

DRAFT – CONFIDENTIAL**BACKGROUND**

In May 2021, Governor Newsom announced a one-time \$250 million allocation from Federal American Rescue Plan Act of 2021 (ARPA) funding to California’s ports to mitigate the negative economic impacts resulting from the COVID-19 pandemic. The 2021-22 State budget appropriates the \$250 million to the California State Lands Commission for allocation to ports to address negative economic impacts within this industry due to the COVID-19 pandemic. The Budget Act requires that ports use these funds to support their economic recovery, such as for activities that include avoiding layoffs, restoring jobs and services lost due to COVID-19, and supporting safe operations.

California’s ports are responsible for developing and operating harbors and ports for the State’s benefit. The California Legislature declared that “The state has a compelling interest in the success of its ports and harbors because they provide significant economic benefit to the state in terms of jobs, personal income, business revenue, and taxes.” (Harb. & Nav. Code, § 1690, subd. (a).) Some ports are independent special districts, such as the San Diego Unified Port District. Others are harbor districts or port districts formed pursuant to the Harbors and Navigation Code. Finally, some, are departments of local governments. The ports manage California’s container shipping operations and maintain public infrastructure like roads, bridges, warehouses, and piers, necessary for maritime commerce. They also provide public services like harbor police, fire response, parks, and visitor amenities that facilitate safe public enjoyment of and access to the waterfront area managed by the ports.

PURPOSE

The purpose of the COVID-19 Fiscal Recovery Funds is to mitigate the negative economic impacts, including aid to impacted industries such as ports, resulting from the COVID-19 pandemic. Ports have a sizable impact on the recovery effort: approximately 1 million California jobs are linked to trade activities at the 11 public ports. Ports create family-sustaining jobs in the areas of technology, engineering, logistics, and environmental management, among other areas. An infusion of federal funds will also have a sizable impact in targeting the

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unemployed residents of port communities by helping ports to re-hire or bring on new essential workers.

Those ports that rely on tourism-based revenue will particularly benefit from these federal funds given the disproportionate impact the pandemic had on tourism-related industries. Tourism venues, such as hospitality and maritime trades, also employ essential workers that play a vital role in economic recovery.

Finally, the State of California has a strong public interest in assisting those ports that manage Public Trust Lands. The State has oversight over these lands and Fiscal Recovery Funds will enable these ports to comply with the Public Trust Doctrine that guides their grant activities.

FUNDING REQUEST PROCESS

The Legislature directed the State Lands Commission to distribute funds to “California ports.” Cities, counties, and non-port special districts are not eligible to receive funds. Commission staff will also consider whether a port received funds from local fiscal recovery funds. No airport operations in port jurisdictions or costs incurred at those airports because of the pandemic are eligible for this funding.

Eligible ports may request funding based on costs related to the COVID-19 pandemic incurred during the 2020 calendar year (a Funding Request). A port’s Funding Request must include:

- Letter to the State Lands Commission that includes the amount requested; a description of what the funds will be used for, including anticipated expenditures, costs, expected outcomes, outputs, and performance metrics; a certification that the port qualifies to receive the funds; and that all information provided in the application is true and correct. Funds may be used to support eligible expenditures/costs incurred between March 3, 2021, and June 30, 2024.
- Request Summary (a template is attached as Exhibit A to these Guidelines)

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- Supporting Documentation include any documentation the requesting port wishes to provide to justify and substantiate the information provided in Exhibit A.

After a port’s Funding Request is approved, Ports must submit a signed Funding Agreement within 30 days of the Commission’s approval (a copy is attached as Exhibit B to these Guidelines). The Commission must receive a signed Funding Agreement before disbursement of funds. Staff recommends that ports include a completed draft of their Funding Agreement with their request to improve disbursement speed. Staff may modify the Funding Agreement if the applicant port presents a heightened risk of noncompliance, in which case staff will provide the modified agreement as soon as possible to the requesting port. If the award is different than the funding requested, the port shall update its description of what the funds will be used for, including revised expenditures, costs, expected outcomes, outputs, and performance metrics. This update shall be received within 30 days of the award notification for inclusion in the Funding Agreement. The expected expenditures, obligations, actual costs, outcomes, outputs, and performance metrics shall be reported quarterly consistent with the federal reporting requirements.

