

MEMORANDUM

November 5, 2015

TO: MEMBERS, PORT COMMISSION
Hon. Leslie Katz, President
Hon. Willie Adams, Vice President
Hon. Kimberly Brandon
Hon. Doreen Woo Ho

FROM: Monique Moyer
Executive Director

SUBJECT: Informational presentation on the proposed Infrastructure Financing Plan for Pier 70 Subarea G-1 encompassing the Pier 70 - Historic Core and approval of the Port-Controller Memorandum of Understanding to implement the Pier 70 - Historic Core Infrastructure Financing Plan

DIRECTOR'S RECOMMENDATION: Informational Presentation; Approve Attached Resolution

Executive Summary

As part of the approvals for Lease No. L-15814 between the Port of San Francisco and Orton Development, Inc. and its affiliate Historic Pier 70, LLC ("Orton") for the development and lease of six historic buildings along 20th Street ("20th Street Historic Building Project" or "Pier 70 - Historic Core"), the Port Commission and the Board of Supervisors directed Port staff to develop an Infrastructure Financing Plan ("IFP") to finance improvements to facilitate the rehabilitation of the Pier 70 - Historic Core and to fund phase 2 of Crane Cove Park at Pier 70. A map of the Pier 70 – Historic Core is included as Exhibit A.

This staff report includes an overview of the proposed Pier 70 - Historic Core IFP and the legislation required to adopt the IFP, including a resolution approving a Memorandum of Understanding between the Port, the Controller and the Treasurer/Tax Collector ("Port-Controller-Tax Collector MOU"). The attached resolution requests Port Commission approval for Port staff to negotiate and execute the Port-Controller-Tax Collector MOU as described in this report.

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The Pier 70 - Historic Core IFP addresses the Port's Strategic Plan objectives of Renewal and Stability by (1) creating a vibrant new neighborhood at Pier 70 for residents, commercial and industrial/PDR businesses and employees, (2) expanding the Port's necklace of public open spaces and creating a major new waterfront park and (3) advancing solutions to the Port's capital funding gap by maximizing external investment capital including IFD funds.

Background

Since 2005, Port has been seeking the authority to capture property tax growth to fund public improvements along the San Francisco waterfront. In 2005, the California Legislature approved SB 1085 (Senator Carole Migden), which authorized the Board of Supervisors ("Board") to form infrastructure financing districts ("IFD") that include Port property and in 2010 the Legislature approved AB 1199 (Assemblymember Tom Ammiano) which authorized the Port to capture the State's share of property (or possessory interest) tax at Pier 70 (collectively, "Port IFD Law").

In 2012, the Board of Supervisors authorized the formation of Port Infrastructure Financing District #2 ("Port IFD"), encompassing Port property. In 2013, by Resolution 123-13, the Board of Supervisors adopted Guidelines for the Establishment and Use of an Infrastructure Financing District on Port Land.

As part of the approval of the 20th Street Historic Building Project, the Port Commission and the Board of Supervisors both directed Port staff to seek approval of an IFP for the Pier 70 - Historic Core. Board of Supervisors Resolution 273-14 approving Lease No. L-15814 states:

"FURTHER RESOLVED, That this Board directs Port staff to seek Board adoption of an ordinance to create the Port Infrastructure Financing District and approval of an Infrastructure Financing Plan for public realm improvements within and adjacent to the leasehold, installation of new electrical service to service the Pier 70 Shipyard and removal of old transformers from Building 102, and Phase 2 of Crane Cove Park including sediment remediation following completion of any necessary environmental documentation prepared in compliance with CEQA with respect to the foregoing improvements; and, be it [emphasis added]"

Accordingly, staff is seeking approval of the Board of Supervisors to form an IFD subarea ("Appendix G-1", as shown on Exhibit A) that includes Orton's 20th Street Historic Building Project at Pier 70.

