COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL

(1) DEPARTMENT	(2) MEETING DATE	(3) CONTACT/PHONE
Administration	April 25, 2006	Vincent Morici (805) 781-5011

(4) SUBJECT
Request to approve recommended responses to findings and recommendations contained in the March Grand Jury report on County Harbors and to forward the responses to the Presiding Judge of the Superior Court.

(5) SUMMARY OF REQUEST
The Grand Jury has directed that the County Department of Public Works and the Board of Supervisors respond to findings and recommendations contained in their report on County Harbors. The primary focus of the findings and recommendation relate to the Port San Luis Harbor District and responsibility for flood control, funding of District operations, mosquito abatement and safety.

(6) RECOMMENDED ACTION
Recommend your Board adopt the recommended responses prepared by the Administrative Office (attachments 1 and 2) as the Board's response to the March 2006 Grand Jury Report on County Harbors and forward the adopted response and the attached response from the Public Works Department to the Presiding Judge of the Superior Court.

(7) FUNDING SOURCE(S)	(8) CURRENT YEAR COST	(9) ANNUAL COST	(10) BUDGETED?
N/A	N/A	N/A	☐ YES ☑ N/A ☐ NO

(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST):
County Public Works and the Public Health Division of Environmental Health

(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? ☑ No ☐ Yes, How Many? _____
☐ Permanent _____ ☐ Limited Term ____ ☐ Contract _____ ☐ Temporary Help _____

(13) SUPERVISOR DISTRICT(S) 1st, 2nd, 3rd, 4th, 5th, All	(14) LOCATION MAP ☐ Attached ☒ N/A
(15) AGENDA PLACEMENT ☑ Consent ☐ Hearing (Time Est. _____) ☐ Presentation ☐ Board Business (Time Est._____)	(16) EXECUTED DOCUMENTS ☐ Resolutions (Orig + 4 copies) ☐ Contracts (Orig + 4 copies) ☐ Ordinances (Orig + 4 copies) ☐ N/A
(17) NEED EXTRA EXECUTED COPIES? ☐ Number: _____ ☐ Attached ☒ N/A	(18) APPROPRIATION TRANSFER REQUIRED? ☐ Submitted ☐ 4/5th's Vote Required ☑ N/A

(19) ADMINISTRATIVE OFFICE REVIEW OK - Jim Grant

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4-25-06

County of San Luis Obispo

COUNTY GOVERNMENT CENTER, RM. 370 • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5011

DAVID EDGE
COUNTY ADMINISTRATOR

TO: Honorable Board of Supervisors

FROM: David Edge, Administrative Officer

DATE: April 25, 2006

SUBJECT: Response to the 2005-2006 Grand Jury Report on County Harbors

RECOMMENDATION

The Board of Supervisors adopt the attached recommended responses prepared by the Administrative Office (attachments 1 and 2) as the Board's response to the March 2006 Grand Jury Report on County Harbors and forward these responses and the response from the Public Works Department to the Presiding Judge of the Superior Court.

DISCUSSION

The Grand Jury issued an interim report in March of 2006. The interim report addresses issues involving the Port San Luis Harbors District and Morro Bay. The Grand Jury has requested County Department of Public Works and your Board of Supervisors respond to four findings and four recommendations related the Port San Luis Harbor District.

The four recommendations in the Grand Jury Report can be summarized as follows:

1. The County should allocate a portion of the transient occupancy tax derived from hotels and motels in Avila Beach be provided to the Port San Luis Harbor District to fund Harbor District operations.
2. There County and/or Flood Control District should assume responsibility and liability for flood control on a portion of property within the Port San Luis Harbor District.
3. The County should undertake mosquito abatement in a drainage ditch within the Harbor District.
4. The County or Harbor District should install fencing be installed around the drainage ditch.

Recommended Board responses to each of the Grand Jury findings and recommendations are contained in the attachments to this report.

OTHER AGENCY INVOLVEMENT

The Department of Public Works and the Division of Environmental Health were consulted regarding the issues raised in this report.

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FINANCIAL CONSIDERATIONS

The Grand Jury recommendation to provide the Port San Luis Harbor District a portion of the transient occupancy tax could reduce the amount of revenue from this source. No specific dollar amount is mentioned in the report. Transient occupancy taxes are general revenues that help fund law enforcement, fire protection, emergency medical, and many other services provided to the unincorporated areas of the County. Implementing the recommendation for the County to assume responsibility and liability for flood control within the District boundaries could result in additional, and potentially significant, expense to the County.

