



Legislation Details (With Text)

File #: 2021-0349 **Version:** 1 **Name:**
Type: Action Item **Status:** Passed
File created: 9/27/2021 **In control:** Board of Port Commissioners
On agenda: 10/12/2021 **Final action:** 10/12/2021
Title: AMERICAN RESCUE PLAN ACT (ARPA)

A. ADOPT A RESOLUTION TO APPROVE AN ECONOMIC RECOVERY PROGRAM (ERP) FOR PROJECTS UTILIZING AMERICAN RESCUE PLAN ACT (ARPA) FUNDS RECEIVED FROM THE STATE OF CALIFORNIA'S CORONAVIRUS FISCAL RECOVERY FUND OF 2021 AND GRANT AUTHORITY TO THE EXECUTIVE DIRECTOR OF THE SAN DIEGO UNIFIED PORT DISTRICT AND/OR HIS DESIGNEE TO SIGN ANY APPLICATION, FUNDING AGREEMENT AND ASSOCIATED DOCUMENTS TO RECEIVE ARPA FUNDS.

B. ADOPT A RESOLUTION AMENDING BOARD OF PORT COMMISSIONERS (BPC) POLICY NO. 090 TO ESTABLISH AN ECONOMIC RECOVERY PROGRAM (ERP) ORDINARY EXPENSES APPROPRIATED ITEM AND AN ERP CAPITAL OUTLAY APPROPRIATED ITEM FOR THE FUNDS IN THE ERP

C. ADOPT AN ORDINANCE AMENDING THE DISTRICT'S FY 2022 BUDGET BY ADDING \$10,000,000 TO THE ECONOMIC RECOVERY PROGRAM (ERP) ORDINARY EXPENSES CLASS APPROPRIATED ITEM AND \$90,000,000 TO ERP CAPITAL OUTLAY APPROPRIATED ITEM, TO BE FUNDED FROM THE FUNDS RECEIVED FROM THE STATE OF CALIFORNIA'S CORONAVIRUS FISCAL RECOVERY FUND OF 2021 RESULTING IN NO IMPACT TO THE DEFICIT.

Sponsors:

Indexes:

Code sections:

Attachments: 1. 16. 2021-0349 Attachment A, 2. 16. 2021-0349 Attachment B, 3. 16. 2021-0349 Attachment C, 4. 16. 2021-0349 Attachment D, 5. 16. 2021-0349 Attachment E, 6. 16. 2021-0349 Attachment F, 7. 16. 2021-0349A Draft Resolution, 8. 16. 2021-0349B Draft Resolution, 9. 16. 2021-0349C Draft Ordinance

Date	Ver.	Action By	Action	Result
10/12/2021	1	Board of Port Commissioners	adopted	Pass

DATE: October 12, 2021

SUBJECT:

AMERICAN RESCUE PLAN ACT (ARPA)

A. ADOPT A RESOLUTION TO APPROVE AN ECONOMIC RECOVERY PROGRAM (ERP) FOR PROJECTS UTILIZING AMERICAN RESCUE PLAN ACT (ARPA) FUNDS RECEIVED FROM THE STATE OF CALIFORNIA'S CORONAVIRUS FISCAL RECOVERY FUND OF 2021 AND GRANT AUTHORITY TO THE EXECUTIVE DIRECTOR OF THE SAN DIEGO UNIFIED PORT DISTRICT AND/OR HIS DESIGNEE TO SIGN ANY APPLICATION, FUNDING AGREEMENT AND ASSOCIATED DOCUMENTS TO RECEIVE ARPA FUNDS.

B. ADOPT A RESOLUTION AMENDING BOARD OF PORT COMMISSIONERS (BPC) POLICY NO. 090 TO ESTABLISH AN ECONOMIC RECOVERY PROGRAM (ERP) ORDINARY EXPENSES APPROPRIATED ITEM AND AN ERP CAPITAL OUTLAY APPROPRIATED ITEM FOR THE FUNDS IN THE ERP

C. ADOPT AN ORDINANCE AMENDING THE DISTRICT'S FY 2022 BUDGET BY ADDING \$10,000,000 TO THE ECONOMIC RECOVERY PROGRAM (ERP) ORDINARY EXPENSES CLASS APPROPRIATED ITEM AND \$90,000,000 TO ERP CAPITAL OUTLAY APPROPRIATED ITEM, TO BE FUNDED FROM THE FUNDS RECEIVED FROM THE STATE OF CALIFORNIA'S CORONAVIRUS FISCAL RECOVERY FUND OF 2021 RESULTING IN NO IMPACT TO THE DEFICIT.

