

**CALIFORNIA STATE LANDS
COMMISSION**



Established in 1938

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March 1, 2024

VIA EMAIL

keene.simonds@sdcounty.ca.gov

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

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

Dear Mr. Simonds,

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

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

¹ The Legislature formed the Port for the management of "the harbor of San Diego upon the tidelands and lands lying under the inland navigable waters of San Diego Bay, and for the promotion of commerce, navigation, fisheries, and recreation thereon..." (Harb. & Nav. Code, § App. 1, § 4, subd. (a)). The Port also protects physical access to the bay, the bay's natural resources, and the bay's water quality. (Harb. & Nav. Code, § App. 1, § 4, subd. (b).) The

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State²; it may only use sovereign lands, and funds generated by those lands, for uses that benefit the statewide public.³ This obligation to use trust lands for statewide purposes doesn't apply to only granted tidelands; in fact any property that is acquired by the Port, using funds generated through their administration of the legislatively granted land, becomes "an asset of the public trust" and is held under the same restrictions as granted sovereign land, including the obligation that it be used for statewide, rather than local, benefit.⁴ As such, changes in the boundaries and ownership interests of the land held by the Port is actually an extension of the State's ownership rights and responsibilities in the after acquired lands.

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

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

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

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

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

⁶ For example, the Port may adopt rules and regulations related to "public services and public utilities in the district, operated in connection with or for the promotion or accommodation of commerce, navigation, fisheries, and recreation therein as are now vested in the district" – in other words, for the promotion of the Port's duties under the Public Trust Doctrine. (Harb. & Nav. Code, § App. 1, § 56.) It may issue bonds, and collect taxes to pay those bonds, for the "acquisition or improvement of real property, authorized by this act or necessary or convenient for the carrying out of the powers of the district[.]" (Harb. & Nav. Code, § App. 1, § 42.) And it may collect assessments, special taxes, and bonds for "waterway construction projects and related operations and maintenance, or operations and maintenance projects[.]" (Harb. & Nav. Code, § App. 1, § 61, subd. (a).) All these authorities are limited to furthering the Port's core purpose of managing the State's tidelands and submerged lands for the benefit of the statewide public.

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

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

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

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

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

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

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

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

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

Sincerely,

DocuSigned by:

Jennifer Lucchesi

JENNIFER LUCCHESI

Executive Officer

Attachments

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

cc:

Randa Coniglio, President and CEO, San Diego Unified Port District

Job Nelson, Vice President of Strategy and Policy, San Diego Unified Port District

Thomas Russell, General Counsel, San Diego Unified Port District

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



San Diego County

Local Agency Formation Commission

Regional Service Planning | Subdivision of the State of California

February 20, 2024

Delivered by Electronic Mail:

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

SUBJECT: San Diego Unified Port District

Ms. Lucchesi:

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

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

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

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

Administration

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 Rincon del Diablo

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 General Public

Harry Mathis, Alt.
 General Public

San Diego LAFCO

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Letter to SLC Regarding the San Diego Unified Port District

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.

San Diego LAFCO

February 20, 2024

Letter to SLC Regarding the San Diego Unified Port District

- 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

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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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