RESULTS

Adoption of the findings and recommendations will fulfill the County's obligation to respond to Grand Jury reports as specified in Section 933 of the Penal Code

County of San Luis Obispo

COUNTY GOVERNMENT CENTER, RM. 370 • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5011

DAVID EDGE
COUNTY ADMINISTRATOR

TO: The Honorable Rodger Piquet,
California Superior Court, San Luis Obispo County

FROM: County of San Luis Obispo Board of Supervisors
Katchik "Katcho" Achadjian, Chairman

DATE April 25, 2006

RE: 2005-2006 Grand Jury Report - County Harbors

Thank you for the opportunity to respond to the Grand Jury report on County Harbors. This memo is the County Board of Supervisors response to the report. The required response from the County Public Works is also attached to this memo.

Grand Jury Finding 1
While major economic benefits of the beach, pier, and other District facilities accrue to the complex of new, luxury resorts and hotels at Avila Beach, and to the county treasury through bed taxes, the excess cost of operations must be borne by the residents of the District through their property taxes.

Board of Supervisor's response to Finding 1
We disagree with this finding.

District facilities, the beach and the pier are only part of an area that also includes surrounding natural areas, a golf course, a County park, the Pacific Ocean and the town of Avila. All of these attractions contribute to making the area a desirable place to recreate and develop. The Grand Jury fails to provide supporting evidence that the district is a main economic engine for the area. While we disagree that there is a direct and quantifiable correlation between the development in Avila Beach and existence of the Harbor District and it's facilities, we agree that the presence of the Harbor District facilities add to the already considerable attraction of the coastal area of Avila Beach.

The Grand Jury report also fails to recognize that as the area grows the County is responsible for funding increased road maintenance, parks, law enforcement, fire protection and emergency medical services that are provided for residents, business owners and visitors to the Avila area including those that use and work in Harbor District facilities.

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The main sources of revenue for the County to expand these services come from local property tax revenue, transient occupancy taxes and other discretionary revenues. These discretionary revenue sources are used to provide the types of services described above on a countywide basis. The Board of Supervisors must take into consideration the needs of the entire unincorporated area and allocate limited discretionary dollars where it is needed the most.

Additionally, it should be noted the Harbor District, formed in 1954, receives a portion of the property tax. The FY 2005-2006 Budget for the Port San Luis Harbor District shows that the District receives approximately $2 million dollars in property tax revenue. The District benefits financially from the increase in property values within their tax rate area. This increase in revenue will help the District maintain their current services. However, the Grand Jury report did not acknowledge that the District also derives revenue from the operation of leases and services that are provided either by the district or its contractors. These include: boat hoist services, boat storage, gear storage, dry dock, boat repair, RV and camp sites, fuel and ice services, mooring sales, mooring leases, mooring rentals, and water taxi services. The revenue derived from the above District leases and services also helps to fund the District and its operations. Moreover, these revenues are largely under the control of the District and have the potential to be adjusted by the District to meet its needs. A quick glance at the District's 2005-2006 budget shows that revenues from District operations total over 1 million dollars or over 34% of the total income available for District operations. The Grand Jury finding does not address this significant source of revenue to the district.

Grand Jury Finding 2
The drainage ditch at the parking lot represents a potential flooding hazard.

Board of Supervisor's response to Finding 2
The Board adopts the response prepared by the Public Works Department in their Board letter dated March 23, 2006 attached to this report.

Grand Jury Finding 3
The drainage ditch at the parking lot represents a potential health hazard due mosquito breeding.

Board of Supervisor's response to Finding 3
Based upon input from the Public Health Department's Division of Environmental Health, we agree that the ditch, like many other water sources throughout the County, may be an area where mosquito breeding could take place. All such areas could pose a potential health hazard. We further note there is nothing specifically unique to the drainage ditch that makes it a greater hazard than any of the other hundreds or perhaps thousands of bodies of water in the county where mosquitoes could breed.

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Grand Jury Finding 4:
A Safety Problem also exists from the ditch being uncovered and unprotected.

