

MINUTE ITEM

This Calendar Item No. C43 was approved as Minute Item No. 43 by the California State Lands Commission by a vote of 3 to 0 at its 09-13-07 meeting.

**CALENDAR ITEM
C43**

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G. Kato

CONSIDER APPROVAL OF THE PROPOSED EXPENDITURE OF PUBLIC TRUST FUNDS BY THE SAN DIEGO UNIFIED PORT DISTRICT FOR THE PALM AVENUE STREET END IMPROVEMENT PROJECT LOCATED AT THE NORTHERN EXTREMITY OF THE CITY OF IMPERIAL BEACH, SAN DIEGO COUNTY

GRANTEE/APPLICANT:

San Diego Unified Port District
PO Box 448
San Diego, CA 92122-0488

SUMMARY:

The San Diego Unified Port District (Port District) is trustee of tide and submerged lands granted to it by the Legislature pursuant to Chapter 67, Statutes of 1962, 1st Ex. Session, as amended, with minerals reserved to the State. The Port District is seeking approval of the proposed expenditure of public trust funds, in the amount of approximately \$2,700,000 for the Palm Avenue Street End Improvement Project located on lands adjacent to existing Port District public trust lands, in the city of Imperial Beach, San Diego County.

THE PROJECT:

The proposed Palm Avenue Street End Improvement Project site is located at the northern extremity of the city of Imperial Beach. Palm Avenue, which runs east and west, functions as a major roadway into the City from Interstate 5 (I-5) and terminates at Ocean Boulevard, a paper street. The existing Palm Avenue street end is a public area that provides public access to the beach (Exhibit A).

The project overlaps the jurisdictions of both the city of Imperial Beach and the San Diego Unified Port District (Exhibit B). Improvements proposed within the existing Palm Avenue right-of-way are within the Port District's jurisdiction, based upon an easement from the city of Imperial Beach.

The project site is located in an area characterized by beach sand, devoid of vegetation, a rock groin, randomly placed armor stones and a storm drain outfall.

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A concrete platform has been laid over the groin and is used by lifeguards and the public as a vista point because it offers broad views of the Pacific coastline. To the north of the site, are newly-constructed residential units and a two-story single family residence followed by two-story and multiple family residential developments. Located east of the project site is the 80-foot wide Palm Avenue public right-of-way and the Ye Olde Plank Inn Tavern and the Shopkeepers Development. To the west is Ocean Boulevard, a paper street that has been leased by the city of Imperial Beach to the Port District and runs north and south along the beach and the Pacific Ocean.

The proposed project involves the renovation and enhancement of a public coastal access way and view corridor for the western terminus of Palm Avenue, where the street end intersects with the beach. The project area between Seacoast Drive and Ocean Boulevard will be transformed into a park-like setting for bay viewing with benches, landscaping, low-level lighting, public parking and a public art piece. The project includes removal of the concrete platform because of its uneven surface. Construction of vertical shore protection would be required to protect the public access improvements.

Public and emergency vehicle access to the beach is currently available from the Palm Avenue street end, but is often difficult as the sand level drops significantly in the winter. As a result, pedestrians are forced to traverse the groin and rip-rap to get to the beach level. Access to the north of Palm Avenue is particularly difficult from the street end. Pedestrians previously got to the beach area north of Palm Avenue across a formerly vacant private lot adjacent to the street end; however, that area is now fully developed with a residential building. This project will establish year-round lateral beach access including ADA access, lifeguard access, and emergency vehicle access by providing a permanent transition from the groin/street end to the beach. A semicircular public overlook will be created at the street end.

Vertical shoreline protection would consist of an interlocked vertical sheet-pile system encased in concrete, with a cap that varies in width from 3.5 feet around the overlook to 3.0 feet along the top of the ramps. The overlook will include two areas for seasonal lifeguard cabanas. Benches are proposed around the outlook. In order to allow construction during the heavy surf season (winter months) and to leave the area groomed after construction, beach nourishment will be provided. Imported sand will be checked to ensure compatibility of grain size and color with existing beach sand and will be free of deleterious material.

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The construction of a storm water pump station with a built-in pollution diversion system is proposed and the existing storm drain outlet will be reconstructed. Development of the storm water pump station and outlet will help to prevent or reduce beach warning postings and closures in the Imperial Beach area by diverting the dry weather urban runoff from the Palm Avenue Storm Drain to the sanitary sewer system.

