy of the offer submitted by a separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE ISSUING OFFICE PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If, by virtue of this amendment you desire to change an offer already submitted such change may be made by telegram or letter, provided such telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

NO.	Appropriation and Fund	Obj. Cl.	Service Cont. No.	Sub-Allot.	Activities Acct's No.	Type	Property Acct's No.	Country	Cost Code	Agency
Applicable accounting data will be cited upon liquidation of invoices										

11. THIS BLOCK APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS
 (a) This Change Order is issued pursuant to **10 U.S.C. 2304(a)(10)**
 The changes set forth in block 12 are made to the above numbered contract/order.
 (b) The above numbered contract/order is modified to reflect the administrative changes as changes in pay or clicks, appropriations item, etc. set forth in block 12.
 (c) This Supplemental Agreement is entered into pursuant to authority of _____
 It modifies the above numbered contract as set forth in block 12.

12. DESCRIPTION OF AMENDMENT/MODIFICATION
Due to revised requirements of Naval Air Station, Imperial Beach, California, it is requested that subject contract be amended by changing effective date of contract to read: "Effective 1 October 1967" in lieu of 1 November 1969.

Except as provided herein, all terms and conditions of the document referenced in block 8, as hereinafter changed, remain in full force and effect.

13. CONTRACTOR/OFFEROR IS NOT REQUIRED TO SIGN THIS DOCUMENT CONTRACTOR/OFFEROR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE

14. NAME OF CONTRACTOR/OFFEROR
 BY _____ (Signature of person authorized to sign)
 15. NAME AND TITLE OF SIGNER (Type in print)
W. J. HOBBS, For Commander, Naval Facilities Engineering Command
 16. DATE
6/30/67
 17. UNITED STATES OF AMERICA
 BY _____ (Signature of Contracting Officer)
 18. NAME OF CONTRACTING OFFICER (Type in print)
W. J. HOBBS, For Commander, Naval Facilities Engineering Command



DEPARTMENT OF THE NAVY
SOUTHWEST DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
SAN DIEGO, CALIFORNIA 92132

IN REPLY REFER TO:

1123

Ser 7668

SEP 15 1967

City of Imperial Beach
925 Coronado Avenue
P.O. Box 427
Imperial Beach, California 92032

Subject: Letter Agreement N62473-67-M-0002

Gentlemen:

This is in reply to your letter of August 9, 1967 in which you requested that Contract NBY(U)36815 which provides sewer service to Naval Radio Station, Imperial Beach, be renewed for another five (5) year period. To reduce paper work and to conform with existing instructions, this proposed Letter Agreement is forwarded for your consideration. *Approved*

- a. Effective date - 1 June 1967
- b. Estimated annual costs - \$45.00
 - 4 dwellings - \$40.00
 - 1 guard house - 5.00
- c. Point of Delivery - one 6 inch connection into a City of Imperial Beach constructed manhole at the intersection of the extension of the Silver Strand Blvd. service main with the Government sewer line.
- d. Service to be rendered - The City of Imperial Beach, California, shall provide sanitary sewerage service as required by the Government and shall receive, transport, treat and dispose of all sewage originating at the project in such amounts as the Government desires to release into the City's system and in a manner and by such means as will constitute no hazard to the public health. The City of Imperial Beach shall operate its sewage disposal and treatment facilities in conformity with applicable laws, rules and regulations promulgated by State and Federal governmental authorities.

1123
Ser 7668

e. Invoicing - The Government will accept annual invoices in arrears and make payment therefor at the rates shown above which are understood to be the lowest rates available to any customers under like conditions of service. The Letter Agreement number shall be inserted on the invoices submitted for the service. Invoices to be submitted in quintuplicate to the Commanding Officer, Naval Communications Station, 937 No. Harbor Drive, San Diego, California 92132, Code 34G. Applicable accounting data will be furnished by the Government upon liquidation of invoices in accordance with existing regulations.

f. Payment - Payments will be made by Commanding Officer, Navy Regional Finance Center, San Diego, California 92132.

This Letter Agreement is processed under the provisions of 10 U.S.C. 2304(a)(10).

Please indicate your acceptance of this Letter Agreement in the space provided therefor on the original and three copies herewith and return the original and two copies to the Commander, Southwest Division, Naval Facilities Engineering Command, Code 1123, San Diego, California 92132.

Sincerely,

W. B. ...
For Commander, Naval Facilities
Engineering Command, Contracting
Officer

Accepted CITY OF IMPERIAL BEACH
(Company Name)

By _____
(Name and Official Title)

Date 10-3-67



CITY OF CORONADO

1825 STRAND WAY
CORONADO, CA 92118

OFFICE OF CITY MANAGER
(619) 522-7335
FAX (619) 522-7846

April 10, 2015

Mr. Mike Ott, Executive Director
San Diego County Local Formation Commission
9335 Hazard Way, Suite #200
San Diego, CA 92123

Sent Via Electronic Mail & Regular Mail

Dear Mr. Ott,

This is a follow up to the responses to comments for the Naval Base Coronado Coastal Campus Final EIS related to the provision of wastewater services by the City of Imperial Beach to the project. As you know, the Naval Base Coronado Coastal Campus (Project), is located wholly within the jurisdictional boundaries of the City of Coronado.

Cities are limited to providing services only within their own jurisdictional boundaries unless permission is obtained from LAFCO. LAFCO is authorized to grant that permission to a city provided it is within the city's sphere of influence in anticipation of a later change of organization.

The Navy's responses to the comments made by LAFCO and the City of Coronado to the EIS show a fundamental misunderstanding of the Cortese-Knox-Hertzberg Local Reorganization Act of 2000. Imperial Beach's ability to provide wastewater service to the Project is immaterial. The Project is within Coronado's jurisdictional boundaries and outside Imperial Beach's sphere of influence. Under state law, Imperial Beach cannot provide wastewater services to the Project without LAFCO's permission. In fact, LAFCO may only allow permission to extend a city's services beyond its jurisdiction and beyond its sphere of influence if there is a threat to public health and safety, that threat is documented, and other providers have been notified of the request. None of which exist in this instance.

In addition, existing wastewater service agreement between the City of Imperial Beach and the US Navy does not negate LAFCO's jurisdiction. Only contracts or agreements solely involving two public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and were the level of service to be provided is consistent with the level of service contemplated by the existing service provider are exempt from LAFCO's authority.