Board of Supervisor's response to Finding 4
The Board adopts the response prepared by the Public Works Department in their Board letter dated March 23, 2006.

Grand Jury Recommendation 1
A portion of the bed tax collected from the hotels and motels and resorts in Avila should be shared with the Harbor District for its operation and maintenance of the beaches and other facilities, which benefit these enterprises.

Board of Supervisor's response to Grand Jury Recommendation 1
We disagree with this finding. The recommendation is not warranted and is unreasonable. It is not warranted since the District has the potential to increase funding through revenue sources that are under its control (see response to Finding Number 1). The recommendation is unreasonable in that it fails to recognize that transient occupancy tax revenue (referred to as the bed tax in the Grand Jury Report) is a general purpose used to help offset the cost of County services countywide. This would include fire protection, law enforcement, emergency medical services and road maintenance services provided to the Port San Luis Harbor District area.

In essence, the Grand Jury seems to be saying that since the Harbor District may contribute to drawing people to Avila Beach, the District should share in the transient occupancy tax. Imagine the effect upon local governments if this concept were extended to other governmental entities throughout the state. Would the State of California be entitled to ask for a share of local transient occupancy taxes due to the draw created by Hearst Castle and the local state parks? Since there are now hotels in Avila Beach that could draw more boaters to the area, should the County be entitled to ask for a share of the boat launch and mooring fees from the Harbor District? How does the Grand Jury draw a distinction between their recommendation and the two examples cited above? The information in the report did not address this issue.

In summary, the rationale behind the Grand Jury recommendation would appear to conflict with Section 7280 of the Revenue and Taxation Code, which provides that cities and counties may levy and collect a transient occupancy tax. The legislature established the existing law to be simple, clear and used throughout the state as the appropriate means for the allocation transient occupancy tax.

Grand Jury Recommendation 2
Whereas the county benefits economically from the development of Avila and the future revenues generated thereby, and whereas the county has approved the plans and granted permits for building and paving in Avila and whereas the county flood control district is responsible for flood control in Avila, and whereas the county must share in

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the potential burden and liability for any damage resulting from flooding of the drainage ditch in its flood control district, the County should therefore assume responsibility for designing, providing, and maintaining a solution to the potential overflow and flooding problems at the drainage ditch.

Board of Supervisor's response to Grand Jury Recommendation 2
The Board adopts the response prepared by the Public Works Department in their memo dated March 23, 2006 and determines that the recommendation will not be implemented because it is not warranted. There is an existing process to develop zones of benefit as the means to handle local flood control issues. Public Works identifies that the Grand Jury is incorrect in identifying that the "the county flood control district is responsible for flood control in Avila." The Public Works Department clarifies the relationship and policies of the Flood Control District for issues involving local flood control projects. A more appropriate solution would be to form a zone of benefit to fund appropriate flood control measures for this area.

Grand Jury Recommendation 3
The County should undertake regular mosquito abatement at the drainage ditch, or other appropriate measures, to prevent mosquito larvae from developing.

Board of Supervisor's response to Grand Jury Recommendation 3
County Environmental Health, a division of the Public Health Department, provides mosquito abatement services. Environmental Health treated mosquito larvae in the drainage ditch with larvicide in 2004. They returned in 2005 identified that small native fish discovered in the ditch had prevented the development of larvae. With regard to the recommendation that the county should undertake regular mosquito abatement at the drainage ditch, Environmental Health notes that they will respond to any complaints about mosquitoes, if appropriate, they would use larvicide, without charge for the service. Because the drainage ditch discharges into the San Luis Creek, the Dept of Fish and Game prevents the use of mosquito fish as a control method.

A process is already in place to address mosquito abatement in the drainage ditch.

Grand Jury Recommendation 4
The ditch should be fenced and access restricted for safety reasons.

Board of Supervisor's response to Grand Jury Recommendation 4
The Board adopts the response prepared by the Public Works Department in their memo dated March 23, 2006 noting that this the responsibility of the Harbor District.

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SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

Noel King, Director

County Government Center, Room 207 • San Luis Obispo CA 93408 • (805) 781-5252

Fax (805) 781-1229 email address: pwd@co.slo.ca.us

March 23, 2006

TO: **David Edge, County Administrative Officer**

FROM: **Glen L. Priddy, Deputy Director of Public Works - Engineering Services** GP

VIA: **Noel King, Director of Public Works** NK

SUBJECT: **Response to Interim Grand Jury Report on County Harbors**

The interim Grand Jury Report on County Harbors requires response from the County Public Works Department on Findings #2, 3 and 4 and Recommendations #2, 3 and 4.