Port Infrastructure Financing Districts

Port IFD Law operates in much the same way as former redevelopment law: when approved by the Board of Supervisors, the Port may form an infrastructure financing district and establish a base year, after which the Port may capture growth in property or possessory interest¹ taxes ("Tax Increment"), either annually ("pay-go") or through the

¹ Possessory interest taxes are property tax levied against leasehold interests. Port tenants are responsible for paying possessory interest taxes to the City.

issuance of bonds, to fund facilities of “communitywide significance” as part of an approved Infrastructure Financing Plan.

The Port’s 10-Year Capital Plan has included projected proceeds from a Port IFD to fund major capital improvements since 2007. Subject to approval by the Board of Supervisors, the proposed Pier 70 - Historic Core IFP will be the first time the Port implements the Port IFD Law and realizes funding to address Port capital needs.

Within the Port IFD, the Port establishes “project areas” encompassing each project site, but only when the related development has been approved by the Board. Port IFD Law generally allows the capture of property or possessory interest taxes for periods of up to 45 years; establishing different project areas allows the Port to set different 45 year “clocks” for each project area, thus maximizing capture of Tax Increment.

Port IFD law allows the following uses of Tax Increment:

- Repairs and upgrades to piers, docks and wharves and the Port’s seawall
- Installation of piles, both to support piers and to support buildings where soil is subject to liquefaction
- Parks and shoreline improvements, where the Port has been unable to secure General Obligation bond funding to fund new parks
- Utility infrastructure, including utility requirements to comply with standards imposed by the Regional Water Quality Control Board and/or the Bay Area Air Quality Management District
- Streets and sidewalks
- Seismic upgrades and improvements to the City’s seawall and other measures to address sea level rise
- Environmental remediation
- Historic rehabilitation
- Improvements to Port maritime facilities

The City’s *Guidelines for the Establishment and Use of an Infrastructure Financing District on Port Land* establish the following strategic criteria for the use of Port IFDs:

- **Use IFDs where other Port moneys are insufficient.** Waterfront districts should be used to construct public facilities when the Port does not otherwise have sufficient funds to finance the improvements.
- **Use IFDs strategically to leverage non-City resources.** Waterfront districts should be used as a tool to leverage additional regional, state and federal funds. For example, IFDs may prove instrumental in securing matching federal or state dollars for transportation projects.
- **Continue the “best-practices” citizen participation procedures used to help City agencies prioritize implementation of public facilities funded by a waterfront district.** Staff has made several presentations and engaged regularly with local advisory and stakeholder groups including the Central Waterfront Advisory Group.

Consistent with the “best practices” citizen participation described above, Port staff presented the proposed Pier 70 - Historic Core IFP to the Central Waterfront Advisory Group at its October 2015 meeting.

Port IFD Legislative Process

The legislative process to form an IFD on Port property is time-consuming and provides the public with multiple opportunities to provide input to the Board of Supervisors.

On October 6, 2015, Mayor Edwin M. Lee and Supervisor Malia Cohen sponsored two proposed resolutions to initiate the process to form the Pier 70 - Historic Core IFD. The sponsors introduced substitute legislation for the second of the resolutions on October 20, 2015. These resolutions included:

1. A resolution Further Amending Resolution of Intention to Establish Infrastructure Financing District No. 2 for the City and County of San Francisco at the Port of San Francisco (File No. 151006).
2. Resolution of Intention to Issue Bonds in an Amount Not to Exceed \$25,100,000 for City and County of San Francisco Infrastructure Financing District No. 2 (Port of San Francisco) (File No. 151007).

These resolutions provide the public with notice of the City’s intent to form a Port IFD at Pier 70 and to issue bonds repaid by Tax Increment and direct City staff to prepare the Pier 70 - Historic Core IFP, which includes a detailed expenditure plan for available Tax Increment. On Wednesday, October 28, 2015, the Board of Supervisors Budget and Finance Committee recommended approval of these resolutions to the Board of Supervisors. On Tuesday, November 3, 2015, the Board of Supervisors approved the resolution of intention to issue bonds but continued the resolution further amending the resolution of intention to establish IFD No. 2 until November 17, 2015.

