



Legislation Details (With Text)

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**File created:** 3/9/2023    **In control:** Board of Port Commissioners  
**On agenda:** 5/9/2023    **Final action:** 5/9/2023

**Title:** PRIORITY LEGISLATIVE BUDGET PROJECT FUNDS: ADOPT A RESOLUTION FINDING THE BOARD ACTION EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), INCLUDING, BUT NOT LIMITED TO, CEQA GUIDELINES SECTIONS 15306 AND 15308, AND AUTHORIZING ACCEPTANCE OF PRIORITY LEGISLATIVE BUDGET PROJECT FUNDS IN THE AMOUNT OF \$1,400,000 FROM THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR THE ZUNIGA SHOAL PROJECT AND GRANTING AUTHORITY TO THE EXECUTIVE DIRECTOR TO EXECUTE THE FUNDS TRANSFER AGREEMENT WHEN FINALIZED AFTER ACCEPTANCE.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. 5. 2023-0081 Attachment A - Draft Funding Transfer Agreement, 2. 5. 2023-0081 Draft Resolution

Date	Ver.	Action By	Action	Result
5/9/2023	1	Board of Port Commissioners	adopted	

**DATE:** May 9, 2023

**SUBJECT: Priority Legislative Budget Projects**

**PRIORITY LEGISLATIVE BUDGET PROJECT FUNDS: ADOPT A RESOLUTION FINDING THE BOARD ACTION EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), INCLUDING, BUT NOT LIMITED TO, CEQA GUIDELINES SECTIONS 15306 AND 15308, AND AUTHORIZING ACCEPTANCE OF PRIORITY LEGISLATIVE BUDGET PROJECT FUNDS IN THE AMOUNT OF \$1,400,000 FROM THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR THE ZUNIGA SHOAL PROJECT AND GRANTING AUTHORITY TO THE EXECUTIVE DIRECTOR TO EXECUTE THE FUNDS TRANSFER AGREEMENT WHEN FINALIZED AFTER ACCEPTANCE.**

**EXECUTIVE SUMMARY:**

On August 31, 2022 the California legislature passed AB179 - Budget Act of 2022, a trailer bill to California’s fiscal year 2023 budget. The Governor signed AB179 one week later. Included in AB179 was \$1,400,000 to support the District’s work in Zuniga Shoal (Project). The California Department of Transportation (CalTrans) was identified as the administrative agency to distribute these funds to the District. Since budget adoption, CalTrans staff has been working to establish a process to distribute Priority Legislative Budget Project (PLBP) funding that aligns with existing state funding administration processes. CalTrans staff has provided District staff with a template funds transfer agreement for the Project funding to be finalized after acceptance of the funds by the District (Attachment A). Adopting a resolution accepting the funds is a necessary step to securing the funds

for this project.

### **RECOMMENDATION:**

Adopt a resolution authorizing acceptance of priority legislative budget project funds in the amount of \$1,400,000 from the California Department of Transportation (CalTrans) for the Zuniga Shoal Project and granting authority to the Executive Director to execute the funds transfer agreement when finalized after acceptance.

### **FISCAL IMPACT:**

If the Board adopts the resolutions, accepting PLBP the funds will be reflected in the District's FY24 Budget, scheduled to be presented to the Board for approval on June 13, 2023. No match funds are required to accept the PLBP Funds. Project funds will be budgeted in each fiscal year as provided in the Discussion section below, subject to Board approval with each fiscal year's budget.

### **COMPASS STRATEGIC GOALS:**

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

- A thriving and modern maritime seaport.
- A Port with a healthy and sustainable bay and its environment.
- A Port that is a safe place to visit, work and play.

### **DISCUSSION:**

On August 31, 2022 the California legislature passed AB179 - Budget Act of 2022, a trailer bill to California's fiscal year 2023 budget. The Governor signed AB179 one week later. Included in AB179 was \$1,400,000 to support the District's work in Zuniga Shoal (Project). The California Department of Transportation (CalTrans) was identified as the administrative agency to distribute these funds to the District. Since budget adoption, CalTrans staff has been working to establish a process to distribute Priority Legislative Budget Project (PLBP) funding that aligns with existing state funding administration processes. CalTrans staff has provided District staff with a template funds transfer agreement for the Project funding to be finalized after acceptance of the funds by the District (Attachment A). The funds transfer agreement is subject to various conditions and state regulations that must be complied with by the District to use the funds. Examples include, but are not limited to, oversight by CalTrans over aspects of the projects and reporting requirements. Adopting a resolution accepting the funds is a necessary step to securing the funds for this project.

Zuniga Jetty Shoal is a shallow stretch of water near the entrance of San Diego Bay, within the jurisdiction of the California State Lands Commission in the San Diego City limits and located near Naval Air Station North Island. The hazardous conditions in the area, especially during storms, can cause anchored vessels to drag or become unanchored, and sink or wash ashore on beaches south and east of the shoal.

In April 2019, the City of San Diego adopted an Ordinance to prohibit unoccupied mooring or anchoring at Zuniga Jetty Shoal for more than two hours. The two-hour maximum sought to address derelict vessels without limiting recreational activities such as fishing. The District partnered in a

temporary pilot program with the City of San Diego to enforce the regulations using San Diego Harbor Police resources. In August 2022, the District and the cities of San Diego and Coronado entered into a Memorandum of Understanding (MOU) to continue enforcement and abatement of abandoned vessels at Zuniga Shoal. Under the terms of the MOU, the City of San Diego contributed \$75,000 and the City of Coronado contributed \$50,000 to fund enforcement at Zuniga. As of January 2023, all of the funds have been expended. A portion of the funding from the State of California will be used to further these efforts. In addition, the State funding will be used to advance required environmental studies and entitlements for a future aquaculture project in the area.

The template funds transfer agreement is included as Attachment A. There is no match funding requirement. If approved, funding expected to be expended in FY24 will be included in the FY24 District Budget presented to the Board for consideration on June 13, 2023. Funding for future fiscal years will be budgeted in the appropriate fiscal year, subject to Board approval upon adoption of each fiscal year's budget.

### **General Counsel's Comments:**

The Office of the General Counsel has reviewed and approved this agenda, as presented, as to form and legality, and will review and approve the funds transfer agreement when finalized.

### **Environmental Review:**

The proposed Board action, including without limitation, adopting a resolution authorizing acceptance of priority legislative budget projects funds from CalTrans for the Zuniga Shoal Project is Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15306 and 15308 and Sections 3.f. and 3.h. of the District's Guidelines for Compliance with CEQA because the project would consist of accepting funding from the State to conduct research and resource evaluation activities which would not result in a serious or major disturbance to an environmental resource, and to conduct enforcement activities where the regulatory process involves procedures for protection of the environment. The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2). These activities could inform future projects at the Zuniga Shoal, such as the design and plans for a future aquaculture project, however at this time those are not available to adequately assess the action and supplemental environmental review would be required once those are determined. Any future proposed Board action resulting from these activities requiring the District or the Board's discretionary approval resulting in a physical change to the environment would 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 complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. 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.

Finally, this Board item 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, the District’s projects require processing under the District’s CDP Regulations. If future projects, such as design and plans for an aquaculture project, are formulated as a result of the Board’s direction, the Board will consider approval of the project and any improvements associated after the appropriate documentation under District’s CDP Regulations has been completed and authorized by the Board, if necessary. The Board’s direction in no way limits the exercise of the District’s discretion under the District’s CDP Regulations.

**Diversity, Equity, and Inclusion Program:**

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

**PREPARED BY:**

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Attachment(s):

Attachment A:       Template Funds Transfer Agreement with CalTrans