The total estimated project cost is approximately \$3,600,000. The Port District has allocated approximately \$2.7 million in its Capital Development Program budget for development of this project; the city of Imperial Beach has secured approximately \$1.3 million from the State's Water Security, Clean Drinking Water, Coastal, and Beach Protection Act of 2002 (Proposition 50) Clean Beaches Initiative Grant Program. In January 2007, the State Water Board authorized the Division of Financial Assistance to make preliminary funding commitments, consistent with available funds, for routine, non-controversial projects. (Exhibit C) Following final approval of the grant funding from the State, an agreement will be executed between the City and the Port District demonstrating that the grant funds will be turned over to the District for completion of the project.

LEGAL REQUIREMENTS:

Because the proposed transaction involves a capital expenditure by the Port District of funds in excess of \$1,000,000 off of Port District property, the expenditure must first be reviewed and approved by the Commission pursuant to the Section 30.5 (c) of Chapter 67, Statutes of 1962, 1st Ex. Session, as added by Chapter 399, Statutes of 1996. Section 30.5 (c) provides that the Commission review the proposed expenditure on behalf of the State pursuant to Public Resources Code (PRC) Sections 6701, et seq.

In order to approve the proposed expenditure, the Commission must make the following findings pursuant to PRC Section 6702 (b):

- 1) That such lease, contract, or other instrument is in accordance with the terms of the grant or grants under which title to the tide or submerged lands in question is held; and
- 2) That the proceeds of such lease, contract, or other instrument shall be deposited in an appropriate fund expendable only for statewide purposes authorized by the legislative grant; and
- 3) That such lease, contract, or other instrument is in the best interest of the State.

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Title 2, California Code of Regulations Section 2802, requires that, in order to make the finding that the contract is in the best interest of the State, the Commission must analyze whether the use, project or activity permitted by the expenditure is:

- 1) Consistent with current Commission policies, practices and procedures used for administering lands within its jurisdiction;
- 2) Economically viable, necessary and desirable;
- 3) Appropriate for developmental mix;
- 4) Conducive to public access;
- 5) Consistent with environmental protection; and
- 6) Otherwise in the best interest of the State.

STAFF ANALYSIS:

Commission staff has reviewed the information submitted by the Port District for the proposed expenditure pursuant to Section 30.5 of Chapter 67, Statutes of 1962, as amended and Public Resources Code Section 6701, et seq.

The Port District's goals are to: 1) optimize the Port District's positive economic impact to the San Diego region, 2) improve the environmental conditions of the Tidelands Trust resources, 3) enhance the safety and security of the tidelands, 4) increase responsiveness to community needs, 5) enhance organizational performance, and 6) maintain the Port's financial stability. The Port District's position is that the proposed Palm Avenue plan concept proposes to facilitate these goals by: maintaining existing view corridors to the water; improving public access to the public trust lands; developing, rehabilitating, and increasing the size of public facilities and areas; enhancing the amenities of public areas serving the public trust lands; and promoting opportunities for appropriate visitor-serving commercial uses to attract visitors to public trust lands. The staff of the CSLC concludes that overall, the project will enhance public access to public trust lands, help to improve the Imperial Beach shoreline as a focal point for recreational and associated commercial activities, and provide for better water quality in the area and surrounding granted lands.

While the proposed project lies outside of the lands granted to the Port District, the Port District has retained a property interest in these areas via leases and easements from the city of Imperial Beach (copies of these leases and easements are on file at the Sacramento office of the California State Lands Commission).

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Commission staff has reviewed the proposed project and considers it consistent with the public trust under which the lands are held and in the best interest of the State. Staff therefore recommends that the Commission approve the proposed expenditure.