April 10, 2015
Mr. Mike Ott
Page -2-

The U.S. government and its departments, including the U.S. Navy, are not within the definition of "public agency" under the Cortese-Knox-Hertzberg Local Reorganization Act of 2000. Thus, any agreement for service between Imperial Beach and the U.S. Navy bears no weight in the evaluation of LAFCO's jurisdiction on the issue. Moreover, the level of wastewater service for the Project far exceeds and expands the contemplated level of existing service by Imperial Beach. As highlighted in the environmental documents, the existing wastewater infrastructure in Imperial Beach is deficient and lacks capacity to serve the Project. Significant upgrades to Imperial Beach's wastewater system within Silver Strand Boulevard, Calia Avenue, and Seacoast Drive to Pump Station 5 and within Imperial Beach Boulevard from 4th Street to East Lane are proposed to address said deficiencies.

Based on the circumstances outlined above, absent a threat to public health and safety, that threat is documented, and other providers have been notified of the request, LAFCO may not grant permission to Imperial Beach to extend its wastewater services to the Project because the Project is located in its entirety within the City of Coronado's jurisdictional boundaries. No documented threat to public health and safety exist. Coronado has the ability and capacity to provide wastewater services to the Project as evidenced by the approved Resolution of the Local Agency Formation Commission of the County of San Diego Approving the Five-Year Sphere of Influence and Service Review and Affirming the Sphere of Influence for the City of Coronado dated May 5, 2014.

In the alternative, Coronado and Imperial Beach may negotiate and enter into an agreement for Imperial Beach to provide for some of the wastewater services for the Project. Lastly, if Imperial Beach strongly desires to provide municipal services outside of its jurisdictional boundaries and sphere of influence, a reorganization of its boundaries may be in order.

I appreciate your attention I this matter. I am available to discuss further should you have additional questions.

Sincerely,



Blair King, City Manager
City of Coronado

Cc: Honorable Mayor and City Council
Christopher Sund, Commanding Officer, Naval Base Coronado
Wes Bomyea, Community Liaison, Naval Base Coronado
Johanna Canlas, Coronado City Attorney
Andy Hall, Imperial Beach City Manager



1901 Harrison Street - Suite 900
Oakland, California 94612-3501
voice 510.273.8780 - fax 510.839.9104
www.bwslaw.com

Exhibit 4. Burke Williams &
Sorensen, LLP Correspondence
May 1, 2015

Direct No.: 610.903.8836
Our File No. 08813.0003
dcox@bwslaw.com

May 1, 2015

VIA ELECTRONIC MAIL AND REGULAR MAIL

Mike Ott, Executive Director
San Diego County Local Formation Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123

RE: SD-LAFCO Consideration of Proposed Contract for Sewer Services

Dear Executive Director Ott:

This law firm represents the City of Coronado. We have reviewed your letter dated April 9, 2015 in which the San Diego County Local Formation Commission cited an exemption listed in Government Code section 56133(e) in support of its decision that the provision of wastewater service by the City of Imperial to the new Naval Base Coronado Coastal Campus, located outside the boundaries of Imperial Beach and within the boundaries of Coronado (the "new proposed sewer project") is not subject to the purview of the San Diego Local Agency Formation Commission (SD-LAFCO). We have also reviewed other relevant documentation regarding the new proposed sewer project and the history of dealings between the U.S. Navy and the City of Imperial Beach. For the reasons contained in this letter, we contend that SD-LAFCO's initial analysis is incorrect and therefore demand on behalf of the City of Coronado that SD-LAFCO review this City of Imperial Beach contract for provision of new sewer services outside its boundaries.

The subject sewer service agreement between the City of Imperial Beach and the Naval Facilities Engineering Command was first issued in 1967 and last amended in 1991. At its peak, the City of Imperial Beach provided sewer service under the agreement to four dwellings and one guard house (Letter Agreement N62473-67-M-0002), although according to Imperial Beach's General Plan, "[t]he Navy has significantly scaled down its usage since its peak in the 1970's." (General Plan, p. F-18.) The four dwellings and guard house are physically located in the City of Coronado and are therefore outside both the Imperial Beach city limits and its sphere of influence.

Government Code section 56133(e) lists five separate types of agreements and services that are exempt from customary SD-LAFCO review. The exemption claimed by SD-LAFCO is "an extended service that a city or district was providing on or before January 1, 2001" (the "fourth exemption").

We demand that SD-LAFCO reconsider its initial assessment of the new proposed sewer project for several reasons:

1. SD-LAFCO may not rely on the fourth exemption in Government Code section 56133(e).

OAK #4848-3832-1955 v1

Mike Ott, Executive Director
May 1, 2015
Page 2

2. Even if SD-LAFCO could rely on the fourth exemption in Government Code section 56133(e), a proper interpretation of that exemption requires SD-LAFCO to consider the new proposed sewer project.
3. SD-LAFCO may not rely on the first exemption in Government Code section 56133(e).
4. Because the new proposed sewer project is within Coronado's jurisdictional boundaries and outside Imperial Beach's city limits and sphere of influence, the City of Imperial Beach cannot provide wastewater services to the new proposed sewer project without SD-LAFCO's approval.

I. SD-LAFCO MAY NOT RELY ON THE FOURTH EXEMPTION IN GOVERNMENT CODE SECTION 56133(e).

SD-LAFCO's letter of April 9, 2015 states that the fourth exemption in Government Code Section 56133(e) is applicable because extended service has been provided to the Federal Government before January 1, 2001.

However, SD-LAFCO may not properly rely on this Government Code exemption because it has not adopted it in SD-LAFCO's Procedures Guide.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 ("CKH Act"), AB 2838 affirmed and strengthened the role of Local Agency Formation Commissions such as SD-LAFCO in helping shape the future physical and economic growth and development of the State. Among other things, the CKH Act required that each LAFCO establish written policies and procedures not later than January 1, 2002, and that each LAFCO must thereafter exercise its powers in a manner consistent with those policies and procedures. (Government Code Section 56375.)

Accordingly, SD-LAFCO prepared an extensive Procedures Guide that was last updated in 2013. Within Section Four of SD-LAFCO's Procedures Guide is a section entitled "Provision of Services by Contract," which implements Government Code Section 56133(e) and its exemptions. SD-LAFCO's Procedures Guide squarely addresses and explains four of the five exemptions set forth in Section 56133(e), but makes no mention of the fourth exemption. Nowhere in its Procedures Guide does SD-LAFCO adopt, explain or make any reference whatsoever to the fourth exemption regarding "an extended service that a city or district was providing on or before January 1, 2001."

Having failed to adopt this fourth exemption in its Procedures Guide, SD-LAFCO may not now rely upon it to decline to review a city's contract for sewer services outside its boundaries.

Mike Ott, Executive Director
May 1, 2015
Page 3

II. EVEN IF SD-LAFCO COULD RELY ON THE FOURTH EXEMPTION, A PROPER INTERPRETATION OF THAT EXEMPTION REQUIRES SD-LAFCO TO CONSIDER THE NEW PROPOSED SEWER PROJECT.

