



November 27, 2023

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

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

Dear Mr. Simonds:

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

The Port District Act and Other Relevant State Law

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

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

To implement the policy of the State as codified, Port District activities are subject to the requirements and obligations of the Coastal Act¹ and the Public Trust Doctrine and, where applicable, the oversight by both the Coastal Commission and the State Lands Commission.² Specifically, the Port District is charged, under the San Diego Unified Port District Act, with the “development, operation and regulation of harbor works and improvements, including rail and water, for the development, operation, maintenance, control, regulation, and management of San Diego Bay for the promotion of commerce, navigation, fisheries, and recreation...[.]” (Harbor & Nav. Code App. 1, § 4.) Public Resources Code section 6009 establishes that the “purposes and uses of tidelands and submerged lands is a *statewide concern*” and further provides that grantees of tidelands and submerged lands, such as the Port District, must manage them in a manner “consistent with the terms and obligations of their grants and the public trust, *without subjugation of statewide interest, concerns, or benefits to the inclination of local or municipal affairs, initiatives, or excises.*”³

The Port District’s boundaries are also set by the provisions of the Port District Act. Specifically Section 5 of the Port District Act establishes that its boundaries include the corporate areas of San Diego, Chula Vista, Coronado, National City, and Imperial Beach that established the Port District, and any contiguous unincorporated territory in the County of San Diego (“County”), “which is economically linked to the development and operation of San Diego Bay, included in the district by the board of supervisors of the county as provided in this act.” Further, under Section 53 of the Port District Act, “any territory annexed in accordance with law to a city specified in this

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

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

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

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

³ We hope that the Port District’s response to the 2022/2023 San Diego County Grand Jury Report filed June 7, 2023, regarding Governance of San Diego Bay and Its Tidal Land and Regions (Grand Jury Report or Report) can provide SD LAFCO with further information and insights into the distinctive nature of the Port District’s operations. Our response can be found at the following link:

<https://pantheonstorage.blob.core.windows.net/administration/2023%20Port%20Response%20to%20Grand%20Jury%20Report.pdf>

Keene Simonds
Page 3 of 3
November 27, 2023

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

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

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

I look forward to discussing this matter further you.

Sincerely,



Randa Coniglio
Acting President and CEO
San Diego Unified Port District

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