



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
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 Sacramento, California 95825-8202
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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@sdcountry.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