OTHER PERTINENT INFORMATION:

1. The San Diego Unified Port District has approved the leases and easements associated with the project.
2. The city of Imperial Beach has approved the project, the leases, and the easements.
3. The Commission, in its consideration of the proposed expenditure of Tidelands Trust Funds, will be acting under its authority pursuant to Section 30.5 of Chapter 67, Statutes of 1962, as amended and Public Resources Code Section 6701, et seq.
4. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060 (c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

EXHIBITS:

- A. Location and Site Map
- B. Jurisdictional Boundaries
- C. State Division of Financial Assistance Preliminary Funding Commitment

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE

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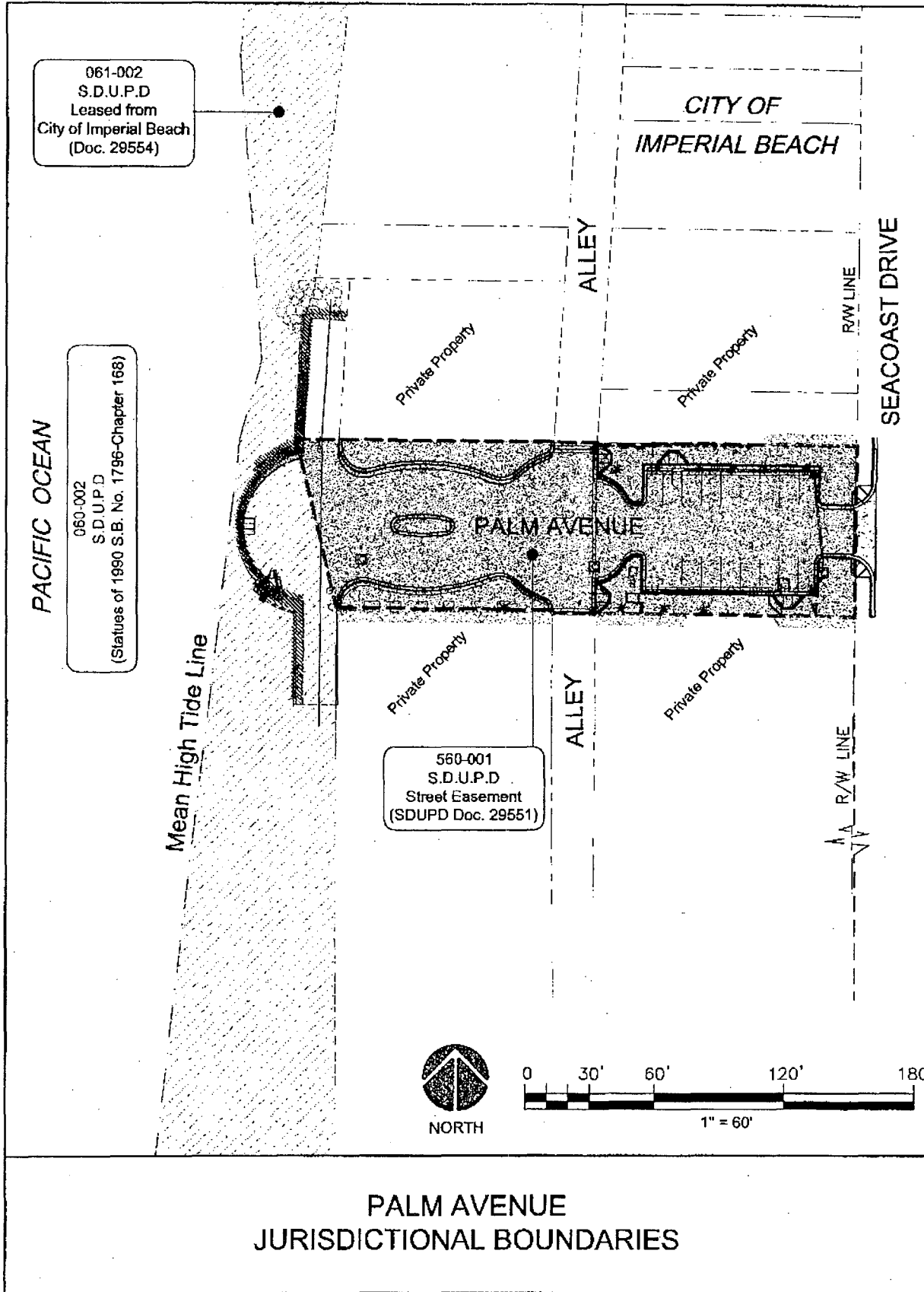
SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS,
SECTION 15378.

AUTHORIZATION:

1. FIND THAT THE PROPOSED EXPENDITURE FOR THE PALM AVENUE STREET END IMPROVEMENT PROJECT IS CONSISTENT WITH THE PUBLIC TRUST AND IS IN THE BEST INTEREST OF THE PEOPLE OF THE STATE.

