



Legislation Text

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DATE: January 11, 2022

SUBJECT:

PRESENTATION ON NEW LEGISLATION FOR 2021-2022 PORT OF SAN DIEGO LEGISLATIVE PRIORITIES AND DIRECTION TO STAFF

EXECUTIVE SUMMARY:

The 2020-2021 Legislative Priorities encompass the Port of San Diego's policy goals and potential legislative priorities at the state and federal level for a two-year timeframe, concurrent with the 2021-2022 California legislative session. This document is guided by the District's Compass Strategic Plan, the 2018-2022 Legislative Platform, existing Board Policies and direction, and the District's Executive Leadership Group and staff input. Legislative priorities are identified at the regional, state, and federal levels of government. Efforts to advance these priorities will range from the District acting as the lead entity in moving legislation to collaborative efforts with multiple stakeholders in which the District is a participant.

RECOMMENDATION:

Receive the presentation on the new legislation for 2021-2022 Port of San Diego Legislative Priorities and give direction to staff.

FISCAL IMPACT:

This item is for presentation purposes only and has no fiscal impact.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.

DISCUSSION:

Port-Specific COVID-19 Relief Funding

The year 2021 saw the District continue its very active legislative advocacy program, notably with respect to the American Rescue Plan Act (ARPA). The top priority for the Port's federal and state advocacy efforts was to secure funding relief from the financial impacts and consequences of COVID-19.

Congress passed several COVID-19 relief bills (e.g., CARES Act) in 2020 that included funding assistance for several transportation sectors, but unfortunately, ports were left out. As Congress was negotiating the “American Rescue Plan Act” (ARPA), direct funding for ports was once again being left off the table. In response to this issue, District staff and legislative advocates worked to develop and implement an alternate, creative strategy that that would allow for this critical funding to be included in the final bill.

The District collaborated with Congressional leaders, including the Speaker of the House Nancy Pelosi, the San Diego Congressional delegation, as well as the relevant Congressional committees to craft language that would make ports eligible for funding through the State’s share of Coronavirus State and Local Fiscal Recovery funds. This specific “transfer authority” provision was enacted into law as part of ARPA, giving the District the ability to advocate to the State for assistance.

To support this effort, the District’s entire advocacy team worked in close coordination to secure statements and letters of support from Senators Padilla and Feinstein, Representative Peters, various affiliated statewide labor groups, and regional officials that helped bolster the District’s request for funding. Enlisting the support of organized labor, State Lands Commission (SLC), the Lieutenant Governor, the Governor’s Office of Business and Economic Development (GO-BIZ), the State Controller, the Governor, and legislative leadership, the enacted 2021-22 state budget provided \$250 million for California ports. The team worked with the State Lands Commission and Department of Finance staff to respond to questions and address concerns to enable enactment of a trailer bill to allocate the funds. As a result of these efforts, the District is estimated to receive as much as \$100 million in needed funding.

Federal and state efforts also included advocacy for COVID-related Legislative and Regulatory Policies. In addition to securing much-needed federal funds, District staff and legislative advocates worked to advance comprehensive approaches to new legislative initiatives and regulatory proposals to assist the District with the impacts of COVID-19, including advocating before the Treasury Department for access to the new Federal Reserve lending programs, commenting on legislative proposals and facilitating briefings for the San Diego Congressional delegation.

Other Federal Legislative Achievements

Beyond COVID-19 relief funding, federal District legislative efforts targeted federal appropriation, advanced regional priorities, and provided technical assistance to federal agencies and Congress. Below are additional initiatives achieved in collaboration with Carpi & Clay, the District’s federal advocates in Washington, D.C.

- 1) Supported Enactment of Maritime Transportation Sector Emergency Relief Act (MTSERA) -- The impacts of COVID-19 made clear that there needed to be funding mechanisms in place to assist ports and the maritime community during natural disasters and states of emergency. At the start of the pandemic, it became apparent that there was no current federal mechanism in place to make such payments during times of need. To address this the “Maritime Transportation Sector Emergency Relief Act” (MTSERA) was introduced and subsequently enacted into law to establish a grant program within MARAD. The District’s legislative advocates lobbied the San Diego Congressional delegation on the importance of this legislation and supported a national port coalition advocacy strategy, which resulted in the passage of the bill. While the District is awaiting Congress to appropriate the first round of funding for the grant program, this new law will provide much-needed assistance to ports in future disaster or pandemic events.