SD-LAFCO's letter appears to rely on an incorrect and overly expanded interpretation of the fourth exemption, stating, "Because the extended service was provided prior to 2001, any subsequent amendments to the 1991 wastewater service agreement would also be exempt from LAFCO purview."

Nowhere in any of the decisional law or legislative history of Section 56133(e) has such an expansive reading of the statute been adopted. Nor is this expansive interpretation of the fourth exemption set forth in SD-LAFCO's Procedures Guide, which is the precise place the CKH Act requires such interpretations to be situated.

In analyzing a statute's text, Courts are guided by the basic principle that a statute should be read as a harmonious whole, with its separate parts being interpreted within their broader statutory context. Canons of construction require that a term used more than once in a statute ordinarily be given the same meaning throughout. (See, e.g. Congressional Research Service Report for Congress, December 19, 2011.)

SD-LAFCO apparently interprets the term "extended service" in Section 56133(e) to mean "amended service" but this is clearly not the meaning intended by the legislature. Each of the other sections in Government Code Section 56133 makes reference to "extended services outside its jurisdictional" boundary or boundaries. It is therefore patently obvious that "extended service" refers to service outside a city or district's boundary or borders. It cannot mean an "expansion" or "amendment" of existing service because those situations are addressed elsewhere in the statute. (See, e.g., 2013 Humboldt LAFCO: "Expansion or intensification of outside agency services shall be considered a new request.")¹

Reading the fourth exemption of Section 56133(e) in that manner: Section 56133(e) does not apply to a service outside its borders that a city was providing on or before January 1, 2001. The only service the City of Imperial Beach was providing outside its borders on or before January 1, 2001 was a sewer service to four dwellings and one guard house, and even that small-scale sewer service had been significantly scaled down by the time the City of Imperial Beach adopted its general plan in 1994.

According to environmental documents circulated by it, the sewer service the U.S. Navy now seeks will apply to 1.5 million square feet of infrastructure, far exceeding and expanding the

¹ See also, *Community Water Coalition v. Santa Cruz County LAFCO* (2011) 200 Cal. App. 4th 1317, 1327: the reason Senate Bill No. 807 amended section 56133 to authorize "a LAFCO to approve the extension of services outside a city's sphere of influence" was to "correct public health and safety problems such as failing septic tanks and water wells." (*Citing* Sen. Local Gov. Comm. Analysis Sen. Bill No. 807 (1999-2000 Reg. Sess.) Apr. 21, 1999, p. 3 (emphasis added).)... "Section 56133, subdivision (a) was and is a limitation upon the power of cities and districts to expand urban services beyond their borders." *Id.*)

Mike Ott, Executive Director
May 1, 2015
Page 4

level of existing service provided by the City of Imperial Beach. This is entirely different from the service previously provided by the City of Imperial Beach. Thus, the fourth exemption of Section 56133(e) for service outside its borders that a city was providing before January 1, 2001 does not apply to the new proposed sewer project.

Such an interpretation is entirely consistent with the first exemption enunciated in Section 56133(e) which exempts from LAFCO's purview contracts involving two public agencies "where the level of service to be provided is consistent with the level of service contemplated by the existing service provider."

Here, the service the City of Imperial Beach "was providing before January 1, 2001" is completely inconsistent with the level of service now contemplated. Thus, the "new or extended services" the City of Imperial Beach now seeks to provide "by contract or agreement outside its jurisdictional boundaries" are subject to the written approval of SD-LAFCO. (Government Code Section 56133(a).)

III. SD-LAFCO MAY NOT RELY ON THE FIRST EXEMPTION IN GOVERNMENT CODE SECTION 56133(e).

As set forth in our letter of April 10, 2015, SD-LAFCO may not rely on the first exemption in Government Code Section 56133(e) for contracts involving two or more agencies for two reasons. First, the U.S. Navy is not a "public agency" within the meaning that term is given in the CKH Act. Government Code Section 56070 defines "public agency" to mean "the state or any state agency, board, or commission, any city, county, city and county, special district, or any agency, board, or commission of the city, county, city and county, special district, joint powers authority, or other political subdivision." Obviously, neither the U.S. Navy, the proponent of the overall expansion project, nor its Naval Facilities Engineering Command, the party to the existing contract with the City of Imperial Beach, is a public agency as defined by the CKH Act.

Second, the first exemption of Section 56133(e) requires that the level of service to be provided be consistent with the level of service by the existing service provider. As explained above, the level of service to be provided is vastly larger than the existing level of service. For both of these reasons, the first exemption of Government Code Section 56133(e) is also inapplicable to the new proposed sewer project.

IV. BECAUSE THE NEW PROPOSED SEWER PROJECT IS WITHIN CORONADO'S JURISDICTIONAL BOUNDARIES AND OUTSIDE IMPERIAL BEACH'S CITY LIMITS AND SPHERE OF INFLUENCE, THE CITY OF IMPERIAL BEACH CANNOT PROVIDE WASTEWATER SERVICES TO THE PROJECT WITHOUT SD-LAFCO'S APPROVAL.

Government Code Section 56133(a) requires that a city seeking to provide extended services by contract outside its jurisdictional boundaries must first receive written approval from its local LAFCO.

Mike Ott, Executive Director
May 1, 2015
Page 5

Here, the City of Imperial Beach is seeking to provide extended services by contract outside its jurisdictional boundaries. The City is not seeking to contract with another public agency. The level of service contemplated for the new proposed sewer project far exceeds and expands the existing services provided by the City of Imperial Beach and will require the installation of 1.5 million square feet of additional infrastructure within Coronado's jurisdictional boundaries and outside Imperial Beach's sphere of influence. Therefore, the exemptions enunciated in Section 56133(e) are inapposite.

LAFCOs are essentially the only body existing at an intermediate level between the state and individual local governments with the power to address broad future planning concerns. They are charged with the broad policy mandate to ensure orderly development. Two of LAFCO's key objectives under the CKH Act are to encourage the orderly growth of government agencies and to assure efficient local government services. (See www.calafco.org -"LAFCO Objectives".) AB 2838 added language that recognized the importance of "efficiently extending governmental services." (Government Code Section 56001.)

In light of these objectives, this proposed project is the very type of project for which LAFCOs exist. This is a project that requires LAFCO oversight to ensure orderly development, the orderly growth of government agencies, and efficient local government services. Decisions regarding the scope and potential extension of utility services ... fall within a county LAFCO's purview. (*Modesto Irrigation Dist. v. Pacific Gas and Elec. Co.* (2004) 309 F.Supp.2d 1156 (citing Cal. Gov't Code §§ 56133, 56375; also citing *Tille Lewis Foods, Inc. v. City of Pittsburg* (1975) 52 Cal.App.3d 983, 995.))

For all these reasons, we demand on behalf of the City of Coronado that SD-LAFCO reconsider its initial assessment of this proposed Project, reverse its initial decision, and decide that the new proposed sewer project requires SD-LAFCO's written approval.