Finding 2:

The drainage ditch at the parking lot represents a potential flooding hazard.

Response to Finding 2:

The Public Works Department is in partial disagreement with this finding.

The flooding and drainage situation in this portion of Avila is quite complex. The ditch is only a small part of a larger picture. While it is a fact that there is occasional standing water on the parking lot in Avila, the report does not present any data to support the finding that the magnitude of the standing water would support a finding that this situation constitutes a "hazard". Given that storm water flows naturally to this location, a parking lot is an appropriate use of this land.

Finding 3:

The drainage ditch presents a potential health hazard due to mosquito breeding.

Response to Finding 3:

The Public Works Department does not agree or disagree with this finding.

The Public Works Department provides no services to the community that relate to health hazards due to mosquitoes. The Harbor District can contact the County Public Health Department for help in determining the potential health effects of their ditch.

Finding 4:

A safety problem also results from the ditch being uncovered and unprotected.

Response to Finding 4:

The Public Works Department does not agree or disagree with this finding.

The Department has no data relating to the accident history of this ditch or information on the design of circulation in the parking lot as it relates to the ditch. The ditch is the responsibility of the Harbor District.

Recommendation 2:

Whereas the county benefits economically from the development of Avila and the future revenues generated thereby, and whereas the county has approved the plans and granted the permits for building and paving in Avila, and whereas the county flood control district is responsible for flood control in Avila, and whereas the county must share in the potential burden and liability for any damage resulting from flooding of the drainage ditch in its flood control district, the county should therefore assume responsibility for designing, providing, and maintaining a solution to the potential overflow and flooding problems at the drainage ditch.

Response to Recommendation 2:

This recommendation will not be implemented by the County Public Works Department.

Response to "Whereas" clauses:

The Public Works Department does not have direct responsibility for, or control of, existing or future revenues related to the development of Avila Beach and, as such, we have no response to the statement about the economic benefits that the Grand Jury states accrue to the County.

The Department agrees that the County has approved plans and granted permits in Avila.

The County Flood Control District is not responsible for flood control in Avila.

The Public Works Department does not have the responsibility for determining who has liability for damage resulting from flooding of the drainage ditch that is located on the Harbor District's property. Consequently, the Public Works Department does not have a response to this statement.

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Response to assumption of responsibility:

History

The area of the parking lot in Avila has flooded forever. In a natural condition, the location was an estuary and mud flat. Sometime over one hundred years ago, the railroad cut off the area from the sand spit with a trestle. As the town developed, the sand spit was protected with sea walls and the trestle was replaced with an embankment, but the elevation of the area between was never raised very much. If this area was to be fully protected from flooding, its elevation should have been raised to match the sea walls that formed Front Street and the railroad embankment that dictated the elevation of Avila Beach Drive. This filling of the land did not take place and the area was left in a hole. It has never been the responsibility of the County to dictate the elevation of private property.

Drainage of parking lot area

The drainage dynamics of this area includes three major components. These are: runoff from higher levels of the Town of Avila; flood flow from San Luis Creek; and, tidal flow from the Pacific Ocean. The old railroad and later Avila Beach Drive embankments would block creek and tidal flow from reaching the area, except that the flow from the town must be allowed to drain to the creek. Before Avila Beach Drive was constructed, the area of the parking lot was directly susceptible to storm flow from the creek and tidal flow from the ocean. To drain the town and to minimize flooding, a culvert was installed when the road was built in the 1960's. The culvert is equipped with a valve that blocks the flow from the creek and the tide but allows flow to drain from the town. This valve improves the situation but at times has leaked or been blocked open by debris. A new type of valve was installed a few years ago in an attempt to minimize backflow through the valve. It needs to be understood that because this area is in a hole, during high creek flow or high tide events, there is no outlet for storm flows entering the parking lot area from the town.

Agencies Providing Services

Avila Beach Drive, the culvert, the valve, as well as most of the other roads in the Town of Avila are all part of the County Maintained Road System which is administered by the County Public Works Department.

