



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

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AGENDA REPORT
 Business | Action

March 4, 2024

TO: Commissioners

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

**SUBJECT: Final Administrative Assessment |
 Commission Oversight Duties and Port of San Diego**

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will receive a final administrative assessment on LAFCO’s oversight duties as they relate to the Port of San Diego – formally the San Diego Unified Port District. The assessment fulfills a request by the Commission to evaluate whether the Port is subject to LAFCO similar to other special districts in San Diego County. The assessment expands on the analysis provided in a preliminary version presented in December – including incorporating input from the Port and State Lands Commission (SLC) – while continuing to conclude the Port is subject to LAFCO oversight as an independent special district in the performance of local governmental and proprietary functions. It is recommended the Commission accept the assessment and approve a conforming policy statement. Alternatively, and as contemplated, should it separately determine the Port is performing functions exclusively for the benefit of the State, the Commission should accept the assessment and approve a substitute policy statement that the Port is not subject to LAFCO oversight.

<p>Administration Keene Simonds, Executive Officer 2550 Fifth Avenue, Suite 725 San Diego, California 92103 T 619.321.3380 www.sdlafco.org lafco@sdcounty.ca.gov</p>	<p>Joel Anderson County of San Diego</p> <p>Jim Desmond County of San Diego</p> <p>Nora Vargas, Alt. County of San Diego</p>	<p>Kristi Becker City of Solana Beach</p> <p>Dane White City of Escondido</p> <p>John McCann Alt. City of Chula Vista</p>	<p>Chair Stephen Whitburn City of San Diego</p> <p>Marni von Wilpert, Alt. City of San Diego</p>	<p>Vice Chair Barry Willis Alpine Fire Protection</p> <p>Jo MacKenzie Vista Irrigation</p> <p>David Drake, Alt. Rincon del Diablo</p>	<p>Vacant General Public</p> <p>Harry Mathis, Alt. General Public</p>
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BACKGROUND

LAFCOs' Oversight Responsibilities

State Legislature delegates LAFCOs' oversight responsibilities to regulate and plan the location of cities and most special districts and their municipal service areas in all 58 counties. This includes establishing, expanding, and reorganizing cities and special districts in meeting LAFCOs' underlying directive to facilitate orderly and accountable growth and development relative to community needs – current and future. Specific regulatory actions under LAFCO statute include approving or disapproving all of the following jurisdictional changes: city incorporations and disincorporations; district formations, consolidations, and dissolutions; city and district mergers; and city and district annexations and detachments. LAFCOs also authorize cities and special districts to provide new or extended services outside their jurisdiction boundaries by contracts or agreements.

Special Districts Defined + Legislative Exclusions

The Legislature defines “special district” under LAFCO statute as follows:¹

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

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

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

Commission Request For Future Item | Administrative Assessment on LAFCO Oversight Regarding the Port

At its October 2023 meeting, San Diego LAFCO provided support for a request made from the dais by Commissioner MacKenzie for staff to prepare a future item to assess whether LAFCO's oversight applies to the Port. The request cited a recent Civil Grand Jury report, which – among other items – identifies the Port as a special district without local oversight.

¹ Reference to Government Code 56036(a).

² Reference to Government Code 56036(b).

A front-page article in the Union-Tribune proceeded to cover the Grand Jury report and presented its own queries into the Port and related oversight and accountability questions.

Preliminary Assessment

LAFCO staff proceeded to present a preliminary administrative assessment on the Port's standing at the December 4th meeting. The preliminary assessment tentatively concluded – and in contrast to administrative practice – the Port is subject to LAFCO oversight. It also tentatively concluded the Port qualifies as an independent district and therefore eligible to participate in elections to seat district members on the Commission while also being responsible for contributing to the annual LAFCO apportionment. In presenting the item, staff emphasized a material qualifier underlying the assessment in its preliminary form ties to limited input from the Port as well as expected input from the SLC. The Commission concluded the discussion with direction for staff to return with a final assessment in early 2024 while also encouraging formal input from the Port.

DISCUSSION

This item is for San Diego LAFCO to receive a final administrative assessment evaluating the applicability of LAFCO's oversight duties as it relates to the Port and making a related policy determination. The assessment has been finalized with the assistance of outside counsel and follows the Commission's initial discussion at its December 4th meeting. It also incorporates input received from the Port as well as comments submitted by SLC. Additional discussion on these latter communications follow.