The Funding Request must be received by **DATE, 2021, at 5:00 p.m. PST**. Ports are encouraged to submit their application before the deadline in the event technical assistance is required. Funding Requests may be submitted electronically to **[email]**, or by mail to:

California State Lands Commission
 Attn: **Name**
 100 Howe Ave., Ste. 100-S
 Sacramento, CA 95825

For application assistance, please email **[redacted]**, or call **[redacted]**.

TIMELINE

Activity	Date
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Guidelines Available	DATE, 2021
Funding Request Due	DATE, 2021
Commission Consideration	DATE, 2021

Ports that are unable to meet the Funding Request deadline of **DATE, 2021**, may apply at a future date if there are any remaining funds after the first disbursement. Staff may present additional funding requests for the Commission’s consideration at a future Commission meeting. If any Fiscal Recovery Funds allocated to the Commission for distribution to ports remain after this disbursement, the Commission will invite subsequent requests for costs incurred during the 2021 calendar year.

Proposed Use Description

Requesting ports should include a description of the program or project and the amount of funding they anticipate committing the Funds to. The description should include:

- Each proposed project, use, or general category.
- A preliminary cost estimate for each proposal.
- A description of the port’s desired outcomes for the proposal
- A narrative of how the program/project responds to the COVID-19 pandemic and supports the Port’s economic recovery.
- A description of the port’s desired outputs.

To the extent feasible, metrics by which the port will evaluate whether the outcome is achieved.

This information will be used for the quarterly Project and Expenditure Report and for the annual Recovery Plan Performance Report as required by the U.S. Treasury.

If it is not possible to provide this level of detail in the Funding Request, ports should provide as much program or project information as possible. Ports that receive Funds will work with Commission staff to amend their cost estimates, outcomes, outputs, and metrics as projects are

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developed. These amendments will be incorporated into the Commission’s Monitoring Plans, which are part of each Funding Agreement.

When recommending awards, Commission staff will consider how the Port’s proposed programs/projects support the Port’s and State’s economic recovery, such as:

- Avoids layoffs
- Restores jobs/services
- Supports port operations
- Implement deferred maintenance or capital outlay projects delayed by pandemic-related fiscal impacts
- Benefits historically marginalized/vulnerable communities
- Benefits the public

Revenue Impacts

Ports must describe the revenue impacts attributable to the COVID-19 pandemic as part of their Funding Request Summary. Some ports, particularly those with a large travel and tourism components, suffered drastically reduced revenues during the pandemic. Others, such as ports with large cargo operations, had increased revenue compared to their projections. The Budget Act directs the Commission to distribute funds to address negative economic impacts due to the COVID-19 pandemic and to support ports’ economic recovery. Accordingly, Commission staff will consider the amount of a port’s revenue impacts, and whether the port received funds from county or city’s local fiscal recovery funds, when recommending disbursements to the Commission. Commission staff do not anticipate recommending awards of funds greater than the sum of a port’s revenue impacts and previous direct COVID-19 response costs. Please refer the Funding Request Summary (Exhibit A) for information on revenue impact calculations.

COMPLIANCE WITH THE ARPA AND GRANTING STATUTES

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A port's receipt of ARPA funds qualifies the participating port, once awarded, as a subrecipient receiving a transfer under sections 602(c)(3) of the ARPA. Once funds are received, the port must abide by the restrictions on use applicable to the State of California under the ARPA and other applicable law and program guidance, including the Interim Final Rule, and, when finalized, the federal regulations for the State Fiscal Recovery Funds. Recipient ports managing legislatively granted lands and resources must ensure that use of the funding is consistent with the terms of their granting statutes.

DISBURSEMENT PROCESS

Commission staff will conduct a multi-step process to review Funding Requests and recommend disbursements. The review process will include:

1. Technical Review. Funding Requests will be assessed for completeness of all required documentation and adherence to eligibility criteria. Staff may disqualify or modify incomplete Requests.
2. Staff Evaluation and Recommendation. As required by Code of Federal Regulations, title 2, Part 200, staff will analyze each port's request and potential risk of noncompliance based on a set of common factors. These factors are listed in the Funding Request Summary.