Sincerely,

BURKE, WILLIAMS & SORENSEN, LLP



DEIRDRE JOAN COX

DJC:mac

cc: Blair King, City Manager
Michael Colantuono, Esq.



City of Imperial Beach, California

OFFICE OF THE CITY MANAGER

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 423-8303 Fax: (619) 628-1395

May 26, 2015

Mike Ott, Executive Director
San Diego County Local Agency Formation Commission
9335 Hazard Way, Suite #200
San Diego, California 92123

Dear Mr. Ott,

The City of Imperial Beach recognizes the authority of LAFCO to determine the appropriate utility service boundaries for municipalities. Without authorization from LAFCO, Imperial Beach will not expand Wastewater Service beyond the current service levels that include a small portion of the City of Coronado along the northern border with Imperial Beach. If LAFCO determines that it is appropriate for Imperial Beach to provide the service, Imperial Beach will cordially work with LAFCO and the City of Coronado to prepare the necessary agreements.

It is not our intent to ignore the authority of LAFCO or usurp the authority of the Coronado City Council in deciding how municipal services are to be provided within the City of Coronado. Imperial Beach remains willing to provide Wastewater Service to the Navy upon authorization from LAFCO and the implementation of all necessary agreements with the City of Coronado.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Andy Hall', is written over the typed name.

Andy Hall, AICP
City Manager,
City of Imperial Beach

cc: Mayor and Council
City of Coronado
Commander, Naval Base Coronado

Exhibit 6. Department of the Navy
Correspondence
June 4, 2015



DEPARTMENT OF THE NAVY
COMMANDING OFFICER
NAVAL BASE CORONADO
BOX 357033
SAN DIEGO, CA 92135-7033

IN REPLY REFER TO:

10000
Ser N00/474
4 Jun 15

Michael D. Ott
Executive Director
San Diego Local Agency Formation Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123

Dear Mr. Ott:

Thank you for your email correspondence with my staff on 4 May 2015; I greatly appreciate the opportunity to address any concerns you may have associated with the development of the Naval Base Coronado (NBC) Coastal Campus and the provision of wastewater services. I support your decision that the provision is not subject to purview of the San Diego Local Agency Formation Commission (LAFCO) and I intend to continue using the historic pre-1967 agreement.

As recognized in your 9 April, 2015, letter; a wastewater service agreement has existed between the City of Imperial Beach and the Federal Government (Department of Navy) since at least 1967. The referenced 1967 document executed a 5 year renewal of an existing agreement that remains in effect. Under the agreement, as last modified in 1991, the City of Imperial Beach must provide sanitary sewerage services "as required by the Government" and "receive, transport, treat and dispose of all sewage originating at the project in such amounts as the Government desires to release into the City's system and in a manner and by such means as will constitute no hazard to public health."

As stated in the NBC Coastal Campus Final Environmental Impact Statement (FEIS), the Department of Navy intends to construct 1.5 million square feet of additional infrastructure wholly within federal property. As compared to 2013, the proposed development is anticipated to generate approximately 200,000 gallons of wastewater per day; however, receipt, transport, treatment, and disposal are consistent with the existing historic agreement between the City of Imperial Beach and the Department of Navy.

10000
Ser N00/474
4 Jun 15

A new sewer service agreement is not required and is not being considered. The existing historic agreement to provide wastewater services by the City of Imperial Beach will remain in effect; the City of Imperial Beach will simply continue to provide wastewater services as required by the Government in such amounts as the Government desires to release in accordance with the wastewater service agreement in place since at least 1967. As such, the Department of Navy supports the LAFCO decision that the NBC Coastal Campus wastewater service is exempt from LAFCO purview because the extended service has been provided to the Federal Government before January 1, 2001.

Thank you for your interest in this project. Please do not hesitate to contact Mr. Wes Bomyea, email wesley.bomyea@navy.mil or telephone (619)545-4134, with any questions or concerns related to this issue.

Sincerely,



C. E. SUND
Captain, U.S. Navy
Commanding Officer
Naval Base Coronado



1901 Harrison Street Suite 900
Oakland, California 94612-3501
voice 510.273.8780 - fax 510.839.9104
www.bwslaw.com

Exhibit 7: Burke Williams
& Sorensen, LLP Correspondence
July 7, 2015

Direct No.: 510.903.8835
dcox@bwslaw.com

July 7, 2015

VIA ELECTRONIC MAIL AND REGULAR MAIL

Mike Ott, Executive Director
San Diego County Local Formation Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123

RE: SD-LAFCO Consideration of Proposed Contract for Sewer Services

Dear Executive Director Ott:

On behalf of the City of Coronado, we write in response to your email correspondence dated June 8, 2015 in which the San Diego County Local Agency Formation Commission (SD-LAFCO) provided all parties an opportunity to review and comment on responses provided to SD-LAFCO staff. We appreciate the opportunity to respond to the correspondence from the City of Imperial Beach and the Department of the Navy regarding the provision of new wastewater service by the City of Imperial Beach (the "Proposed Sewer Project") to the new Naval Base Coronado Coastal Campus, located outside the boundaries of Imperial Beach and within the boundaries of Coronado. (As to the facts and arguments that have been made before, we are not summarizing them again here.)

In further support of its request that SD-LAFCO (a) reconsider its initial opinion that the Proposed Sewer Project is not subject to the purview of SD-LAFCO and (b) find that the City of Coronado is the only proper service provider for the Proposed Sewer Project, the City of Coronado notes the following.

I. None of the Responses to Coronado's Initial Request for Reconsideration Raised Any Statutory or Case Authority to Refute Coronado's Perspective.

In its June 4, 2015 correspondence, the Navy did not dispute any of the arguments raised on behalf of the City of Coronado, but instead simply endorsed SD-LAFCO's initial response. If there were a legal basis to dispute Coronado's perspective, one must assume the Navy would have raised it.

II. Imperial Beach Now Agrees that SD-LAFCO's Review and Approval of the Proposed Sewer Treatment Expansion is Required.

The City of Imperial Beach now acknowledges that before it can undertake the Proposed Sewer Project, it must first seek, and obtain, SD-LAFCO approval. In its correspondence dated May 26, 2015, Imperial Beach states in pertinent part, "Without authorization from LAFCO, Imperial Beach will not expand Wastewater Service beyond the current service levels..." As discussed in more detail below, Imperial Beach's response is supported by various facts



Mike Ott, Executive Director
July 7, 2015
Page 2

pertaining to Imperial Beach's defined sphere of influence, SD-LAFCO's municipal service review of Imperial Beach, and Imperial Beach's General Plan.

III. Undertaking Review of the Proposed Sewer Project is Consistent with SD-LAFCO's Charter.

California Government Code section 56133 was originally enacted by the Legislature in 1993 in response to cities and special districts circumventing LAFCO by contractually extending services outside their jurisdictions to property owners instead of annexing the affected lands.