- 2) Funding for Habitat-friendly Shoreline Structures (\$1 million pending) - For Fiscal Year (FY) 2022, Congress renewed the practice of designating funds for community projects, formerly known as earmarks. To be eligible for funding, the District needed to comply with specific application instructions and participate in an intense and competitive review of project requests with each congressional office. The District and our legislative advocates supported the District's requests, providing technical assistance on project submissions and convening briefing calls. With the support of Rep. Scott Peters, \$1 million has been included in the FY22 Commerce, Justice, Science Appropriations Bill, which provides federal funding to NOAA, to help finance an expansion of the EConcrete pilot project. The current FY 22 bills are still being negotiated in Congress and have not been finalized.
- 3) Harbor Drive 2.0 - Much like the FY 2022 appropriations process, the House-passed infrastructure bill, entitled the INVEST Act, also included funds for designated projects. District staff and legislative advocates worked with the District to develop a request for funding for environmental work on the Harbor Drive 2.0 project. District staff and the legislative advocates facilitated briefings with Reps. Peters and Vargas on the importance of the project. As a result of these briefings and advocacy efforts by the District, the Transportation & Infrastructure Committee included \$800,000 in the INVEST Act for this project. This funding is needed to modernize the surface transportation connection between the Tenth Avenue Marine Terminal and the National City Marine Terminal and awaits further action in Congress.
- 4) Environment and Climate Change Issues --The District's policy interests, and profile have been growing as Congress and the Biden Administration work to enact climate change legislation and provide resources to help transition important economic sectors, including ports. This federal discussion is now front and center and reflected within the infrastructure bill and the Build Back Better proposal. The District's advocacy supported congressional briefings and the District's endorsement of several legislative initiatives that would expand federal resources to ports. Such provisions include a proposed Environmental Protection Act grant program to fund \$3.5B for port electrification at U.S. ports (including money for project planning and design, at the District's request); expanding project eligibility under the Port Infrastructure Development Program; investments in port electrification and shore power and funding through the Diesel Emissions Reduction Act.
- 5) Supporting Solutions to Address Tijuana River Valley Border Sewage -- The District's federal advocacy in support of funding for border sewage continued in support of the \$300 million federal funding announcement included in the US-Mexico-Canada Agreement Implementation Act (USMCA). Through the District's advocacy with regional partners, Congress agreed to increase FY20 discretionary funding to \$25 million for the EPA Border Water Infrastructure Program (BWIP) account. This pattern is continuing. The House-passed FY21 appropriations bill includes \$35 million. The District is now working with Rep. Vargas, Sen. Feinstein, and the San Diego Delegation to facilitate IBWC receipt of the funds.
- 6) Port Security Grant Funding (\$1 million) -- The District continued to press for Port Security Grant funding and has requested an increase in appropriations. The District's allocation in the most recent funding round was just over \$1 million.

Other State Legislative Achievements

Alongside the strategic efforts to obtain COVID-19 relief funding, the District navigated state government challenges as Governor and Legislature continued to manage impacts of the pandemic and make progress on environmental goals. Between a historic Budget surplus and the impacts of an ultimately unsuccessful recall election of Governor Newsom, Executive orders, and legislation beyond a focus on COVID-19 included housing, homelessness, and supply chain congestion. Highlighted below are initiatives achieved in collaboration with JGC Government Relations, the District's state advocates based in Sacramento.

- 1) Leverage State Budget Dollars for District Priorities -- The District's legislative advocates engaged and advocated on behalf of the Governor's clean air proposals in the State Budget, as well as advocating for additional funding for the Tijuana River Valley in the State Budget. Ultimately, an additional \$20 million was included in the State Budget for the Tijuana River Valley and District staff and our legislative advocate are already working with Legislative Leadership and the Administration on including additional funds for the FY 22/23 Budget.
- 2) Expand Legislative Support for District Goals -- In terms of legislation, the District's legislative advocates helped to establish the District as a lead supporter to Senate Bill 372 by Senator Leyva to expand the state's clean truck program and ultimately that bill was signed by Governor Newsom. This bill recognizes the need for incentives and financing assistance by establishing a new purchasing assistance program within the California Air Resources Board's Air Quality Improvement Program to enable the conversion of California's medium and heavy-duty fleets to zero-emission vehicles.