EXECUTIVE SUMMARY:

The State of California has allocated \$250 million of its Federal ARPA Funds to mitigate the negative economic impacts resulting from the COVID-19 pandemic to California Ports by providing aid. Additionally, the State passed the Budget Act of 2021 (Act), which clarified the use of the ARPA Funds by ports and escalates the deadlines for ports to spend or obligate ARPA fund by six months (from December 31, 2024 to June 30, 2024). Applications for ARPA funds are likely due to State Land Commission (SLC) in mid- to late October with anticipated awards granted to eligible ports in late October or early November. Hence, action by the Board of Port Commissioners (Board) at the October 12, 2021 Board meeting is vital for the San Diego Unified Port District (District) to submit a timely application to SLC, sign a funding agreement and execute on that agreement. For example, the proposed budget amendment takes 30 days to go into effect and a delay of approximately 45-60 days would occur if staff to come back with a budget amendment after an award is granted to the District by SLC. With the escalated timeline, every month counts and such delays may impact the implementation of a proposed Economic Recovery Plan (ERP), which will dictate how the District will send any awarded ARPA funds.

The Act clarified that ARPA funds are distributed by SLC to ports only to “address negative economic impacts within this industry due to the COVID-19 Pandemic. Ports shall use these funds to support their economic recovery, such as for activities that include but are not limited to avoiding layoffs, restoring jobs and services lost due to COVID-19, and supporting safe operations.” Moreover, the Act clarifies that SLC may consider the level of revenue losses and COVID-19 expenditures in apportioning these funds and the funds shall be allocated, monitored, and reported consistent with all applicable federal law or guidance issued by the U.S. Treasury for the Coronavirus State Fiscal Recovery Fund.

After several meetings with SLC and the California Department of Finance (Finance), it was decided that the State will award ARPA funds to ports under the impacted industry category of the ARPA. Impacted industries, such as tourism, travel, and hospitality, are eligible for ARPA funds to respond to the negative economic impacts of the pandemic. With this parameter in mind, SLC issued its draft guidance and application materials (collectively, Draft SLC Guidance) to ports for comment the week of September 27th. Based on those draft materials, SLC staff will look at a port's revenue impacts, and whether the port received funds from county or city's local fiscal recovery funds when recommending the amount of ARPA funds awarded to an individual port. Moreover, the Draft SLC Guidance states that when recommending awards, SLC 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 and benefits the public. Ports must also identify metrics or measurable outcomes from use of the ARPA funds where feasible. The Draft SLC Guidance was in draft form and may be subject to change.

Based on the funding calculation methodology in the draft SLC Port Fund guidelines, the San Diego Unified Port District (District) anticipates receiving approximately \$100 million in funds. It is anticipated that SLC will award ARPA funds to ports in two batches, with the first batch covering losses during calendar year 2020 and the second batch covering calendar year 2021. According to the State Budget Act of 2021, awarded ARPA funds must be spent or obligated by June 30, 2024, unless Finance approves otherwise, and the State may claw back any ARPA Funds not obligated by August 1, 2024. All ARPA funds must be spent by December 31, 2026. Additionally, quarterly and annual reporting will be required by the District and the District will be subject a single-audit in accordance with the federal Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F.

To effectively manage and account for the use of the ARPA funds, as well as ease reporting requirements, staff recommends the Board (1) approves an ERP with the anticipated \$100 million award and complete projects using these funds within the time limits established by the federal government and the State, as well as grant the Executive Director and/or his designee authority to sign any application and necessary documents to obtain ARPA funds; (2) amends BPC Policy No. 090 (Attachment F) to create new appropriated items specific to ERP funds; and (3) amends the FY 2022 budget to appropriate the ERP the funds to pay for the ERP projects.

RECOMMENDATION:

- A. Adopt a resolution to approve an Economic Recovery Program (ERP) for projects utilizing American Rescue Plan Act (ARPA) funds received from the State of California's Coronavirus Fiscal Recovery Fund of 2021 and grant authority to the Executive Director of the San Diego Unified Port District and/or his designee to sign any application, funding agreement and associated documents to receive ARPA funds.**
- B. Adopt a resolution amending Board of Port Commissioners (BPC) Policy No. 090 to establish an Economic Recovery Program (ERP) Ordinary Expenses appropriated item and an ERP Capital Outlay appropriated item for the funds in the ERP.**
- C. Adopt an ordinance amending the District's FY 2022 budget by adding \$10,000,000 to the Economic Recovery Program (ERP) Ordinary Expenses class appropriated item and \$90,000,000 to ERP Capital Outlay appropriated item, to be funded from the funds received from the State of California's Coronavirus Fiscal Recovery Fund of 2021 resulting in no impact to the deficit.**

FISCAL IMPACT:

This action will increase the spending appropriations for ERP projects by \$100M funded by the ARPA funds with no impact to the deficit.