2. APPROVE THE PROPOSED EXPENDITURE FOR THE PALM AVENUE STREET END IMPROVEMENTS BY THE SAN DIEGO UNIFIED PORT DISTRICT, PURSUANT TO SECTION 30.5 OF CHAPTER 67, STATUTES OF 1962, AND AS AMENDED, PUBLIC RESOURCES CODE SECTION 6702(b) AND TITLE 2, CALIFORNIA CODE OF REGULATIONS SECTION 2802.

Exhibit B



PALM AVENUE JURISDICTIONAL BOUNDARIES

This exhibit is solely for purposes of generally defining the lease premises, and is based on unverified information provided by lessee or other parties, and is not intended to be, nor shall it be construed to as a waiver or limitation of any state interest in the subject or any other property. GK

Exhibit C

DIVISION OF FINANCIAL ASSISTANCE
PRELIMINARY FUNDING COMMITMENT
CLEAN BEACHES INITIATIVE (CBI) GRANT PROGRAM
CBI PROJECT NO. 502
ITEM NO.: DFA-2007-017

RECIPIENT: CITY OF IMPERIAL BEACH (CITY)

PROJECT DESCRIPTION: PALM AVENUE LOW FLOW URBAN RUNOFF DIVERSION PROJECT (PROJECT)

TOTAL PROJECT COST: \$1,539,000

TOTAL CBI GRANT REQUEST: \$ 1,292,000

PROJECT MANAGER: Kathryn Bare (341-5375)

AUTHORITY

In November 2002, voters approved the *Water Security, Clean Drinking Water, Coastal, and Beach Protection Act of 2002* (Proposition 50) authorizing the issuance of bonds to fund a variety of water quality improvement projects. The 2005/06 Budget Act appropriated \$23 million of Proposition 50 funds for CBI projects. Additional funds are available from the Proposition 13 Coastal Nonpoint Source Control Program. Grant funding is for projects that restore and protect the water quality and environment of coastal waters, estuaries, bays, and near shore waters. All projects receiving grant funding are required to meet the following criteria:

- (a) projects shall demonstrate the capability of contributing to sustained, long-term water quality or environmental restoration or protection benefits for a period of 20 years;
- (b) projects shall address the causes of degradation, rather than the symptoms;
- (c) projects shall be consistent with water quality and resource protection plans prepared, implemented, or adopted by the State Water Resources Control Board (State Water Board), the applicable Regional Water Quality Control Board (Regional Water Board), and the California Coastal Commission (CCC);
- (d) applicants shall inform the State Water Board of any necessary public agency approvals, entitlements, and permits that may be necessary to implement the project; and applicants shall certify to the State Water Board that such approvals, entitlements, and permits have been granted;
- (e) projects shall be consistent with existing recovery plans for coho salmon, steelhead trout, or other threatened or endangered aquatic species where applicable;
- (f) applicants shall be required to submit to the State Water Board a Monitoring and Reporting Plan;
- (g) the State Water Board shall provide the opportunity for public review and comment;
- (h) the recipient shall provide a matching contribution consistent with Water Code § 79148.8(f) for the portion of the project consisting of capital costs for construction;
- (i) upon completion of the project, the recipient of the funds shall submit a Report to the State Water Board that summarizes the completed activities and indicates whether the purpose of the project has been met.

The State Water Board, on January 18, 2007, in Resolution No. 2007-0004, authorized the Executive Director, the Chief Deputy Director, or the Deputy Director of the Division of Financial Assistance (Division) to make Preliminary Funding Commitments, consistent with available funds, for routine, non-controversial projects that are (1) consistent with those policies, regulations, and agreements that the State Water Board has adopted governing the internal management of those financial assistance projects managed by the Division, and (2) on a priority funding list adopted by the State Water Board.

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On October 26, 2006, the State Water Board adopted CBI Program Guidelines (Resolution No. 2006-0074) to establish the process and criteria to solicit applications, evaluate proposals, and award grants. Division staff solicited Concept Proposals (CPs) according to the process in the Guidelines. The Clean Beaches Task Force reviewed the CPs and developed a Recommended Project List (RPL).