Port Communication | Public Trust Doctrine and Orientation as State Agent

LAFCO staff met with Port leadership immediately before the December 4th meeting and after the publication of the preliminary assessment. Port attendees – including then Chair Rafael Castellanos and current Chair Frank Urtasun – communicated openness to the notion of LAFCO oversight, although with a significant qualifier orienting them to believe otherwise.³ The qualifier involves the Port's orientation they are bound under the “public trust doctrine” to act exclusively to the benefit of the State as a grantee of certain tidal and submerged lands in the San Diego Bay. This orientation means – among other things – the Port views itself as an exclusive State agent and not a provider of local municipal services. Port attendees added the orientation is a central theme in their recent response to the Grand Jury report. The meeting concluded amicably with all attendees agreeing to schedule a joint meeting with SLC and do so ahead of LAFCO staff's expectation of returning the topic to the Commission as early as its February 2024 meeting.

³ Other Port attendees included Acting Chief Executive Officer Randa Coniglio and Vice President of Strategy and Policy Job Nelson.

SLC Communication | Port Act Provides SLC with Exclusive Oversight

LAFCO was subsequently notified by the Port on January 10, 2024 they had met with SLC staff to discuss the preliminary assessment. Port communicated SLC staff's preference to not meet with LAFCO on the topic, and instead proceed directly with issuing a comment letter. A letter from the SLC Executive Officer was received on January 25th and outlines a staff position they share the Port's position they are not subject to LAFCO. Instead, SLC staff asserts SLC has exclusive oversight given the Port's special legislation and management of public trust properties. Highlighted passages from the letter follows.

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

“The San Diego Unified Port District is different from port and harbor districts formed under the Harbors and Navigation Code. The Port was not formed under the Harbors and Navigation Code's general port district provisions, and not every harbor or port district manages legislatively granted land. LAFCO oversight of the Port presents different issues than oversight of other port and harbor districts.”

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

Attachment One provides copies of both the SLC staff letter and LAFCO staff response.

ANALYSIS

Staff concludes the Port is subject to San Diego LAFCO's regulatory and planning oversight as an independent special district. This final administrative assessment has been vetted through outside counsel and premised on determining the Port performs local governmental and property functions – broadly categorized as harbor and port, recreation, public safety, and community (waterfront) development – and in doing so meets the Legislature's definition of “special district” relative to LAFCO oversight.⁴

⁴ Reference to Government Code 56036(a).

Should the above conclusion apply, the substantive effect is the applicability of LAFCO’s legislative task to oversee the Port’s physical development (jurisdictional boundary, extraterritorial service area, and any latent powers) and accountability in meeting community needs in line with the Commission’s regional growth management priorities. The material effect of the conclusion, however, is somewhat narrowed given local conditions suggest future boundary changes will likely be limited to expansions necessitated by annexations to the Port’s member cities (e.g., Chula Vista, National City, and San Diego). Providing this service – and specifically by LAFCO reorganizing annexations to any of the cities to include concurrent annexations to the Port – is nonetheless important. It ensures the Port’s jurisdictional boundary is clear and known and void of any deviations that could complicate future board appointments and/or elections.⁵ Additional public value and benefit would separately come in the form of LAFCO preparing periodical municipal service reviews covering the Port. These studies provide decision-makers and the public independent evaluations of the performance of local agencies relative to meeting community needs – current and future – and telegraph and/or initiate merited true-ups.⁶

Other material factors underlying the assessment and central conclusion the Port is subject to LAFCO oversight follows.

- **LAFCO Statute Covers “Special Act” Districts**

The creation of the Port by a special act does not materially separate applicability from other port and harbor districts overseen by LAFCOs – including the Oceanside Small Craft Harbor District. Statute defines special districts for the purpose of delineating LAFCO oversight to include agencies of the state formed under “general law or special act.” (Emphasis added.)

- **SLC Oversight and LAFCO Oversight are Different**

Introducing LAFCO oversight would not moot or otherwise override SLC’s existing oversight tasks involving the Port specific to managing granted public trust lands. However, as provided in its enabling special act, the Port can exercise its powers (active and latent) beyond public trust lands and has a relatively expansive jurisdictional boundary to do so. Overseeing the jurisdictional boundary via annexations, detachments, etc. is tasked to LAFCO. Also tasked to LAFCO is preparing periodical studies on the performance and accountability of associated governmental services in meeting current and future community needs.

⁵ As noted in the preliminary assessment, the State Board of Equalization reports no changes to the Port’s boundary have been filed since 2000 when the reporting function transitioned to LAFCOs as part of the Cortese-Knox-Hertzberg Local Government Reorganization Act. The lack of boundary updates for the Port directly conflicts with several annexations concurrently occurring since 2000 involving Chula Vista, National City, and San Diego.

⁶ The conclusion would also materially require the Port to begin participating in the annual apportionment applied to independent special districts as well as elections to seat district members on LAFCO. The total special district apportionment to LAFCO equals 28.5% of the total approved annual budget less any other budgeted revenues (e.g., application fees). This amount is apportioned among all the districts based on their percentage share of total revenues collected by all of the districts in the most recent fiscal year as reported by the State Controller’s Office. The County Auditor-Controller invoices the districts directly. In 2023-2024, the Auditor-Controller estimates the apportionment to the Port would have been \$75,453.