District staff and legislative advocates engaged on more than a dozen individual, developed position letters, and tracked bills through the legislative process. This also included successful advocacy of legislation that would provide:

- A State Energy Assistance Account, requiring the California Energy Commission to provide grants and loans to public agencies to expand electric vehicle charging infrastructure. (Assembly Bill 33)
- \$2.5 million for studying an early warning system for coastal erosion and landslides in San Diego County, which recognizes the urgent need for improvements along the Los Angeles - San Diego - San Luis Obispo Rail Corridor in San Diego County and its critical role in San Diego. (Assembly Bill 66)
- Eligibility for peer-to-peer truck sharing demonstrations would be eligible under existing programs, such as California Clean Truck, Bus, and Off-Road Vehicle and Equipment Technology Program to incentivize as much technology development as possible to meet state goals. (Assembly Bill 992)
- Create the California Sea Level Rise State and Regional Support Collaborative and recognize the future impacts of sea level rise on coastal communities and the impacts upon local jurisdictions by providing direction and establishing additional resources at the state level for the District and those who share these responsibilities. (Senate Bill 1)
- Create a Natural and Working Lands Climate Smart Strategy at Natural Resources Agency and CalEPA to recognize the need for targets to advance state strategy on carbon dioxide removal, and at the District's suggestion, amend it to include effective nature-based solutions that can deliver greenhouse gas reductions and carbon sequestration benefits. (Senate Bill 27).

- Require a statewide assessment of zero-emission vehicle (ZEV) charging infrastructure that is needed to support statewide ZEV adoption goals and recognize the need for workforce development to be a part of that assessment to fully implement the statewide goals for the adoption of ZEV. (Senate Bill 589).
- 3) Support Environmental Quality and Economic Recovery - the District requested that the Legislature to fully funding state ZEV programs in Governor's annual budget proposal, providing input to the California Natural Resources Agency's 30x30 coastal management strategy. The District also participated in Cutting the Green Tape initiative sponsored by the California Natural Resources Agency, which includes CEQA streamlining for environmental construction.

District efforts also informed the refinement of the California Air Resources Board's (CARB) clean air rules, advocated to CARB for approval of the AB 617 Community Emissions Reduction Plan, prompted a board-directed study of funding equity among CARB's various incentive programs, and successfully urged the establishment of a new, small fleet set-aside within CARB's Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP) clean truck funding program.

Finally, the District's continued work on COVID issues related to closures and reopening by working with the California Department of Public Health (CDPH) and the release of guidance documents for how cruise ships return to operations in California. District staff and its legislative advocates worked with several stakeholders, in addition to CDPH, including the cruise line association, CAPA and other California ports to help solve the issue. CDPH ultimately released the guidance in a timely matter which facilitated cruise ships returning to San Diego this past fall.

Overview of Current and New Legislation

As the District looks ahead to the second half of the 2021-2022 legislative session, staff proposes an agenda that encompasses the District's policy goals and potential legislative priorities at the state and federal levels. The development of these proposed legislative priorities was guided by the Compass Strategic Plan, the 2018-2022 Legislative Platform, existing Board Policies and direction, and the District's Executive Leadership Group and staff input. Efforts to advance these priorities will range from the District acting as the lead entity in moving legislation to collaborative efforts with multiple stakeholders in which the District is a participant.

As in the past, when appraising the legislative areas of focus for the year, GCR staff employs five main criteria to determine the value and wisdom of including a proposal or policy option:

1. Does the proposal fit within the 2018-2022 Legislative Platform?
2. Does the proposal increase the District's ability to serve those who visit or work on the Tidelands?
3. Does the proposal enhance public safety on the Tidelands?
4. Does the proposal assist the District in meeting environmental goals or complying with state or federal regulations?
5. Does the proposal provide necessary revenue or funding opportunity to the District, which is a public agency that is self-sustaining, without the benefit of taxpayer money?

Last year, the Board reviewed 2021-2022 Legislative Priorities. As the second year of that timeframe

begins, additional policy goals and potential legislative priorities at the state and federal level have been identified. Those items are featured in underlined text at the end of each section. Highest priority items are preceded by an asterisk.