Staff will recommend disbursements to eligible ports based on eligible costs, expected outcomes, outputs, and performance metrics described in the Funding Requests. Staff will also consider a port's previous pandemic-related costs and revenue impacts to equitably disburse funds. Staff anticipates recommending modified disbursements if the total requests would exceed available funds. If there are insufficient funds to disburse funds based on all eligible costs, expected outcomes, outputs, and performance metrics, staff anticipates recommending that requests be reduced on a pro-rata basis or otherwise capped.

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3. Commission Consideration. The Commission will consider staff's recommended disbursements at its Special Meeting on **DATE**, 2021. The Commission has discretion to approve, modify, or reject staff recommendations. The Commission's determination as to eligibility for funding, or the amount of funding awarded, is not subject to appeal. After approval (and execution of Funding Agreement), funds will be transferred to the recipient port in a lump sum

ELIGIBLE USES

The Budget Act requires that ports use the funds to address negative economic impacts due to the COVID-19 pandemic and to support their economic recovery, such as for activities that include avoiding layoffs, restoring jobs and services lost due to COVID-19, and supporting safe operations. A receiving port must also comply with the ARPA and federal guidance on use of ARPA funds. As outlined in the 2021 Budget Act, funds must not be used to purchase fully automated cargo handling equipment. For the purposes of this paragraph, "fully automated" means equipment that is remotely operated or remotely monitored with or without the exercise of human intervention or control. This provision does not prohibit the use of the funds for a project that includes the purchase of human-operated zero-emission equipment, human-operated near-zero-emission equipment, and infrastructure supporting that human-operated equipment. Furthermore, this provision does not prohibit the purchase of devices that support human-operated equipment, including equipment to evaluate the utilization and environmental benefits of that human-operated equipment.

REPORTING AND MONITORING

The State of California is responsible for monitoring and overseeing the ports' use of State Fiscal Recovery Funds and other activities related to the award to ensure that the port complies with the statutory and regulatory requirements and the terms and conditions of the award.

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The U.S. Treasury requires quarterly Project and Expenditure Reports and an annual Recovery Plan Performance Report. The U.S Treasury has released Compliance and Reporting Guidance for State and Local Fiscal Recovery Funds, which contains an overview of the state’s reporting requirements which will also apply to its subrecipients, including ports. The Port must provide all information needed by the State to meet its reporting requirements, as described in the Funding Agreement.

The Commission will monitor a recipient port’s use of State Fiscal Recovery Funds as described in its Monitoring Plans, incorporated into each port’s Funding Agreement. Ports may update and revise project descriptions, costs, outcomes, and metrics as needed and communicate said revisions to the Commission with a justification for the revision as soon as possible and prior to any reporting period

NOTICES TO PORTS

All materials submitted in response to Commission staff will become the property of the Commission and will be subject to the California Public Records Act (Government Code Section 6250 et seq.).

All appropriations from the state’s Coronavirus Fiscal Recovery Fund of 2021 shall be available for expenditure through June 30, 2024. This deadline may be extended if the Director of Finance determines that a later date is authorized by the federal government or that a department, such as the State Lands Commission, will complete the program, project, or function such that the funds will be expended or encumbered by December 31, 2024. The quarterly reports will be used to track progress of these funds. Further, the Director of Finance may reallocate funds not encumbered as of August 1, 2024. A recipient port must return any funds not encumbered by **August 1, 2024**, unless the Commission provides notification that the Director of Finance has granted an extension pursuant to the provision of the 2021 Budget Act, Control Section 11.96.

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A port's failure to comply with the requirements outlined by the state or U.S. Treasury guidelines, and applicable sections of ARPA will result in recoupment of funds. A port must reimburse the State for any recoupment caused by a port's failure to comply with these state and federal requirements for use of these funds to address the negative economic impacts due to the COVID-19 pandemic.

VERIFICATION OF PORT INFORMATION

By submitting a Funding Request, ports authorize Commission staff to verify any information submitted in the application. Commission staff may request additional documentation to clarify or validate any information provided in Funding Request.