

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: September 24-25, 2008

Reference No.: 2.4e.
Action Item

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Subject: **LONG-TERM LEASE EXCHANGE**

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) approve an exchange of Lease Agreements with the San Diego Port District in order to satisfy mitigation requirements for eelgrass impacts associated with the Coronado Bridge Seismic Retrofit project.

ISSUE:

This is the proposed exchange of two long-term leases to satisfy environmental mitigation requirements associated with the Coronado Bridge Seismic Retrofit project. Specifically, the Department proposes to lease a subsurface marine preservation site from the San Diego Port District (Port District). In return, the Port District would lease a bay front jetty from the Department as an addition to their recently constructed boat marina. Both leases would be for a 66-year term, the same time period required by the environmental mitigation. It has been determined through the appraisal process that both properties have an equivalent value, so that the two leases would offset each other, with no actual exchange of monies. Terms and conditions of each lease are nearly identical.

BACKGROUND:

Mitigation History

The Department originally planted eelgrass mitigation as required by the National Marine Fisheries Service (NMFS) and linked to the 404 permit from the Army Corps of Engineers (ACOE). The eelgrass did not survive due to several conditions. On February 8, 2006, the NMFS, the ACOE, the California Department of Fish and Game, and the Department reached an agreement for construction of fish enhancement structures as alternate compensatory mitigation requirements for eelgrass impacts associated with the Coronado Bridge Seismic Retrofit project. The NMFS gave the Department some leeway to get the mitigation in place. When the Department experienced major delays due to this lease exchange, NMFS began imposing a seven percent mitigation increase fine per month beginning in June 2007. The seven percent increase per month fine is part of the eelgrass policy for all impacts to eelgrass. This increase has already

doubled the size of the mitigation area and if the Department does not meet the requirements by the end of the year, the lease area will not be large enough to accommodate the required habitat. There have also been threats to forward the Department's non-compliance to the ACOE for a monetary fine as well.

The Department plans to accomplish this work through a change order on an existing Coronado Bridge project contract. If the Department is unable to do this it will be forced to put this work out to bid in a separate contract, which would exceed the dollar limits of a Minor B contract and take more time. It is critical that the Department complete this work before the existing contractor completes their bridge contract, so time is of the essence.

The Mitigation Lease Site

After some procedural delays, a site was selected off Coronado, north of the bridge. The project will involve placement of up to 80.7 cubic feet of material, with periodic monitoring to assess utilization by fish and macro invertebrates.

The Jetty Lease Site

The jetty was constructed as a flood control structure at the mouth of the Sweetwater River near the I-5/SD-54 freeway interchange near the south boundary of National City. The jetty consists of a granite rock base topped with dirt. The Port District controls the most westerly end and the Department owns the interim segment, which is 454 feet long, level, and from 29 to 54 feet wide. Lease of the Department's segment will provide a desirable continuity for the Port.

Valuations

An independent appraiser who holds the title 'Member of Appraisal Institute', determined that each site is suitable only for mitigation, and appraised both lease sites at \$1.15 per square foot. From that amount, a lease rate could be derived which would indicate a rental rate of \$142 per month. Since both properties are the same size and value the two leases would offset each other, with no actual exchange of monies.

Department Review and Timing

The agreements have been reviewed by Department and Port District legal divisions. Staff from the Department's District 11 and HQ's Division of Right of Way and Land Surveys, Office of Appraisals have reviewed the appraisal and concur with the valuation. As outline above, time is of the essence as environmental mitigation is overdue, penalties are incurring, and the Department has a window of opportunity to include this work in an existing contract. All things considered, this transaction will benefit from expediency.