The Legislature delegated to LAFCO the responsibility of approving annexation proposals in order to insure the orderly development of cities and to prevent wasteful duplication of municipal services. (*City of Ceres v. City of Modesto* (1969) 274 Cal.App.2d 549, 557.) Some of LAFCO's tools for carrying out this responsibility are Sphere Of Influence and Municipal Service Reviews.

As explained further in this letter, and in our correspondence of May 1, 2015, the Proposed Sewer Project is precisely the type of situation LAFCO's were formulated to address. As explained in more detail below, if SD-LAFCO continues to refuse to undertake review of the Proposed Sewer Project, an irrevocable course of potential future development within the City of Coronado will be established, with significant potential adverse consequences, without any participation by Coronado's City Council.

IV. Upon Deciding to Undertake an Assessment of Imperial Beach's Request to Expand Wastewater Service, SD-LAFCO Should Reject it, Because the Area to Which the Navy Seeks to Have Imperial Beach Expand its Wastewater Services is Not and Will Never Be Within Imperial Beach's Sphere of Influence, and is Instead Within City of Coronado Boundaries, and Any Expansion of Wastewater Services by Imperial Beach Would be Improper.

An important tool used in implementing the Cortese-Knox Act ("Act") is the adoption of a Sphere of Influence (SOI) for a jurisdiction. An SOI is defined by Government Code section 56425 as "...a plan for the probable physical boundary and service area of a local agency." An SOI represents an area adjacent to a city or special district where a jurisdiction might be reasonably expected to provide services over the next 10-15 years. In other words, the SOI is generally the territory within which a city or special district is expected to annex.

For these reasons, the Act requires SD-LAFCO to adopt an SOI for each city and special district in its county. An SOI designates the city or district's future boundary and service area. It guides LAFCO in making decisions on individual jurisdictional changes. Importantly, a city does not control the territory in its sphere of influence until it actually annexes the property. LAFCO includes territory that is expected to require city services within a 10-15 year time period and considers information regarding land use, and public facilities and services. Each LAFCO is required to review a city's sphere every five years for possible modification.

Mike Ott, Executive Director
July 7, 2015
Page 3

In a 1977 opinion, the California Attorney General stated that an agency's SOI should "serve like general plans, serve as an essential planning tool to combat urban sprawl and provide well planned efficient urban development patterns, giving appropriate consideration to preserving prime agricultural and other open-space lands." (60 Ops. Cal.Atty.Gen. 118).

According to OPR's LAFCO publication, "a City's SOI describes its probable physical boundaries and service area and can therefore be used as a benchmark for the maximum extent of the city's future service area. ("LAFCOs, General Plans, and City Annexations," Governor's Office of Planning and Research 2012, p. 5)

With respect to services provided outside of a city or district's jurisdictional boundaries and within the city or district's SOI, LAFCO may authorize the provision of services "in anticipation of a later change of organization." If a district proposes to provide services outside of the district's sphere of influence, LAFCO may only approve the district's request if the services are provided to respond to "an existing or impending threat to the public health or safety of the residents of the affected territory."

An SOI is "a plan for the probable physical boundaries and service area of a local agency" that is determined by a LAFCO. Therefore, a city may provide "services outside of its jurisdictional boundaries only if the services will be provided 'within its sphere of influence in anticipation of a later change of organization.'" (*Habitat Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277.) Of course, here, there is no anticipated change of organization.

Applying these precepts to the facts at hand, SD-LAFCO's Sphere of Influence report for the City of Imperial Beach states, "The Imperial Beach Sphere of Influence is coterminous with the City's boundary." This means that the SOI boundary follows the boundaries of the incorporated city. In its 2008 MSR, SD-LAFCO affirmed the existing coterminous sphere of influence for Imperial Beach, stating, "The City of Imperial Beach's sphere of influence was established on July 12, 1999 and is coterminous with the City's corporate limits. There was a partial coterminous sphere affirmation on August 2, 2004 involving a portion of the City sphere located in the boundary of the now dissolved Tia Juana Valley County Water District. On August 1, 2005, a city sphere review was conducted and the coterminous sphere was again affirmed coterminous. There have been no amendments to the sphere since this affirmation."

Thus, that portion of Coronado to which Imperial Beach provides wastewater treatment services is not even within Imperial Beach's Sphere of Influence. Generally, a request to extend services beyond a City's SOI is accompanied by a proposal for annexation of that area. Here, no such annexation is possible since the area to which expanded service is proposed to be provided is already within another City's boundaries.

In *City of Ceres v. City of Modesto* (1969) 274 Cal.App.2d 549, the court considered whether the City of Modesto's proposed plan to construct permanent sewer lines in an area which it may never be able to annex is an unconscionable waste of city funds entitling a

Mike Ott, Executive Director
July 7, 2015
Page 4

stakeholder taxpayer to injunctive relief under Code of Civil Procedure section 526a, explaining "a court must not close its eyes to wasteful, improvident and completely unnecessary public spending, merely because it is done in the exercise of a lawful power." On facts less favorable than these (i.e., in the *City of Ceres* case, future annexation was at least feasible), the Court concluded that a taxpayer would have been able to state such a cause of action for several reasons.

- a. "First, it is conceivable that the City of Modesto will derive no benefit of any kind from the installation of sewer lines in the adjoining unincorporated territory unless the territory is ultimately annexed to Modesto." So too here. Imperial Beach will never be able to annex the territory in which the sewer lines are proposed to be installed since that territory is already squarely within not just Coronado's sphere of influence, but its boundaries!
- b. Second, the court held that if the City of Ceres were to annex the area, "the construction of permanent sewer lines by Modesto in the disputed territory would result in an unnecessary duplication of municipal services, would serve no useful purpose, and would constitute an unconscionable waste of Modesto's tax funds." So too here. Because the territory into which the sewer lines are proposed to be extended is already within Coronado, such an expansion of services by Imperial Beach within the boundaries of Coronado could "result in an unnecessary duplication of municipal services, would serve no useful purpose, and would constitute an unconscionable waste of [Imperial Beach's] tax funds."

V. Any Expansion of Imperial Beach Wastewater Services Into Coronado Is Inconsistent with SD-LAFCO's MSR.

State law also mandates that LAFCO prepares Municipal Service Reviews (MSRs). (See, Government Code section 56378 (a): In addition to its other powers, the commission shall initiate and make studies of existing governmental agencies. Those studies shall include, but shall not be limited to, inventorying those agencies and determining their maximum service area and service capacities.) An MSR is a comprehensive analysis of the municipal services, including an evaluation of existing and future service conditions, provided in a particular region, city or special district. SD-LAFCO adopted MSRs for all cities in the County in 2008. The reason for conducting MSR's is to ensure SOI's are updated when and as appropriate.