COMPASS STRATEGIC GOALS:

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

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port that is a safe place to visit, work and play.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

ARPA and the State Budget Act of 2021

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law, which allows for stimulus funds to flow through states to “a public benefit corporation involved in the transportation of passengers or cargo. . .” including ports. ARPA requires the Treasury to adopt regulations setting forth the requirements for use of Stimulus Funds by recipients and subrecipients. On May 10, 2021, the Treasury adopted an Interim Rule, which became effective immediately. Among the eligible categories identified in the Interim Rule was impacted industries, such as tourism, travel, and hospitality. The Interim Rule also states that any such aid to impacted industries should respond to the negative economic impacts of the pandemic.

In May 2021, Governor Newsom announced the State would provide a one-time allocation of \$250 million from the ARPA funding to California’s ports. Accordingly, the State Budget Act of 2021 (Act) appropriates the \$250 million to be administered by the California State Lands Commission (SLC) for allocation to ports. In particular, Section 49, Item 3560-162-8506 of Section 2.00 of the Act states:

1. The State Lands Commission shall allocate the funding in this item to California ports to address negative economic impacts within this industry due to the COVID-19 Pandemic. Ports shall use these funds to support their economic recovery, such as for activities that include but are not limited to avoiding layoffs, restoring jobs and services lost due to COVID-19, and supporting safe operations.
2. Funds shall be allocated, monitored, and reported consistent with all applicable federal law or guidance issued by the U.S. Treasury for the Coronavirus State Fiscal Recovery Fund.
3. The State Lands Commission may consider the level of revenue losses and COVID-19 expenditures in apportioning these funds.

The Act also includes Section 11.96 which provides that any appropriation shall be available for expenditure through June 30, 2024, unless an earlier deadline is specified at the time of appropriation. These dates may be extended if the Director of Finance determines a later deadline is

authorized by the federal government or that a department will complete the program, project, or function such that funds will be expended or encumbered by December 31, 2024. Additionally, the Director of Finance may adjust any item of appropriation to reallocate funds not encumbered as of August 1, 2024, to ensure funds are expended or encumbered by the federal deadline for other allowable activities. Section 11.96 also provides that all obligations from the Coronavirus Fiscal Recovery Fund of 2021 shall be liquidated pursuant to the end of the period of performance of December 31, 2026, unless the Director of Finance determines this deadline should be adjusted pursuant to any changes authorized by the federal government, including regulations or federal guidance.

SLC Draft Guidance and Application Process

The SLC issued draft port fund guidance (Draft SLC Guidance) for the use of any awarded ARPA funds, which were provided to California's ports for comment the week of September 27, 2021 (see Attachment B). The Draft SLC Guidance categories port as an impacted industry. It is important to note that the Draft SLC Guidance is in *draft form* and may be subject to change. The Draft SLC Guidance set out eligibility criteria for the funds, and explain how ports can apply for, receive, and use the funds allocated by the State. Since the purpose of the program is to help stimulate the recovery, the Draft SLC Guidance prioritizes eligible costs encumbered (obligated) or spent between March 3, 2021 and June 30, 2024. Accordingly, implementation of a program to spend ARPA funds is vital to meet the new deadline.

The SLC set eligibility criteria in accordance with the Act. As such, the Draft SLC Guidance explicitly limits the funding eligibility to California ports. Cities, counties, and non-port special districts are not eligible to receive funds, and airport operations and related costs are also excluded. The use of the funds must be consistent with Item 3560-162-8506 and Section 11.96 of the 2021 Budget Act (see discussion above under ARPA and the State Budget Act of 2021), applicable state law, as well as related guidance from the SLC, the California Department of Finance, and other state entities. The use of the funds must also be consistent with the ARPA and related federal guidance, including that the funds shall not be used to replenish a rainy-day fund or budget reserves of the port, an obligation of a legal settlement or to fund general pension liability. Funds also must not be used to pay for fully automated cargo handling equipment.