- **Dual Oversight is Contemplated and Practiced**
LAFCO statutes readily addresses the inter-relationship between SLC and LAFCO through reconciling procedures. This includes direction to LAFCO to defer to SLC when boundary changes involve public trust lands. Direction is provided to SLC to report its determinations with allowance for LAFCO to take action as needed. There are approximately 10 other special districts – including port and harbor districts – in California that are currently overseen by both SLC and LAFCO.
- **Port’s Dual Performance to State and San Diego**
The Port’s governmental and related proprietary services (e.g., harbor and port, recreation, public safety, and community development) are organized to benefit both the State and San Diego. The former’s benefit ties to the State’s allowance to facilitate the Port’s creation via a special act and subsequent granting of public trust properties. The latter’s benefit ties to local voters’ actual election approval to form the Port on November 6, 1962 with governance shared by the five member cities.

Notwithstanding the above analysis, an alternative conclusion is reasonably available to the Commission in determining the Port is not subject to LAFCO oversight. This alternative conclusion is premised on the Commission determining the Port’s services are exclusively performed for the benefit of the State. Any associated local benefit or related impact of the Port would be entirely incidental. This alternative is consistent with the Port’s input.

RECOMMENDATION

It is recommended San Diego LAFCO accept the final administrative assessment and determine the Port is subject to Commission oversight. This recommendation and related authorizations are consistent with Alternative One outlined below.

ALTERNATIVES FOR ACTION

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

Alternative One (recommended):

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

Alternative Two:

- (a) Accept the final administrative assessment as presented.
- (b) Approve a substitute policy statement conforming the Port is not subject to LAFCO’s oversight.

Alternative Three:

Continue item to a future meeting.

PROCEDURES

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

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

Respectfully,



Keene Simonds
Executive Officer

Attachment:

- 1) Correspondence Between LAFCO staff and SLC staff
 - LAFCO letter, dated February 20, 2024
 - SLC letter, dated January 24, 2024

Online Materials:

- 1) Preliminary Assessment, December 4, 2023 Agenda Report
 - <https://www.sdlafco.org/home/showpublisheddocument/7388/638366986182570000>

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

February 20, 2024

Delivered by Electronic Mail:

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

SUBJECT: San Diego Unified Port District

Ms. Lucchesi:

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

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

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

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

Administration Keene Simonds, Executive Officer 2550 Fifth Avenue, Suite 725 San Diego, California 92103-6624 T 619.321.3380 E lafco@sdcounty.ca.gov www.sdlafco.org	Joel Anderson County of San Diego Jim Desmond County of San Diego Nora Vargas, Alt. County of San Diego	Kristi Becker City of Solana Beach Dane White City of Escondido John McCann, Alt. City of Chula Vista	Chair Stephen Whitburn City of San Diego Marni von Wilpert, Alt. City of San Diego	Vice Chair Barry Willis Alpine Fire Protection Jo MacKenzie Vista Irrigation David A. Drake, Alt. Rincon del Diablo	Vacant General Public Harry Mathis, Alt. General Public
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2. Notwithstanding the above acknowledgments, the Port's authority and powers (active and latent) are not bound to managing certain State public trust lands. This is reflected – among other measurements – in the Port's jurisdictional boundary extending inland by more than 20 straight-line miles from the Bay in capturing the entirety of Chula Vista, Coronado, Imperial Beach, National City, and San Diego.
3. LAFCO is a State agency tasked with administering the Cortese Knox Hertzberg Local Government Reorganization Act – or CKH – with delegated oversight to help ensure cities and special districts' boundaries and municipal services are orderly, sustainable, and accountable. The State's delegation includes exclusive authority over local agency change of organizations – like special district annexations, detachments, and dissolutions.¹ CKH also provides cities and special districts must receive LAFCO approval before providing services outside their jurisdictional boundaries by contract or agreement.²
4. LAFCO is also tasked with certain planning duties to independently inform its oversight responsibilities. This includes regularly performing studies – e.g., municipal service reviews – to “contribute to the logical and reasonable development of local agencies” and “to shape the development of local agencies to advantageously provide for the present and future needs of each county and its communities.”³ Furthermore, the State empowers LAFCO to initiate certain change of organizations involving special districts if consistent with study recommendations.⁴
5. The SLC letter asserts the establishment of the Port through a special act materially separates it from other port and harbor districts overseen by LAFCOs. CKH does not make this distinction. Instead, CKH defines special districts for the purpose of delineating LAFCO oversight as follows:

““District” or “special district” are synonymous and mean an agency of the state, formed pursuant to general law or special act...”⁵
6. SLC's letter asserts the Port Act provides SLC with exclusive oversight of the Port. This position does not seem supported by the provisions presented in the letter; it also counters existing statutes and related procedures. Consider the following.
 - a) The SLC letter references the Port Act establishes procedures for how the Port's boundary may change. LAFCO staff concurs. This includes acknowledging the Port Act provides for the ministerial annexation of new territory to the Port in step with remaining coterminous with the boundaries of its five-member cities (Chula Vista, et al.). CKH readily reconciles these types of ministerial or otherwise scripted annexations within special districts' principal acts and provides that these actions proceed while LAFCO retains ultimate oversight.⁶

¹ CKH defines change of organizations to include city incorporations and disincorporations, district formations and dissolutions, city and district annexations and detachments, mergers and consolidations, and activations and divestitures of district functions and classes (Government Code 56021).