Environmental Leadership

- *Develop a marketplace for blue carbon credits and advance/monetize carbon sequestration via seagrass mitigation banking.
- *Seek expanded parameters for Air Resources Board grant solicitations to allow funding for infrastructure projects that advance the state's electrification and clean energy goals and enhance compliance with those standards.
- *Develop a state budget funding request for blue carbon assessment of San Diego Bay eelgrass beds to support the Governor's executive order for action on natural solutions for climate resiliency and carbon sequestration.
- Support legislative efforts that would require California Air Resources Board and California Public Utilities Commission to conduct at least two joint meetings per calendar year to coordinate implementation of state climate goals and setting of electrification objectives.
- Support legislative efforts to clarify the applicability of the California Environmental Quality Act to approval of updates to climate action plans.
- Provide statutory California Environmental Quality Act streamlining for infrastructure projects to expedite environmental improvement and protection projects, save limited resources, and hasten efforts to bring shore power, electric cranes, and other clean technology online.
- Support legislative efforts that would remove barriers-of-entry to the locally grown macro- and micro-algae market.
- Support legislative efforts that would further the establishment of submerged and nonsubmerged land mitigation banks.
- Continue support for state and federal legislative efforts and budget appropriations to plan, design, operate, and/or maintain infrastructure to eliminate sewage and other waste discharges into the Tijuana River Valley and the Pacific Ocean, and support related investigations and remediations of contamination existing on and near Tidelands.
- Request executive order or legislation to lift funding barriers that limit incentive grant funding to infrastructure projects and equipment replacement purchases to projects that exceed state emissions requirements.
- Advocate budget support for tenant and District projects, equipment, and infrastructure to implement the Maritime Clean Air Strategy.
- Create and fund a program at regional air districts for allocating AB 617 funds on an ongoing basis to support Port electrification projects, including funding assistance for replacing diesel recreational vessels.
- Ensure access to insurance coverage related to tidelands environmental contamination.

Infrastructure and Transportation

- Streamline potential disbursement of federal grant monies for Harbor Drive mobility projects and improvements, such as Harbor Drive 2.0.
- *Request ongoing infrastructure funding and other grant money for maritime cargo terminal infrastructure enhancements, especially as they relate to strategic port and core cargo business capabilities.
- Build support for state investments in marine highway network.

- Request grant programs capable of supporting retrofitting, repowering, or replacement of commercial harbor craft engines and support expansion of the Low Carbon Fuel Standard's Shore Power Program to include those harbor craft vessels.
- Seek a statewide, holistic evaluation of commercial electric truck parking/charging capacity.
- Request incentive funding set-asides for clean infrastructure at small and medium-sized ports.
- Seek expansion of Maritime Transportation System Emergency Relief Act (MTSERA) to include support for natural disaster preparation, such as seismic and flooding events.
- Support development of a state freight mobility plan that can inform and guide federal transportation funding to all types of coastal ports in California and ensure recreational and visitor-serving ports are included.

Maritime and Trade

- Support state legislative efforts or state administrative action that would establish marine utility rates for cruise and cargo operations, to help cruise and cargo industries remain competitive in the California market.
- Support state funding for a study of the value of California ports to the California and national economy.
- Support administrative actions and legislative efforts that would provide regulatory pathways at the state and federal level of government to advance sustainable aquaculture and other blue economy goals.
- Support legislative efforts that would temper impacts of tariffs or trade restrictions upon maritime business.
- Support implementation of, and appropriations for, the federal Water Resources Development Act, while protecting the 'donor port' provisions beneficial to the District.
- *Urge federal agencies to evenly and consistently apply aggressive environmental protection standards, promoting environmental excellence.
- *Advocate for discretionary grant parity among state agencies to ensure a level playing field among California's ports of varying scale and type, making the statewide system of ports more economically resilient and competitive.
- Support budget appropriations to Governor's Office of Business and Economic Development (GO-Biz) for international trade exposure for blue economy ventures.
- Establish funding program for state to bolster port resiliency against sea level rise and seismic threats.

Public Safety and Access

- *Support funding for parks and public amenities to enhance public access to the Bay, particularly in disadvantaged communities.
- Support continuation of, and appropriations for, the federal Port Security Grant Program.
- Support administrative actions to advance a federal cybersecurity pilot at District level and deployment of additional security measures for strategic ports.
- Support legislative efforts that would alleviate impacts of homelessness and improve public safety on Port tidelands.
- Support state legislative efforts that would protect public access and govern street parking to maximize that access and use.
- Establish classification of living shorelines as a natural solution for resiliency and bioremediation.