Water and sewer services for the Town of Avila are provided by the Avila Beach Community Services District (CSD). The CSD also provides sewage treatment for the Port San Luis Harbor District. Both the CSD and the Harbor District receive their water from the Lopez water project which is administered by the County Public Works Department through the San Luis Obispo County Flood Control and Water Conservation District, Zone 3 and County Service Area 12. The CSD also receives water from the State Water Project through the Lopez project facilities.

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The Harbor District operates the beach, the pier, and the parking lot. The County Department of General Services, Parks Division, operates and maintains the plaza and park on Front Street.

San Luis Obispo County Flood Control and Water Conservation District

The assertion that "the county flood control district is responsible for flood control in Avila" *implies that the County is responsible for fixing all flooding and drainage problems in the county, which is incorrect. The Flood Control District is a Special District that is governed by the County Board of Supervisors and administered by the County Public Works Department. The District has the power to provide various services including flood control, and water supply. It has been a long standing policy of the District, since the existing need far exceeds the existing resources, that local problems are funded by local communities to the extent that the local communities desire to fund drainage projects and programs. For the District to provide specific services to an area a zone of benefit must be formed and taxes or service charges paid to fund the service. Each zone provides only the service for which it was formed.*

In the Avila area Flood Control Zone 3 provides the wholesale drinking water supply. Flood Control Zone 9 provides flooding studies and limited channel maintenance of San Luis Obispo Creek within the City of San Luis Obispo. There is no Flood Control Zone that provides flood control or drainage services in the Town of Avila.

Proposed Solution to Problem

There is a perceived flooding problem in the parking lot in Avila. The first step in addressing the problem is to determine the extent of the problem. The area of the parking lot has always flooded. There is no data presented regarding the magnitude of damages that have accumulated over the years that this flooding has occurred. The new development in the area should have been designed to accommodate this known flooding problem. The effectiveness of these new designs is yet to be tested so we do not know yet if there is truly a problem relating to the new development.

Since the parking area is in a hole and subject to three different flood sources, there in no way for a passive, gravity flow drainage system to provide total flood protection. The flooding of the parking lot could be helped by installation of a flood water pumping system. These types of systems are very expensive to install and to operate. Before the implementation of any plan to install a pumping system proceeds very far, the benefit of keeping the lot dry must be compared to the cost of the system to keep it dry. A parking lot is an appropriate use for property that is subject to standing water.

There is no agency currently responsible to control flooding of the parking lot except the Harbor District that owns it. Any agency that was chosen to implement a project to reduce flooding of the parking lot would have to do basically the same thing. That is defining an area of benefit, create a benefit assessment zone, hold an election of the benefited properties, impose a service charge or tax, construct and operate the facilities. There are

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many agencies already providing services in the area that could go through these steps. These include; the Harbor District, the Community Services District, the County, and the Flood Control District. Since all these public agencies would ultimately have to gain the support of the benefiting property owners, it seems logical that the agency that already owns the parking lot that would receive the most benefit should take the lead in solving the perceived problem.

Recommendation 3

The county should undertake regular mosquito abatement at the drainage ditch, or other appropriate measures, to prevent mosquito larvae from developing.

Response to Recommendation 3

This recommendation will not be implemented by the County Public Works Department.

The Department does not provide mosquito abatement services and has no program or authority to provide any services on privately owned property. The drainage ditch is located on property owned by the Harbor District. It is the responsibility of the property owner to maintain the facilities located on their property. The Harbor District can contact the County Public Health Department for help in determining the potential health effects of their ditch. This particular ditch was reconstructed during the project to reconstruct the Town of Avila. Although the preexisting ditch had not been disturbed, the Coastal Commission dictated that an easily cleaned concrete ditch be replaced with a gabion lined ditch which is impossible to clean and promotes standing water. The Harbor District owned the ditch at that time and did not formally protest or appeal the provisions of the Coastal Development Permit that contained this requirement. The Harbor District may wish to revisit the provisions of this permit and construct a ditch that is easier to maintain and less susceptible to standing water.

Recommendation 4

The ditch should be fenced and access restricted for safety reasons.

Response to Recommendation 4

This recommendation will not be implemented by the County Public Works Department.

The ditch is owned by the Harbor District and any maintenance or alteration of the facility should be done by that agency.