The Draft SLC Guidance document also establishes a funding request process for ports to secure approval to receive and use these recovery funds. In recommending allocation of funds to any individual port, SLC staff will look at revenue losses during 2020 and whether the port received funds from county or city's local fiscal recovery funds. As the Board is aware, the District has not received any fiscal recovery funds. Staff anticipates receiving instructions for calendar year 2021 in the near future.

The funding request package to SLC must include the following:

1. **Letter to the SLC** that includes the following:
 - Description of the revenue impacts attributable to the COVID-19 pandemic.
 - The amount requested.
 - A description of what the funds will be used for, including the project/program, anticipated expenditures, costs, how the use responds to COVID-19 and supports the port's economic recovery, and 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.
- Acknowledgement that funds may be used to support eligible expenditures/costs incurred between March 3, 2021, and June 30, 2024.

2. Request Summary (see Attachment D) that includes the following:

- A quantification of revenue losses using a methodology prescribed by SLC. This methodology requires identifying revenues collected in the last full fiscal year prior to the pandemic (FY2019), estimating a counterfactual revenue level for calendar year 2020 based on a 4.1% growth adjustment, and then the extent of the reduction in revenue is equal to counterfactual revenue less actual revenue.
- A description of any other aid received.
- A description of the proposed use of the funds.
- An explanation of noncompliance risk factors.

3. Supporting Documentation to justify and substantiate the information provided in the Request Summary.

As of drafting this agenda, SLC has not issued the date the request package is due, but staff anticipates the package due mid- to late October. Hence, the Board's actions at the October open session are vital for the District to submit a timely application, sign a funding agreement and execute on any awarded funds. The SLC staff will perform a technical review of all request packages in accordance with their guidance document, and based on that review, will make a recommendation to the SLC Commissioners.

When recommending awards, SLC staff will consider a number of factors (technical factors) for how the proposed program supports a port's and State's economic recovery, including:

- 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

It is anticipated that SLC will consider SLC staff's recommended disbursements at its regular October meeting or, more likely, at a special meeting in November 2021.

Once the SLC approves the funding request, ports must submit a signed/executed funding agreement within 30 days. The signator shall have authority to sign such an agreement and hence, staff is recommending the Board grant such authority to the Executive Director at the October 12, 2021 meeting. No funds will be disbursed until the SLC receives that document. This funding agreement will include a Monitoring Plan that ensures that the funds are being used in compliance with applicable Federal and State regulations (See Attachment C). The Monitoring Plan shall include requirements to provide data for an "Annual Recovery Plan Performance Report", submit quarterly project and expenditure reports, and perform a single-audit in accordance with the federal Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F.

Recommended Economic Recovery Program

As mentioned above, the Draft SLC Guidance establishes a methodology to calculate revenue declines that form the basis of a port's funding request. When using that methodology, staff estimates that the District will be eligible about \$100 million in funds from this program in two phases. The first phase of funds will be calculated for losses and other costs incurred during Calendar Year 2020, and that phase is estimated at \$60 million for the District. The second phase of funds will be to cover losses occurring during Calendar Year 2021, and staff expects that phase to provide an additional \$40 million to the District.

In order to apply for and then utilize the anticipated funding, the District needs to develop a program for use of the funds, and that program will be a key element of the funding request. Staff recommends that the District meet that requirement by establishing a dedicated Economic Recovery Program (ERP), consisting of the projects detailed below and contained in Attachment A.

The ERP is designed to be consistent with State and Federal guidance, as well as the SLC technical review factors described above. Establishing the ERP will also facilitate the post-award monitoring requirements, such as fund tracking, output measurement, auditing, and quarterly/ annual reporting.

The proposed ERP includes projects grouped into eight general categories and totaling \$100 million in total spending. All categories and individual projects that have been identified can be executed or obligated by the June 30, 2024 deadline. These categories are:

Spending Category	Amount
Major Maintenance	\$35,511,500
Disadvantaged Communities - Electrification Projects	*\$23,765,000
Disadvantaged Communities – Legacy Projects	\$11,550,000
Environmental Mitigation Projects	\$6,390,000
Port Technology Investments	\$6,000,000
Visitor Serving Projects	\$4,350,000
Personnel	\$2,900,000
Budget Stabilization Projects	\$12,000,000
Total	\$102,466,500

*This category includes a project that has received \$2.5 million in grant funding. These funds are not reflected in the proposed budget amendment for the Economic Recovery Program.