Subsequently, Port staff will work with the City Attorney, the Controller and the Tax Collector to finalize drafts of the following legislation, which will approve the formation of the Pier 70 - Historic Core IFP:

- Ordinance Forming the Infrastructure Financing District and Adopting the Infrastructure Financing Plan
- Resolution Authorizing the Issuance of Bonds
- Resolution Approving the Memorandum of Understanding between the Port, Controller and Tax Collector

Pier 70 - Historic Core IFP

With the assistance of Keyser-Marston Associates, Port staff has developed an IFP for the Pier 70 - Historic Core that describes the sources and uses of funding for the project. The funding plan for the Pier 70 - Historic Core IFP is shown in Table 1 below. The proposed IFP anticipates that Orton will initially fund public right-of-way improvements and the Port will fund replacement of electrical infrastructure (including removal of PCB transformers) in Building 102, and that Port will be, and Orton may be, repaid by the proposed Pier 70 - Historic Core IFD. The remaining Tax Increment will fund a portion of Crane Cove Park Phase 2.

Table 1: Pier 70 - Historic Core IFP Funding Plan		
Anticipated Uses	Est. Cost, 2015 Dollars	Target Completion Schedule
Crane Cove Park - Phase 2	\$13,899,000	Based on funding availability
Bldg. 102 electrical relocation/improvements	3,090,000	FY 2016/17
Street, sidewalk, traffic signal improvements	<u>1,271,000</u>	FY 2016/17 – FY 2017/18
Total	\$18,260,000	

The Pier 70 - Historic Core sub-project area (Orton's leasehold for the 20th Street Historic Building project) will generate approximately \$720,000 annually in Tax Increment to the IFD at stabilization in FY 2019-20, which will increase overtime. The project is scheduled to be fully built-out and attain financial stabilization in 2021. At this point, the Port anticipates issuing bonds supported by the Tax Increment. Current estimates indicate the increment supports net bond proceeds of approximately \$6.6 million (in 2015 dollars).

The form of bonds issued to support the IFP will be a later decision for the Board of Supervisors, based on recommendations from the Port Commission. The Port IFD Law permits issuance of IFD bonds, but these bonds have not yet been issued in the State of California. Lease No. L-15814 between the Port of San Francisco and Orton anticipates the possible use of Community Facilities District ("CFD") bonds under the Mello-Roos Act, which may be part of a broader Pier 70 strategy that the Port Commission may pursue.

Table 2: Pier 70 - Historic Core IFP Sources and Uses	
Sources / Uses	2015 Dollars
Port, developer advance, net of bonds	\$1,762,363
Bond proceeds	6,558,879
Allocated Tax Increment, portion	<u>15,090,670</u>
Total Sources	\$23,411,912
Projects funded by debt*	\$8,321,242
Projects funded by pay-go*	9,938,434
Interest expense	<u>5,152,236</u>
Total Uses	\$23,411,912

**Projects funded by debt and pay-go equal \$18.26 million consistent with Table 1*

A preliminary version of the IFP was presented to Capital Planning Committee on October 19, 2015. Consistent with the City's *Guidelines for the Establishment and Use of an Infrastructure Financing District on Port Land*, the final IFP will be subject to review and a recommendation from the Capital Planning Committee to the Board of Supervisors prior to its vote on whether to adopt the IFP.