The RPL was adopted by the State Water Board (Resolution No. 2007-0014) on April 18, 2007, and includes categories for both research and implementation projects, and contains more projects than there is funding available. Applicants with projects on the RPL were invited to submit detailed applications. Grant funding will be awarded to projects on the adopted RPL in the order complete applications are received until the funding is exhausted.

The City submitted a CP for the Project and was placed on the RPL. The City submitted a detailed application as outlined in the CBI Guidelines. The City adopted Resolution 2007-6466 on April 4, 2007, authorizing the City Manager as the City's Project Representative for the Project.

PROJECT OBJECTIVE

The City, located in southern San Diego County, is a popular year-round destination for surfing, sunbathing, and other water-related recreational activities. Annual attendance averaged over 2.3 million visitors from 2002 through 2005. The Beach experiences the most beach postings and closures in the State due to the high concentrations of indicator bacteria. Based on San Diego County Assembly Bill 411 coastal monitoring data, the beaches in the City were posted or closed 81.0 Beach Mile Days (BMDs) in 2004, 106.3 BMDs in 2005, and 68.9 BMDs in 2006, where a BMD is defined as the total number of miles of beach posted or closed, multiplied by the corresponding number of days of each beach posting or closure incident.

The primary goal of this Project is to prevent or reduce beach postings and closures by diverting the dry weather urban runoff from the Palm Avenue Storm Drain to the sanitary sewer system. Urban runoff discharged to ocean beaches via storm drains is a known contributor of bacteria to ocean water. Eliminating the discharge of urban runoff from the Beach is expected to reduce or eliminate postings and closures at the Beach.

PROJECT DESCRIPTION

A dry weather diversion system will be installed in the new Palm Avenue storm water pump station being constructed by the San Diego Unified Port District (Port). The pump station serves a drainage area of approximately 83.2 acres of residential development, and discharges storm water into the ocean.

The reconstructed pump station will include a submersible pump and two storm water pumps. The submersible pump will pump urban runoff (non-storm water) and the first flush of storm water from the pump station's wet well to the sanitary sewer system. During storm events after the station's storage capacity is exceeded, the storm water pumps will override the submersible pump to pump storm water flows to the ocean.

This Project was initially awarded a \$500,000 Proposition 13 Grant in 2001. Due to California Environmental Quality Act (CEQA) litigation, the Project was delayed several years and will be unable to expend the funds by the Proposition 13 deadline. The City sent a letter dated May 18, 2007, relinquishing the Proposition 13 funding and requested funding under Proposition 50. The Proposition 13 money originally granted will be re-appropriated. The litigation surrounding the Project has been resolved and the project is cleared to proceed. This Grant is necessary to extend the Project end date and to increase the original Grant amount due to increased construction costs since the original estimate.

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ENVIRONMENTAL IMPACT

The San Diego Unified Port District (Port District) developed an Environmental Impact Report (EIR) for the Palm and Carnation Avenues Street End Improvement Project, which includes the Palm Avenue Diversion Project to be completed by the City.

The EIR was distributed to the public and circulated through the State Clearinghouse (SCH # 2002031106) for review from November 9, 2005, through December 23, 2005. The Port District received 23 comment letters during the public commenting review period. The comment letters received were from the Native American Heritage Commission, two federal agencies, two state agencies, and eighteen private citizens. The Port District responded to comments and made changes, where appropriate, to the EIR and Mitigation Monitoring and Reporting Program.

The Port District certified the EIR and Mitigation Monitoring and Reporting Program in a Resolution dated February 7, 2006. The Port District filed a Notice of Determination with the San Diego County Clerk on February 13, 2006, and with the Governor's Office of Planning and Research on February 21, 2006. The City is utilizing the Port District's EIR for its Project. The City's Project is a small portion of the Project addressed in the EIR. The City's Council certified the EIR and Mitigation Monitoring and Reporting Program at its regular meeting held on August 2, 2006.

Division staff have reviewed and considered these environmental documents and determined that the Project will not have any significant adverse water quality impacts.

FISCAL IMPACT

The 2005/06 Budget Act appropriated \$23 million to the Clean Beaches Program for grants up to \$5 million per project to restore and protect the water quality and environment of coastal waters, estuaries, bays, and near shore waters. This Project will be funded by the Clean Beaches Program, and will have the following fiscal impact.