The Major Maintenance category includes spending on deferred maintenance projects at an estimated cost of \$35.5 million. These major maintenance projects were selected based on critical need due to the seriousness of the failure of the asset providing safe operations and because they were delayed due to COVID -19.

Project Description	Technical Factor and Budget Act Provision	Project Amount
Curtain Wall B Street	Implements Deferred Maintenance; Supports Port Operations; Safe Operations; Supports the Economic Recovery of Cruise.	\$10,812,000
Structural Repairs at National City Marine Terminal Berth 24-11	Implements Deferred Maintenance; Supports Port Operations; Safe Operations; Supports the Economic Recovery of Imports/Exports at NCMT.	\$11,000,000
Pile Repairs Navy Pier	Implements Deferred Maintenance; Supports Safe Operations; Benefits the Public	\$11,700,000
Electrical Improvements at Tenth Avenue Marine Terminal to Support Electrification Efforts	Implements Deferred Maintenance; Supports Port Operations; Co-Benefit of Benefitting Historically Marginalized/Vulnerable Communities	\$2,000,000

The Disadvantaged Communities - Electrification Projects Category includes efforts to electrify port operations by replacing diesel equipment and trucks with electric versions. All of these projects have a benefit to historically marginalized/vulnerable communities and meeting the District’s and State’s climate change goals. The electrification of the mobile harbor crane system also has the benefit of increasing the cargo heavy lift capacity of the Tenth Avenue Marine Terminal, which generates new economic activity for the region, new jobs for ILWU longshoremen, and an average of \$2 million in new net revenues for the District per year over twenty years. They also all implement capital outlay projects delayed due to COVID-19. The efforts listed here have an estimated cost of \$23.7 million.

Project Description	Technical Factor and Budget Act Provision	Project Amount
Electrification of Mobile Harbor Crane System	Generate New Economic Activity, Implement Capital Outlay Project; Benefit the Public; Support Safe Port Operations; Co-Benefit of Benefitting Historically Marginalized/Vulnerable Communities	\$14,000,000 stimulus, \$1,500,000 of outside funding
Electrification of Utility Tractor Rigs	Supporting Port Operations; Benefits the Public; Co-Benefit Benefitting Historically Marginalized/Vulnerable Communities	\$1,685,000
Electrification of Port Fleet	Benefits the Public; Supports Port Operations	\$1,000,000
Electrification Shore Power at National City Marine Terminal	Implement Capital Outlay Project; Supports Port Operations; Co-Benefit of Benefitting Historically Marginalized/Vulnerable Communities	\$6,000,000 *
Electrification Clean Truck Program (Purchase of ZEV Trucks)	Supports Port Operations; Benefit to the Public Co-Benefit of Benefitting Historically Marginalized/Vulnerable Communities	\$1,080,000

*This project includes \$2.5 million in grant funding. These funds are not reflected in the proposed budget amendment for the Economic Recovery Program.

The Disadvantaged Communities - Legacy Projects in category moves forward legacy projects in historically marginalized/vulnerable communities at a cost of \$11,550,000.

Project Description	Technical Factor and Budget Act Provision	Project Amount
Balance Plan (Entitlements and Design)	Benefits Historically Marginalized/Vulnerable Communities, Benefitting the Public; Co-benefit of Supporting Port Operations	\$3,000,000
Pepper Park	Benefits Historically Marginalized/Vulnerable Communities, Benefitting the Public; Co-benefit of Supporting Port Operations	\$850,000
Harbor Park Phase 2 (Design)	Benefits Historically Marginalized/Vulnerable Communities, Benefitting the Public; Co-benefit of Supporting Port Operations	\$2,000,000
Bus TA Living Coast	Benefits Historically Marginalized/Vulnerable Communities, Benefitting the Public; Supports Safe Operations	\$1,000,000
Marina Park	Benefits Historically Marginalized/Vulnerable Communities, Benefitting the Public; Co-benefit of Supporting Port Operations	\$850,000
Pond 20 (Clean-Up of Sediment)	Benefitting Historically Marginalized/Vulnerable Communities; Benefitting the Public; Implement Capital Outlay Project	\$3,000,000
Imperial Beach Pier improvements	Benefits Historically Marginalized/Vulnerable Communities, Benefitting the Public; Co-benefit of Supporting Port Operations	\$850,000

The Environmental Mitigation Projects are designed to improve the cleanliness of stormwater runoff around San Diego Bay and to implement aquaculture and BlueTech projects that will enhance the water quality in the bay. These projects are anticipated to cost \$6,390,000.