Port-Controller Memorandum of Understanding

The proposed Port-Controller-Tax Collector MOU ("MOU"), a copy of which is on file with the Port Commission Secretary, sets forth the roles and responsibilities of the Port, Controller and Treasurer/Tax Collector and will govern the distribution of funds for the specific improvements in the Infrastructure Financing Plan related to Sub-Project Area G-1 and allow for the use of one or more CFDs in the territory of the Pier 70 – Historic Core. Table 3 below describes the key terms of the proposed MOU:

Table 3: Port-Controller-Tax Collector MOU Key Provisions

Provision	Description
Term	<p>Under Charter Section Charter B7.320 (Port Agreements), the MOU is a multiple-year agreement which will terminate at the later of:</p> <ol style="list-style-type: none"> 1) when all of the IFD Tax Increment from Sub-Project Area G-1 has been disbursed in accordance with IFD Law and Appendix G-1; 2) the last date on which CFD special taxes may be levied within a corresponding CFD; and 3) when all debt issued under the IFD and CFD financing documents has been defeased and the proceeds of such debt have been expended.
Cooperation	<p>The Port, the Controller and the Treasurer-Tax Collector will cooperate with respect to implementing the IFD (including project subarea G-1) and any CFD, including a maintenance or facility CFD, and any judicial validation action to affirm the City's actions.</p>
Controller	<p>Authorizes and directs the Controller to allocate, budget, and appropriate Sub-Project Area G-1 tax increment to the IFD, avoiding the need for discretionary annual appropriations. The MOU includes a similar commitment with respect to the CFDs, when formed.</p>
Treasurer/Tax Collector	<p>Authorizes the Treasurer-Tax Collector to levy and collect tax increment in Sub-Project Area G-1 and any special taxes for a CFD, and provides that the Treasurer-Tax Collector agrees to do so. The Treasurer-Tax Collector and the Controller also agree not to dispute any statement of indebtedness related to Sub-Project Area G-1.</p>
Port	<p>Establishes the Port as the agent of the IFD with respect to Sub-Project Area G-1 and any CFD. Authorizes the payment of any Port, Controller or Treasurer-Tax Collector administrative expenses by the IFD and CFD**.</p>

**The Port is expected to incur administrative expenses as agent and the Treasurer-Tax Collector is expected to incur costs associated with the levy and collection of new special taxes for a CFD.

The MOU is required because California law only allows the City to establish and allocate property tax revenue to an IFD. The MOU will provide certainty that the IFD and Sub-Project Area G-1 will be formed and implemented as approved. Under the MOU, property tax paid in Sub-Project Area G-1 would be allocated to the IFD after administrative expenses are paid to the City. The MOU would limit future discretion of the Board of Supervisors to change the IFD policy or the allocation of increment after initial approval. This will provide more certainty to investors and will allow for bonding against future IFD revenues.

The Port does not have legal authority to establish CFDs. The MOU provides certainty that the Board of Supervisors will form and implement CFDs as described in prior approvals. The MOU establishes that the special fund where Tax Increment is deposited will be held by the Port, the Port will be appointed to administer withdrawals, and the Port will work with the Office of Public Finance on bond issuances.

Recommendation and Next Steps

Port staff recommends approval of the attached resolution authorizing Port staff to negotiate and execute the Port-Controller-Tax Collector MOU as described in this report. Following direction from the Port Commission and the Board of Supervisors, Port staff will work with the City Attorney, the Office of Mayor Edwin M. Lee and Supervisor Malia Cohen to draft and prepare the following legislation for introduction at the Board of Supervisors on November 17, 2015:

- Ordinance Forming the Infrastructure Financing District and Adopting the Infrastructure Financing Plan
- Resolution Authorizing the Issuance of Bonds
- Resolution Approving the Memorandum of Understanding (MOU) between the Port, Controller and Tax Collector

If the Board of Supervisors approves the legislation described above, Port staff will return to the Port Commission at a later date to seek further policy direction regarding the formation of any CFD over the Pier 70 Historic Core, any proposed issuance of bonds pursuant to the IFP, or other related actions.