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|---|---------------|
| Proposition 50 Funding | \$ 23,000,000 |
| Total Previous Commitments | \$ 0 |
| Funds Available for Current Commitments | \$ 23,000,000 |

State Water Board Funding Commitment for June 2007:

City of Imperial Beach, CBI Grant #502 \$ 1,292,000

Funds Remaining for Future Commitments \$ 21,708,000

REGIONAL WATER BOARD IMPACT

The San Diego Regional Water Board has reviewed the Project and determined that it is consistent with existing Water Quality Control Plans.

ROUTINE, NON-CONTROVERSIAL PROJECT

The proposed Project is routine and non-controversial based on staff's consideration of the documents and information provided by the City, Regulatory Agencies, and written responses from the general public. There has been no indication through correspondence with the City, Regulatory Agencies, or the general public through public hearings of a protest or controversy regarding the proposed Project.

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POLICY ISSUE

Should the Deputy Director approve CBI Grant funding for the City's proposed Project?

STAFF RECOMMENDATION

The Deputy Director of the Division should approve a CBI Grant of \$1,292,000 for the City's Project.

Legal Review James Herink

Date 6-6-07

Fiscal Review Bo

Handwritten initials and date: JH 6/7/07

Date 6/7/07

DIVISION OF FINANCIAL ASSISTANCE
PRELIMINARY FUNDING COMMITMENT
CLEAN BEACHES INITIATIVE (CBI) GRANT PROGRAM
CBI PROJECT NO. 502
ITEM NO.: DFA-2007-017

FINDINGS

1. In November 2002, voters approved the *Water Security, Clean Drinking Water, Coastal, and Beach Protection Act of 2002* (Proposition 50) authorizing the issuance of bonds to fund a variety of water quality improvement projects. The 2005/06 Budget Act (Act) appropriated \$23 million of Proposition 50 funds for CBI projects. Additional funds amounting to approximately \$4.5 million are also available from Proposition 13;
2. The CBI funds appropriated in the Act are available for encumbrance up to June 30, 2008;
3. The State Water Resources Control Board (State Water Board), on January 18, 2007, authorized, in Resolution No. 2007-0004, the Executive Director, the Chief Deputy Director, or the Deputy Director of the Division of Financial Assistance (Division) to make Preliminary Funding Commitments, consistent with available funds, for routine, non-controversial projects that are (1) consistent with those policies, regulations, and agreements that the State Water Board has adopted governing the internal management of those financial assistance projects managed by the Division, and (2) on a priority funding list adopted by the State Water Board;
4. The State Water Board adopted in the Clean Beaches Initiative Guidelines (CBI) (Guidelines) Resolution No. 2006-0074 on October 25, 2006, establishing the evaluation criteria and the review and selection process for the CBI Grant Program;
5. The Clean Beaches Task Force reviewed the City of Imperial Beach's (City) Palm Ave. Concept Proposal (Project), and recommended it for inclusion on the CBI Recommended Project List (RPL) at the February 26-27th, 2007, meeting;
6. The State Water Board, on April 18, 2007, in Resolution No. 2007-0014, adopted the CBI RPL, which included the City's Project;
7. The City sent a letter dated May 18, 2007, relinquishing the Proposition 13 funding and requesting funding under Proposition 50;
8. The City submitted a complete detailed application that is consistent with the CBI Guidelines;
9. The Project is a routine, non-controversial project that is consistent with the CBI Guidelines;
10. The City is utilizing the San Diego Unified Port District's (Port District) Environmental Impact Report (EIR) for the funded Project. The Port District prepared an EIR for the Palm and Carnation Avenues Street End Improvement Project, which includes the Palm Avenue Diversion Project to be completed by the City;
11. The Port District filed a Notice of Determination for the EIR. The City certified the Port District's EIR; and
12. Division staff have reviewed and considered these environmental documents and determined that the Project will not have any significant adverse water quality impacts.

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APPROVALS AND CONDITIONS

Using the authority delegated by the State Water Board on April 18, 2007, in Resolution No. 2007-0014, I hereby:

Approve a CBI Preliminary Grant Commitment of \$1,292,000 for the City of Imperial Beach's Palm Avenue Diversion Project.



Barbara L. Evoy, Deputy Director
Division of Financial Assistance

6/8/07

Date