Project Description	Technical Factor and Budget Act Provision	Project Amount
Environmental Education	Benefitting the Public; Restores Services	\$80,000
Environmental Stormwater	Benefitting the Public; Co-Benefit of Benefitting Historically Marginalized/Vulnerable Communities; Implement Capital Outlay Project	\$5,125,000
Environmental Aquaculture/BlueTech	Benefitting the Public; Restores Services	\$1,185,000

The Port Technology Investments are designed to enhance port operations and implement capital outlay projects delayed by pandemic-related fiscal impacts. They are estimated to cost \$6,000,000.

Project Description	Project Benefits	Project Amount
Security Enhancements	Port Operations; Restores Services	\$1,700,000
Operational Infrastructure	Port Operations	\$1,200,000
Maritime and Tenant Portal	Port Operations, Benefitting the Public; Restores Services, Implement Capital Outlay Project	\$3,100,000

The Visitor Serving Projects address landscape restoration needed as a result of deferred maintenance at a cost of \$3,150,000, and On-Tidelands Homeless Community Support at a cost of \$1,200,000. These programs Restore Services lost during COVID-19; Benefit the Public; and create Safe Operations. The On-Tidelands Homeless Community Support also has the Co-Benefit of Benefiting Historically Marginalized/Vulnerable Communities.

The Personnel category includes \$2,900,000 in spending to restore jobs and services at the District port staff subject to meet and confer with the unions.

The Budget Stabilization Projects category covers eligible projects already included in the District's FY2021 budget but that are currently being paid for through deficit spending at an estimated cost of \$12.0 million. These projects meet the goals of supporting port operations, performing deferred maintenance, benefitting historically marginalized/vulnerable communities, and benefitting the public.

Staff recommends that the Board approve the Economic Recovery Plan (ERP) and grant the Executive Director authority to sign the application and funding agreement, so that the District can submit the funding request package as soon as the application period opens and receive the fund expeditiously.

Proposed Amendment to BPC Policy No. 090

As discussed above, staff recommends that the District meet SLC funding requirements by establishing a dedicated Economic Recovery Program (ERP), consisting of the projects outlined above and contained in Attachment A. This will allow the District to apply for and utilize the anticipated funding.

To more effectively implement the ERP - especially given the deadlines imposed by State and federal requirements - staff recommends amending BPC Policy No. 090 to create two new appropriated items for the ERP funds: 1) an ERP Ordinary Expenses appropriated item within the Ordinary Annual Expenses class, and 2) an ERP Capital Outlay appropriated item within the Capital Outlay class. These would only be used in connection with the ERP. This will allow Staff to be nimbler in executing on the Board-approved ERP. The alternative of separating ERP funds between various existing appropriated items likely will hamper and delay staff's ability to implement the ERP on the required time.

Proposed Budget Amendment Under the ERP Appropriations

If the Board approves the recommended amendment to BPC Policy No. 090, staff recommends a budget amendment to appropriate the ERP funds into the appropriate ERP appropriated items. Therefore, Staff recommends the District's FY22 Budget be amended to add \$10 million to the ERP Ordinary Expense appropriated item and \$90 million to the ERP Capital Outlay appropriated item.

General Counsel's Comments:

The Office of the General Counsel has reviewed the agenda sheet and attachments thereto, as presented to it, and approves the same as to form and legality.

Environmental Review:

The proposed Board actions, including without limitation, conducting a public hearing, adopting an ordinance adopting the FY 2022 Final Budget, and adopting resolutions waiving BPC policies, do not constitute an “approval” or a “project” under the definitions 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 Board’s actions 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 current Board actions in no way limit the exercise of this discretion. Therefore, no further CEQA review is required.

The proposed Board actions comply with Sections 20, 21, 35, 47, and 86 of the Port Act, which require the Board to draw up a budget for each fiscal year, and to hold a public hearing prior to fixing the final budget, which allow the Board to transfer amounts from one appropriated item to another in the budget allowance, to pass resolutions, and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

The proposed Board actions do 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 they 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 Board’s actions in no way limit 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.

PREPARED BY:

Stephen Shafer
Principal, Economics and Policy

Attachment(s):

Attachment A: List of Proposed Projects for the District’s Economic Recovery Program (ERP)

Attachment B: SLC Port Fund Guidelines

Attachment C: Monitoring Plan

Attachment D: SLC "Exhibit A Funding Request Summary"

Attachment E: SLC "Exhibit B Funding Agreement"

Attachment F: Current BPC Policy No. 090