- Extend pilot project of enforcement of City of San Diego ordinance regulating anchoring or mooring in Zuniga Jetty Shoals.
- Request state funding for District to sustain and enhance outreach and services provided to people with needs related to emergency shelter and housing, substance abuse, mental health, and other community services.
- Collaborate with federal, state, and regional stakeholders on long-term plan for management of Zuniga Jetty, including funding for clean-up and disposal of such abandoned or surrendered vessels.

Economic Vitality and Development

- *Continue to request federal and state funds for stabilization, relief, and recovery from economic damage caused by the COVID-19 pandemic on San Diego's tourism sector.
- Seek legislative efforts to encourage the growth of San Diego's blue tech economy including policies that ease funding, development, and commercialization of these technologies, and modernize the permitting process for new blue technologies.
- Support establishment of a statewide California Aquaculture Advisory Council.
- Support direction of appropriate state entities to begin creation of a fee-for-service model of shellfish testing, to allow for expedited testing when needed to avoid harvests perishing.
- Support funding for spatial analysis tools, under the direction the State Lands Commission, in consultation with appropriate state agencies for National Centers for Coastal Ocean Science consultation with appropriate state agencies, and for National Centers for Coastal Ocean Science to begin a spatial mapping process of state waters to create a comprehensive map of Bay sites' suitability for aquaculture.
- Direct the state to create a universal California Department of Food and Agriculture template or checklist, aligned with grower best management practices (approved species, etc.), that standardizes approval applications.
- Support funding for community colleges for programs related to aquaculture, fisheries, or maritime studies, and promote workforce development in maritime trades, particularly near disadvantaged communities.
- Inform state and regional consideration of a tax on hydrogen fuel dispensed on Tidelands to offset impacts of infrastructure, access to, and operation of such a service.

Real Estate and Land Use

- Create a port infrastructure fund within existing state incentive programs to facilitate upfront investments required for large-scale capital projects, including planning and design.
- Support state legislative efforts to provide that acceptance of a federal grant award does not constitute predetermination under the California Environmental Quality Act.
- Clarify statutory language relating to the administration of District payments to the state for leaseholds on submerged lands within San Diego Bay.
- Continue to monitor legislation for opportunities to assist Chula Vista Bayfront Plan, including securing additional infrastructure funding.
- Support regional effort to advance Port tidelands mobility, including expedited environmental permitting process for new facilities associated with those locations.

General Administration

- Support state legislative efforts to protect local tax revenue generated on Tidelands, as well as

generate more funding for District infrastructure and priorities.

- Drive a sustained state and federal funding push for infrastructure projects to help accomplish climate goals and continue the District's environmental leadership.
- Support legislative efforts that would protect the workforce stability of the District and ensure security and sustainability of pensions.
- Support state legislative efforts that would improve administration of citation payments.
- Support expansion of the state's Strategic Growth Council membership to include ports and harbors.
- Continue to monitor legislation relating to public works contracting, pensions, records retention, and release process requirements.
- *Expand government funding of environmental projects to include those that accelerate progress towards meeting state goals.
- Ensure statutory alignment to ensure the legislative intent of San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session) is upheld and protected.
- Monitor administrative responsibilities and authority affected by policy changes related to pension reform, governmental oversight, and COVID-related requirements on employers.

General Counsel's Comments:

The Office of the General Counsel reviewed this agenda as presented to it as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, a presentation on Port Legislative priorities and Direction to Staff, does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the proposed Board action that requires the District or the Board's discretionary approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The proposed Board action in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

The proposed Board action allows for the District to implement its obligations under Sections 35 and 81 of the Port Act, which authorize the Board to do acts necessary and convenient for the exercise of its power; and the use funds for necessary expenses of conducting the District. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical

change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The proposed Board action in no way limits the exercise of the District's discretion under the District's CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

Diversity, Equity, and Inclusion Program:

This agenda item has no direct DEI impact on contracting or workforce reporting at this time

PREPARED BY:

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Attachment(s):

Attachment A: 2018-2022 Legislative Platform