

**CALIFORNIA STATE LANDS  
COMMISSION**



*Established in 1938*

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January 24, 2024

VIA EMAIL AND REGULAR MAIL

[Keene.Simonds@sdcountry.ca.gov](mailto: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.<sup>1</sup>

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."<sup>2</sup> 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).<sup>3</sup> The Port Act defined the Port's boundaries, including how those boundaries will change<sup>4</sup>; granted the Port the State's tidelands and submerged lands to be used for purposes in the Statewide interest<sup>5</sup>; and empowered it to act to achieve those interests, including outside of Port property.<sup>6</sup> 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.<sup>7</sup>

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."<sup>8</sup> 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.<sup>9</sup>

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

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

<sup>2</sup> Pub. Resources Code, §§ 6009, subd. (c); 6301.

<sup>3</sup> Harbor and Nav. Code, App. 1, §§ 1 *et seq.*

<sup>4</sup> Harbor and Nav. Code, App. 1, §§ 5, 53.

<sup>5</sup> Harbor and Nav. Code, App. 1, § 87.

<sup>6</sup> Harbor and Nav. Code, App. 1, §§ 4, 30, 81–85.

<sup>7</sup> Harbor and Nav. Code, App. 1, § 30.5.

<sup>8</sup> Pub. Resources Code, § 6009, subd. (d).

<sup>9</sup> Pub. Resources Code, § 6009.1., subd. (c)(5).

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

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](mailto:Jennifer.Lucchese@slc.ca.gov).

Sincerely,

DocuSigned by:  
  
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JENNIFER LUCCHESI  
Executive Officer

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

<sup>11</sup> 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.