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Exhibit A: Pier 70 – Historic Core Map

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 15-43

- WHEREAS, California Statutes of 1968, Chapter 1333 (Burton Act) and the San Francisco Charter Sections 4.114 and B3.581 empower the San Francisco Port Commission (Port Commission) with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction; and
- WHEREAS, Under Government Code Sections 53395 et seq. (IFD Law), the Board of Supervisors of the City is authorized to establish an infrastructure financing district and to act as the legislative body for an infrastructure financing district, including the formation of “waterfront districts” under Section 53395.8 and “Pier 70 enhanced financing plan” and subareas within the Pier 70 district pursuant to Section 53395.81 of the IFD Law; and
- WHEREAS, Pursuant to Section 53395.8 of the IFD Law, a waterfront district may be divided into project areas; and
- WHEREAS, On April 23, 2013, the Board of Supervisors, by Resolution No. 123-13, adopted “Guidelines for the Establishment and Use of Infrastructure Financing Districts on Project Areas on Land under Jurisdiction of the San Francisco Port Commission” (Port IFD Guidelines) relating to the formation of infrastructure financing districts by the City on waterfront property in San Francisco under the jurisdiction of the Port Commission; and
- WHEREAS, On March 27, 2012, by Resolution No. 110-12 (Original Resolution of Intention to Establish IFD), the Board of Supervisors declared its intention to establish a waterfront district to be known as “City and County of San Francisco Infrastructure Financing District No. 2 (Port of San Francisco)” (IFD), and designated initial proposed project areas within the IFD; and
- WHEREAS, On June 12, 2012, by Resolution No. 227-12 (First Amending Resolution), the Board of Supervisors amended the Original Resolution of Intention to Establish IFD to propose, among other things, an amended list of Project Areas; and
- WHEREAS, On October 6, 2015, , Mayor Edwin M. Lee and Supervisor Malia Cohen introduced legislation (Resolution of Intention to Establish an IFD) to amend the Original Resolution of Intention, as previously amended, to propose Sub-Project Area G-1 (Pier 70 - Historic Core) within the Pier 70 district; and

WHEREAS, Sub-Project Area G-1 (Pier 70 - Historic Core) includes property that the City, acting by and through the Port Commission, has leased to Historic Pier 70, LLC (an affiliate of Orton Development, Inc.) pursuant to Lease No. L-15814, dated as of July 29, 2015 (Lease), which property will be rehabilitated pursuant to a Lease Disposition and Development Agreement, dated as of September 16, 2014, by and between the City, acting by and through the Port Commission, and Historic Pier 70, LLC (LDDA); and

WHEREAS, Sub-Project Area G-1 (Pier 70 - Historic Core) is within the Eastern Neighborhoods Community Plan Area, for which the San Francisco Planning Commission certified the Eastern Neighborhoods Rezoning and Area Plans Final EIR (EN FEIR) (Planning Department Case No. 2004.0160E); and

WHEREAS, The Planning Department reviewed the project described in the LDDA (Project) and determined that a community plan exemption under CEQA Guidelines Section 15183 would be appropriate because the Project is within the scope of the EN FEIR and would not have any additional or significant adverse effects that were not examined in the EN FEIR; and

WHEREAS, Based on those findings, the San Francisco Planning Department prepared a Community Plan Exemption for the proposed Project, which exemption was approved on May 7, 2014 (Planning Department Case No. 2013.1168E) and the San Francisco Planning Department subsequently prepared a Community Plan Exemption for the construction of Crane Cove Park on October 5, 2015 (Planning Department Case No. 2015-001314ENV); and

WHEREAS, If adopted, the Resolution of Intention to Establish IFD will direct the Executive Director of the Port (Executive Director) to prepare an infrastructure financing plan for the IFD (Infrastructure Financing Plan) consistent with the requirements of the IFD Law; and

WHEREAS, As required by the IFD Law, the Executive Director:

(A) Has prepared the Infrastructure Financing Plan for the IFD as a whole, describing the procedures by which property tax increment (Tax Increment) from project areas in the IFD will be allocated to specific public facilities, which creates a government funding mechanism that does not commit to any specific project that may result in a potentially significant physical impact on the environment and therefore is exempt from CEQA; and