² Reference to Government Code 56133.

³ Reference to Government Code 56301.

⁴ Reference to Government Code 56375(a).

⁵ Reference to Government Code Section 56306.

⁶ Reference to Government Code 56120.

- b) The Port Act states the Port may annex additional territory and/or be dissolved by “operation of law.” LAFCO staff is not aware of another State agent authorized to conduct these jurisdictional procedures. Accordingly, it appears the operation in law would fall to LAFCO to effectuate an annexation of additional territory to the Port or dissolution of the Port.
- c) CKH addresses the inter-relationship between SLC and LAFCO through complementary and reconciling procedures. Specifically, CKH provides LAFCO must defer to SLC when boundary changes involve tidelands and submerged lands.⁷ CKH equally provides SLC shall report its determinations to LAFCO and “thereafter, filings and action may be taken” by LAFCO.⁸
7. The SLC letter states the Port Act predates CKH and its predecessor laws and intended to solely govern the Port’s organization. CKH contemplates conflicts and/or omissions with principal acts given – and as cited – many special districts’ enabling legislation predate LAFCO with the following remedy:
- “It is not necessary for the principal act of any district to adopt or incorporate this division by reference and any change of organization or reorganization provided for by this division may be made by, or with respect to, any district.”⁹*
8. The SLC letter asserts LAFCO oversight and the potential to deny or condition Port boundary changes, outside services, and other actions provided in the Port Act contradicts the State’s intention in creating the Port in 1962. The letter further asserts LAFCO oversight would negatively impact SLC oversight. These assertions lack harmony with the referenced reconciliations in CKH as well as existing conditions throughout coastal California where several local agencies with granted public trust properties already operate with oversight from both SLC and LAFCO.¹⁰

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

Respectfully,



Keene Simonds
Executive Officer

⁷ Reference to Government Code 56740.

⁸ Reference to Government Code 56740(e).

⁹ Reference to Government Code 56119.

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

San Diego LAFCO

February 20, 2024

Letter to SLC Regarding the San Diego Unified Port District

Attachments:

- 1) SLC Letter, Dated January 24, 2024

cc:

Chair Stephen Whitburn

Vice Chair Barry Willis

Outside Counsel DeeAnne Gillick

AEO Priscilla Mumpower

LAFCO Consultant Chris Cate

LAFCO Consultant Adam Wilson

Port President and CEO Randa Coniglio

Port Vice President of Strategy and Policy Job Nelson

**CALIFORNIA STATE LANDS
COMMISSION**



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January 24, 2024

VIA EMAIL AND REGULAR MAIL

Keene.Simonds@sdcountry.ca.gov

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

Subject: LAFCO oversight of the San Diego Unified Port District

Dear Mr. Simonds,

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

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

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

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

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

The Legislature granted tide and submerged land in San Diego Bay to the Port in 1962, through the San Diego Unified Port District Act (Port Act).³ The Port Act defined the Port's boundaries, including how those boundaries will change⁴; granted the Port the State's tidelands and submerged lands to be used for purposes in the Statewide interest⁵; and empowered it to act to achieve those interests, including outside of Port property.⁶ Where the Port Act contemplates oversight of Port actions, such as expenditures outside of Port boundaries, that oversight is entrusted to the State Lands Commission.⁷

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

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

¹ Pub. Resources Code, § 6009, subd. (a), see *Marks v. Whitney* (1971) 6 Cal.3d 251, 259–260.

² Pub. Resources Code, §§ 6009, subd. (c); 6301.

³ Harbor and Nav. Code, App. 1, §§ 1 *et seq.*

⁴ Harbor and Nav. Code, App. 1, §§ 5, 53.

⁵ Harbor and Nav. Code, App. 1, § 87.

⁶ Harbor and Nav. Code, App. 1, §§ 4, 30, 81–85.

⁷ Harbor and Nav. Code, App. 1, § 30.5.

⁸ Pub. Resources Code, § 6009, subd. (d).

⁹ Pub. Resources Code, § 6009.1., subd. (c)(5).

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

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

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

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

Sincerely,

DocuSigned by:

A8DE3BBAE92D437...
JENNIFER LUCCHESI
Executive Officer

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

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

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