In order to prepare and to update spheres of influence, LAFCO is required to conduct a service review of the municipal services provided in the county or other appropriate area designated by the commission. The MSR focuses on service delivery and considers:

- a. Adequacy of public services
- b. Infrastructure needs or deficiencies
- c. Financial ability of agencies to provide services
- d. Status of and opportunities for shared facilities



Mike Ott, Executive Director
July 7, 2015
Page 5

- e. Accountability for community service needs, including governmental structure and operational efficiencies
- f. Any other matter related to effective or efficient service delivery

The MSR prepared by SD-LAFCO for Imperial Beach states, "The City is bounded by the Pacific Ocean, the United States/Mexico International Border, and the Cities of San Diego and Coronado. **Thus any expansion would require detachment from one of the two cities.**" (Emphasis added.) SD-LAFCO's MSR thus envisions that an expansion such as the one described in the Proposed Sewer Project would require detachment of the subject property from Coronado. Further, in response to LAFCO's 2007 survey, Imperial Beach City staff reported no opportunities to share facilities with other local agencies. The expansion now proposed by the Proposed Sewer Project was nowhere on the horizon.

Neither the SOI nor the MSR made mention of the existence of Imperial Beach sewer services in neighboring Coronado. Neither the SOI nor the MSR contemplated any revision or expansion of Imperial Beach's existing SOI. Pursuant to 56425, a Commission uses spheres of influence as the basis to recommend governmental reorganizations. Here, no reorganization is necessary or even possible since the service request is within the Coronado city limits. Rather, the logical solution that is consistent with the Cortese-Knox Act and with LAFCO's charter is for Coronado to provide sewer services within its own boundaries.

VI. Expansion of Imperial Beach Wastewater Services Into the City of Coronado is Even Inconsistent with Imperial Beach's General Plan.

Under Section 56668(g), a LAFCO is required to consider whether a proposal is consistent "with city or county general and specific plans."

Here, the expansion contemplated by the Department of the Navy is not even consistent with Imperial Beach's general plan. Imperial Beach's General Plan (excerpt attached) does not at all address the provision of services to the Navy property in Coronado, but focuses only on the provision of services to Navy property in Imperial Beach (i.e., the OLIB – Outlying Landing Field Imperial Beach). And as to those services, the General Plan references a decrease of those services, not an increase; it states at p. F-18 that "The Navy has significantly scaled down its usage since its peak in the 1970's."

Contrary to the General Plan, the June 4, 2015 Department of the Navy correspondence states that, as compared to 2013, the Navy intends to install an additional 1.5 million square feet of infrastructure to accommodate the additional wastewater requirements, which are expected to generate approximately 200,000 gallons of wastewater per day. This is a huge expansion of wastewater treatment services that is not even remotely considered by Imperial Beach's General Plan. The Proposed Sewer Project's inconsistency with Imperial Beach's General Plan is another reason why SD-LAFCO should find Coronado is the appropriate provider of sewer services within its own boundaries.



Mike Ott, Executive Director
July 7, 2015
Page 6

VII. Expansion of Wastewater Services Into the City of Coronado Violates the City of Coronado's Police Power.

California has nearly 500 cities. Within city boundaries, cities have responsibility for their own municipal services as police and fire, animal control, parks, public works, water, waste water, solid waste, and library. Sometimes these services may be provided by the city itself or by a county, a special district or a private company. Rarely, if ever, are they provided by a neighboring city.

A city has, under its police power, the authority to provide sewer service to its residents in the absence of any competing authority. (Cal. Const. art. XI, § 7; *Harter v. Barkley* (1910) 158 Cal. 742; *McBean v. City of Fresno* (1896) 112 Cal. 159; *Home Gardens Sanitary Dist. v. City of Corona* (2002) 96 Cal.App.4th 88, 94-95.) Here, unlike the facts in the *Home Gardens* case, in which a city was competing with a special district to provide service, the agencies seeking to provide sewer service to the Navy are two cities. Therefore, unlike the outcome in the *Home Gardens* case, in which the constitutional mandate of a special district superseded a city's police power, Coronado's police power to provide sewer service to its residents within its boundaries is superior to the right of neighboring Imperial Beach to do so.

A contrary result, i.e., allowing Imperial Beach to supply new hookups outside its geographical boundaries and outside its sphere of influence without requiring annexation and without a revenue-sharing agreement gives Imperial Beach an upper hand in managing economic growth and reaping the tax revenue benefits therefrom.

More importantly, the development of this amount of infrastructure (1.5 million square feet of additional infrastructure over 548 acres of property in Coronado) can potentially establish a future land use pattern without any participation or permission from Coronado's City Council. Without the agreement of the Coronado City Council, this 548 acres of property within the City is being more fully developed. Should the Navy at any point in the future abandon its current use of the property, and lease it to a private developer, the results could be devastating to Coronado. Such a course is not beyond the realm of possibility. As recently as the 1990's, a proposal for the Ocean Links Golf Course Development was considered, which would have been comprised of luxury homes and golf courses.

Unlike some fast growing cities in Southern California, Coronado is built out to the levels its leaders believe appropriate. The zoning for the 548 acres of property on which the Navy base is situated is "nature preserve" (pursuant to an environmental overlay). Coronado officials and residents are interested in preserving the existing character and level of development in Coronado. While the City may not have the legal right to stop the Navy from conducting this development, it would likely not approve it for a regular private developer. Should the Navy cease its current use of the property after the installation of the proposed 1.5 million square feet of infrastructure by Imperial Beach, and lease that property to a private developer, Coronado would be left in the untenable position of (a) having Imperial Beach make future development decisions about Coronado property (since Imperial Beach would own the infrastructure),



Mike Ott, Executive Director
July 7, 2015
Page 7

(b) having its City Council deprived of the land use discretion, development oversight, and police power intended to rest with it, and (c) allowing private development to occur without paying proper incremental costs to the City of Coronado, thereby burdening Coronado with a full buildout of an area intended to be a nature preserve.

SD-LAFCO should participate in the oversight of the Proposed Sewer Project and ensure the City of Coronado is empowered to make decisions about development within its boundaries to ensure such an untenable (yet very foreseeable) result does not occur.

VIII. Conclusion

For all of the reasons enunciated in this letter and in our letter of May 1, 2015, we renew our request on behalf of the City of Coronado that SD-LAFCO reconsider its initial opinion that the Proposed Sewer Project is subject to the purview of SD-LAFCO and:

1. Undertake review of the Proposed Sewer Project, especially in light of the fact that the City of Imperial Beach has stated it will not provide wastewater services to the Proposed Sewer Project without SD-LAFCO's approval.
2. Find that because the Proposed Sewer Project is within Coronado's city limits and outside Imperial Beach's city limits and sphere of influence, the City of Imperial Beach cannot provide wastewater services to the Proposed Sewer Project without SD-LAFCO's approval.
3. Find that the City of Coronado (and not the City of Imperial Beach) is the proper provider of wastewater services to the Proposed Sewer Project.