(B) Has prepared Appendix G-1 to the Infrastructure Financing Plan, proposing an allocation of property Tax Increment from proposed Sub-Project Area G-1 (Pier 70 - Historic Core) to finance the public facilities described in Appendix G-1 to the Infrastructure Financing Plan,

which development and public facilities have been analyzed under CEQA in the EN FEIR and subsequent Community Plan Exemptions; and

(C) Will send the Infrastructure Financing Plan, including Appendix G-1, along with the EN FEIR and subsequent Community Plan Exemptions, to the City's Planning Department and the Board of Supervisors; and

WHEREAS, The Clerk of the Board of Supervisors will make the Infrastructure Financing Plan, including Appendix G-1, available for public inspection; and

WHEREAS, Following publication of notice consistent with the requirements of the IFD Law, the Board of Supervisors will hold a public hearing relating to the proposed Infrastructure Financing Plan, including Appendix G-1; and

WHEREAS, Upon the completion of the public hearing, the Board of Supervisors will introduce an "Ordinance establishing an Infrastructure Financing District and adopting an Infrastructure Financing Plan for City and County of San Francisco Infrastructure Financing District No. 2 (Port of San Francisco)," which will fully form and establish the Infrastructure Financing Plan, including Appendix G-1 and establish the base year for Sub-Project Area G-1; and

WHEREAS, The LDDA also provides for formation by the City of (i) a community facilities district (Facilities CFD) under the Mello-Roos Community Facilities Act of 1982 (California Government Code §§ 53311 - 53368), the San Francisco Special Tax Financing Law (Admin. Code ch. 43, art. X) or similar law (collectively, the "CFD Law") to finance certain public infrastructure described in the LDDA and (ii) a community facilities district (Services CFD) under the CFD Law to finance certain ongoing maintenance costs; and

WHEREAS, San Francisco Charter Section B7.320 authorizes the Mayor to submit to the Board of Supervisors for approval a memorandum of understanding between the Port Commission and another department or departments of the City, approved by the Port Commission by resolution, that requires the department(s) to expend funds or to transfer funds to the Port Commission; and

WHEREAS, The Port Commission wishes to approve a Memorandum of Understanding (M-16022) by and among the Controller of the City and County of San Francisco (Controller), the Treasurer and Tax Collector of the City and County of San Francisco (Treasurer-Tax Collector) and the Port Commission (Memorandum of Understanding) as further described in the staff report attached to this Resolution, pursuant to which the Controller, the Treasurer-Tax Collector and the Port Commission would agree to implement Appendix G-1, and to request the Mayor to submit the

Memorandum of Understanding to the Board of Supervisors for its approval; now, therefore, be it

RESOLVED, That the Memorandum of Understanding between the Port Commission, the Treasurer-Tax Collector and the Controller, in the form on file with the Port Commission Secretary and as further described in the staff report attached to this Resolution, is hereby approved and the Executive Director (or her designee) is hereby authorized to execute the Memorandum of Understanding with such changes, additions and modifications as the Executive Director (or her designee) may make or approve in consultation with the Controller and the Treasurer-Tax Collector in accordance with this Resolution; and, be it further

RESOLVED, That the Executive Director, upon consultation with general counsel to the Port Commission, is hereby authorized to make such modifications, changes and additions to the Memorandum of Understanding as may be necessary or desirable and in the interests of the Port Commission, and which changes do not materially increase the obligation of the Port Commission or reduce its rights thereunder, which modifications, changes and additions shall be conclusively evidenced by the execution and delivery of the Memorandum of Understanding by the Executive Director; and, be it further

RESOLVED, That the Port Commission hereby requests the Mayor to submit the Memorandum of Understanding to the Board of Supervisors for its approval.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of November 10, 2015.

Secretary