Sincerely,

BURKE, WILLIAMS & SORENSEN, LLP

A handwritten signature in blue ink, appearing to read "Deirdre Cox", is written over a blue horizontal line. The signature is stylized and cursive.

DEIRDRE JOAN COX

Enclosures:

1. SD-LAFCO SOI for City of Imperial Beach
2. SD-LAFCO MSR for City of Imperial Beach
3. Excerpt from City of Imperial Beach General Plan

cc: Blair King, City Manager
Michael Colantuono, Esq.
Andy Hall, City Manager, City of Imperial Beach
Wesley Bomyea, Department of the Navy

CITY OF IMPERIAL BEACH

The City of Imperial Beach is a residential beach city and is the most southern beach city in Southern California and the West Coast of the United States. It is 14.1 miles south of downtown San Diego and 5 miles northwest of downtown Tijuana, Mexico. Imperial Beach encompasses nearly 4 miles of beach. The City connects to nearby Coronado, California, by way of the Silver Strand.

Currently, Imperial Beach has a population of 26,324 people; as of 2020 that number is projected to increase to 28,230 people.

The City Council consists of a Mayor and four Councilmembers; each serving four year terms and elected from the city at-large. The position of the mayor is elected directly by the voters. The City Council also acts as the Planning Commission, Redevelopment Agency, Financing Authority and Personnel Board.

The Imperial Beach Sphere of Influence is coterminous with the City's boundary. Agencies providing key services include the City of Imperial Beach, San Diego Unified Port District, and County of San Diego Sheriff. EDCO provides trash hauling and disposal services and Cal American Water Company provides water services.

CITY CHARACTERISTICS

Incorporation Date: July 18, 1956
Population: 26,324 (2010 Census)
Land Area: 4.4 sq. miles
Governance: General Law City; Elected at large

Sphere of Influence: Coterminous
Sphere Adopted: July 12, 1999
Sphere Reaffirmed: March 3, 2008
General Plan Adoption Date: 2007

Primary Service Providers: City of Imperial Beach, San Diego Unified Port District, County of San Diego Sheriff, CAL American Water

City Council Meetings: 1st and 3rd Wednesday at 6:00 p.m.
Planning Commission: Same as City Council

Contact Information

Address: 825 Imperial Beach Blvd.
Imperial Beach, CA 91932
City Hall Phone: 619/423-8301
Police Department (Non Emergencies): 619/423-8223
Fire Department (Non Emergencies): 619/423-8223
Planning Department: 619/628-1356
Website: <http://www.imperialbeachca.gov>
Email: N/A

Conclusions

The City of Escondido effectively provides services to the City's residents; all public services are provided by the City or through contracts with outside agencies. The City also maintains a budget that adequately funds services. In FY 2007-08 total revenues exceeded expenses by \$11,841,605.

CITY OF IMPERIAL BEACH

Description

The City of Imperial Beach incorporated on July 18, 1956 and now encompasses approximately 4.44 square miles. The current estimated population according to SANDAG is 27,709 people (SANDAG, 2007). Imperial Beach is a General Law city that operates within the parameters of California municipal law. The City has a city manager and a 5-member city council that is elected at large for 4-year terms.

Imperial Beach is located along the southern portion of the San Diego coastline. The City is bordered by the City of Coronado to the north, the City of San Diego to the north, east, and south, the country of Mexico to the south, and the Pacific Ocean to the west. Imperial Beach provides many municipal services to city residents including: beach maintenance, building inspection, business licenses, fire protection, flood control, information systems, landscape maintenance, lifeguard services, park and recreation, planning, land use, zoning, redevelopment, road maintenance, storm drain maintenance, street lighting, and traffic control. Animal control services are provided by the City of Chula Vista through a contract. American Medical Response (AMR) provides emergency medical transport. Garbage and refuse collection and recycling services are provided by EDCO through a contract with the City. While the City provides landscape maintenance, some of the work is contracted out. Legal services are provided through a contract with McDougal, Love, Eckis, Smith, and Boehmer. The County of San Diego provides library services. Wastewater is provided by Metro Wastewater JPA and water service is provided by Cal-American Water Company.

According to the City of Imperial Beach Fiscal Year 2007-08 Budget, total revenues amount to \$34,422,844 and total expenses amount to \$28,631,119.

Total Operating Budget (FY 2007-08)

	<u>Revenues</u>	<u>Expenses</u>
General Fund	\$17,455,929	\$14,174,148
Special Revenue	\$2,089,425	\$2,244,390
Enterprise	\$4,318,900	\$3,958,994
Internal Service	\$1,887,090	\$1,537,793
Redevelopment	\$8,691,500	\$6,715,794
Total	\$34,422,844	\$28,631,119

Sphere of Influence

The City of Imperial Beach's sphere of influence was established on July 12, 1999 and is coterminous with the City's corporate limits. There was a partial coterminous sphere affirmation on August 2, 2004 involving a portion of the City sphere located in the boundary of the now dissolved Tia Juana Valley County Water District. On August 1, 2005, a city sphere review was conducted and the coterminous sphere was again affirmed coterminous. There have been no amendments to the sphere since this affirmation.

Requests for Sphere Changes

In response to LAFCO's 2005 survey, city staff reported that there are no anticipated sphere amendments at this time.

General Plan and Land Use

The Imperial Beach General Plan was adopted in 1994 and last updated on March 3, 2007.

Conclusions

The City of Imperial Beach's location restricts expansion. The City is bounded by the Pacific Ocean, the United States/Mexico International Border, and the Cities of San Diego and Coronado. Thus any expansion would require detachment from one of the two cities. There have been no sphere amendments since the sphere's coterminous affirmation in 2005. Because of its geographic location and no recent amendments, a coterminous sphere affirmation appears to be warranted.

MUNICIPAL SERVICE REVIEW

The purpose of a service review is to evaluate the service delivery of the City of Imperial Beach in terms of five broad factors, including: growth, infrastructure, finance, management, and governance. Information about the City is gathered and analyzed in order to make specific determinations related to the efficiency and effectiveness of municipal service delivery.

Growth and population projections for the affected area

According to SANDAG, the current population of the City of Imperial Beach is 27,709 people and the population in 2010 is projected be 28,331 people (SANDAG, 2007).

Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies

Imperial Beach provides many municipal services for the City. Other services and facilities are provided through contracts with outside agencies and companies. Currently, Imperial Beach is undergoing seven different major improvements, including the establishment of an Emergency Operations Center, a fire station remodel, the Civic Center Master Plan; replacement of collapsed storm drains,

and street reconfiguration. The City also has capital improvement/facility plans, including: the Public Works Facility Master Plan; Marina Vista Center Master Plan; Reama Pars/ Teeple Park/Sports Park Recreation Center improvements and renovations; Sewer System Capacity Study; improvements to pumps and their stations; repairing wet wells and manholes; lighting improvements; and street and sidewalk repairs.

Financial ability of agencies to provide services

Imperial Beach maintains a budget that effectively supports and sustains the City's activities and residents. The City's Fiscal Year 2007-08 Budget states that total revenues amount to \$34,422,844 and total expenses amount to \$28,631,119.

Status and opportunities for shared facilities

In response to LAFCO's 2007 survey, Imperial Beach City staff reported no opportunities to share facilities with other local agencies.

Accountability for community service needs, including governmental structure and operational efficiencies

Imperial Beach is a General Law city that operates within the parameters of California municipal law. Imperial Beach has a city manager and a 5-member city council. The City administers the following board, commissions, and committees: the Design Review Board and the Tidelands Advisory Committee. The City also provides public outreach and information programs such as the City Bi-Annual Newsletter and cable television Community Calendar.

Conclusions

The City of Imperial Beach provides services effectively; all public services are provided by the City or through contracts with outside agencies and companies. The City has a budget that adequately funds services. In FY 2007-08 total revenues exceeded expenditures by \$5,791,725.

CITY OF LA MESA

Description

The City of La Mesa incorporated on February 16, 1912 and currently includes approximately 9.04 square miles in central San Diego County. The current estimated population of La Mesa according to SANDAG is 56,250 people (SANDAG, 2007). La Mesa is a General Law city that operates within the parameters of California municipal law. La Mesa has a city manager and a 5-member city council that is elected at large for 4-year terms. The position of City Clerk is also subject to an election.

La Mesa is bounded by the City of San Diego to the north, the City of El Cajon to the northeast the on the east by the unincorporated community of Spring Valley,



CITY OF IMPERIAL BEACH
GENERAL PLAN & LOCAL COASTAL PLAN

UPDATED OCTOBER 2010

WASTEWATER SERVICES

Background

The City of Imperial Beach is a member of the San Diego Metropolitan Sewerage System (Metro). The City operates its own sewerage collection system and transports the sanitary waste to Metro's South Bay Interceptor which conveys it to the regional water treatment plant on Point Loma.

The present collection system consists of 11 pump stations, 16,200 feet of force main, and approximately 36 miles of sewer lines ranging in diameter from 6 inches to 21 inches. Where possible, the sewage system utilizes gravity flow to convey effluent, however, in some instances, pumping is required. Two major service areas of Imperial Beach are served by large pump stations. The west side of the City's sewage is transported to Pump Station No. 8, located at 9th Street and Imperial Beach Boulevard, prior to conveyance to Metro. The east side of the City and a portion of the west side of the City's sewage is pumped by force main to Calla and Florida Streets prior to conveyance to the Palm City Pump Station by gravity sewer flow. Effluent from both pump stations enters Metro's South Bay Interceptor.

Portions of the wastewater management system are up to 40 years old. The oldest pipes in the system are made of vitrified clay, which carries a life expectancy of approximately 75 years. Some portions of the system are in need of repair and are currently scheduled for replacement dependent upon urgency.

Infiltration, defined as water entering the sewer system from the groundwater table, is a significant problem. Portions of the City's system are very susceptible to sea water infiltration due to the close proximity of the ocean and the depth of the pipe relative to sea level. Areas of probable high seawater intrusion include the collection lines leading to Pump Station 1A, 1B, and 2; in alleys between Seacoast Drive and the ocean; and just west of Pump Station 10 at Cypress and Eighth Street. Correction of this problem includes TV inspection inside of the pipes, lining and sealing of the pipe if it appears structurally sound and the leaks are not too numerous, or complete replacement. By the end of 1993, it was estimated that approximately one quarter of the problem areas were lined.

In 1990, the City adopted a Sewerage System Master Plan prepared by Engineering-Science, Inc. The plan's conclusions and recommendations utilized the 1981 General Plan for ultimate build-out of the City. The report identified a number of deficiencies in the existing system. Besides the groundwater infiltration problem, the report identified improvements needed to the interceptor/trunk sewer, and pumping stations. Utilizing this report, the City's Five Year Capital Improvement Program since 1990 has included improvements to correct many of the deficiencies.

In 1993, the City of Imperial Beach discharged an average of 2.5 million gallons per day (mgd) of waste into the Metro system. The City's agreement with Metro allows flows up to 3.5 mgd until the year 2003. The City pays \$33,000 per year to Metro in order to retain their reserved sewer capacity. The Navy has contracted with the City of Imperial Beach for 0.5 mgd portion of the City's 3.5 mgd allotment.

The combined flow from the Navy and the City can increase by 1.0 mgd before the Metro capacity allocation is exceeded. This represents a combined reserve capacity of approximately 4,000 equivalent dwelling units (EDU) using 250 gpd per EDU. However, if the total capacity reserved for the Navy were to be utilized, the remaining reserved capacity for the City of approximately 2,000 EDU, is adequate for the City's projected ultimate build-out based upon the General Plan projections. Ultimate flow estimates predict that the City will require less than the reserved 3.5 mgd for complete build-out (including the Navy usage). This appears to be especially true when the following facts are considered:

- The actual sewage flows per dwelling unit in Imperial Beach appear to be lower than the 250 gpd standard utilized for EDU.
- The Navy has significantly scaled down its usage since its peak in the 1970's.
- The problem of infiltration of groundwater entering the sewer system is slowly being resolved, thus decreasing the flows.
- It should also be noted that a new San Diego Area Waste Management District is being formed to replace the Metro System and is talking about eliminating the reserve capacity system, and developing a different system for assuring that adequate wastewater service capacity can be guaranteed.

The City of Imperial Beach has established an Enterprise Fund to financially support sewer services in the City. The fees that are collected for providing services, and a \$2,400 connection (hook-up) fee, fund the total program. All the money that is collected is utilized exclusively for sewer service, and covers the cost of all capital improvement outlays, the treatment of effluent by the Point Loma treatment facility, staffing and other miscellaneous expenses.

A related issue to the City's wastewater service is water contamination that originates in Mexico. The ocean and sandy beaches of Imperial Beach are considered a major asset for the City. Unfortunately, as early as 1959, the San Diego County Department of Public Health has periodically placed quarantines on the City's beaches. These quarantines prohibit swimming in the effected ocean waters, but non-water contact recreation is still permitted on the beach. The pollution problem is solvable but not by Imperial Beach. Solutions to the pollution problem are within the jurisdiction of many different agencies --Federal, State and International, as well as the City of San Diego.