



## MEMORANDUM

August 4, 2023

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Willie Adams, Vice President  
Hon. Gail Gilman  
Hon. Steven Lee  
Hon. Ed Harrington

**FROM:** Elaine Forbes  
Executive Director 

**SUBJECT:** Informational presentation on the formation of Community Facilities Districts at the Port, and discussion of the formation of a new Community Facilities District for the Pier 70 Historic Core with Historic Pier 70, LLC (aka, Orton Development, Inc.) under Port's Lease Disposition and Development Agreement and Master Lease L-15814, each with Historic Pier 70, LLC.

**DIRECTOR'S RECOMMENDATION:** Information Only – No Action Required

---

### EXECUTIVE SUMMARY

In May 2014, the Port Commission approved Resolution No. 14-33 authorizing execution of a Lease Disposition and Development Agreement (“LDDA”) and Master Lease (“Lease”) with Orton Development, Inc. through its affiliate, Historic Pier 70, LLC (“ODI” or “Developer”) for the rehabilitation of 8 historic, former shipyard structures at Pier 70 (“Historic Core” or “Project”). With the opening of Restoration Hardware at Building 101, the project is substantially complete. Port staff is working with ODI to formally terminate the LDDA and transition the project from the Port's development team to the asset management team within Port Real Estate. As outlined in the lease, the Port is also initiating the process to form a Community Facilities District (“CFD”) at the Historic Core, which will be the third Port project with a CFD. This staff report will provide a high level of overview of the project's history, an overview of Port CFDs and Historic Core CFD, and an update on the remaining steps now underway to conclude the LDDA.

## BACKGROUND

The Port issued a Request for Proposals (“RFP”) in 2011 for the Pier 70 Historic Core (the “Project”) to ten parties selected through a Request for Interest process, and four parties responded. In February 2012 the Port Commission awarded the opportunity to Orton Development Inc. (the “Developer”) and directed staff to negotiate an Exclusive Negotiating Agreement (“ENA”) for the Project. Over the next few years, the Port worked with the Developer to achieve key milestones including an ENA, Term Sheet, CEQA adoption, and LDDA. The Port and Developer executed a Lease in July 2015, and the Developer began construction shortly thereafter.

The Historic Core is made up of six historic buildings and two outbuildings along 20<sup>th</sup> Street. In addition to rehabilitating these buildings, the Project also added approximately 69,000 GSF of new space mezzanine space and 9,000 GSF of new restaurant space for a total of 338,000 GSF of office, PDR, and retail uses. Current PDR and commercial tenants of the Historic Core include Restoration Hardware, Gusto, JUUL, Astranis, and Y Combinator.

## PROJECT FINANCIAL UPDATE

Overall, project construction was more expensive, sublease revenues were higher, and construction debt was more difficult to secure than anticipated. On balance, both cashflows for the Developer and the Port exceeded projections. The key reasons for these results are twofold: the Developer decided to invest more heavily in the project in terms of preparing the space for potential tenants, and the project went on the market just before a time period of high market rent growth for office and PDR space in San Francisco (see **Tables 1 and 2** for details).

Key differences in project financial attributes generally consist of:

- Total project sq. ft. increased from approximately 270,000 sq. ft. to approximately 338,000 sq. ft. due to added mezzanine and restaurant space
- Total project costs increased from \$81 million to an estimated \$140 million, plus \$12 million in nonqualified rehabilitation expenditures.
- Project revenues (rent plus expense reimbursements) increased from about \$29 per gross square foot to about \$44 per gross square foot.
- Port has received significant annual income from the project two years earlier than anticipated, including stabilized revenue of \$2.5 million in 2022 as compared to the \$850,000 projection at project approval.
- Assessed value is anticipated to be higher than estimated at project approvals, which will drive the amount of IFD revenue. At approvals, the projection was \$450,000 per year but the current projection is \$700,000 per year.
  - IFD tax increment will generally be used by the Port for important infrastructure improvements within the Pier 70 Development and the Historic Core.

**Table 1. Financial Outcomes Comparison, 2014 Approvals and Actuals**

Item	Estimate at Approvals (2014)	Actual (project completion in 2019)
<b>Sources and Uses</b>		
<b>Sources</b>		
Port capital	\$1.8 m	\$1.8 m
Seismic Safety Loan	\$24.0 m	\$23.6 m
Historic Tax Credit Equity	\$14.8 m	\$27.6 m
Private Debt + Equity	<u>\$41.3 m</u>	<u>\$87.0 m</u>
<b>Total Sources</b>	<b>\$81.9 m</b>	<b>\$140.0 m</b>
<b>Costs</b>		
Building 101	\$13.1 m	\$19.4 m
Building 102	\$3.1 m	\$11.8 m
Building 104	\$8.6 m	\$14.7 m
Buildings 113-114	\$24.2 m	\$62.6 m
Buildings 115-116	\$7.1 m	\$19.2 m
Building 14	\$2.6 m	\$11.5 m
Building 123		\$0.6 m
Site	<u>\$1.9 m</u>	<u>\$0.2 m</u>
<b>Total Costs</b>	<b>\$81.9 m</b>	<b>\$140.0 m</b>

**Table 2. Revenues to Port Comparison, 2014 Approvals and Actuals (millions)**

Revenues to Port	Estimate at Approvals (2014)	Actual (2022)
Total Annual Rent	\$0.85 m	\$2.5 m
Port Loan	\$0.13 m	\$0.13 m
Tax Increment from IFD	\$0.5 m	\$0.7 m

## PORT COMMUNITY FACILITIES DISTRICTS

Community Facilities Districts (CFDs), authorized by the Mello-Roos Community Facilities Act of 1982, are a special tax district formed over a specific area by a local government. CFDs create a special assessment separate from ad valorem (property) taxes that can fund capital improvements and/or ongoing operations and maintenance.

The Port previously formed three CFDs at two of its project sites: the Mission Rock CFD at Mission Rock, and the Pier 70 Leased Properties CFD and the Pier 70 Condo CFD at the Pier 70 waterfront site. These two CFDs interact with the Infrastructure Financing Districts (IFDs) at the Mission Rock and Pier 70 sites whereby tax increment from the IFDs acts as an offset or credit for certain CFD Special Taxes.

The Port now plans to form a CFD with a Facilities Special Tax and a Services Special Tax at the Historic Core as contemplated in the Lease with Orton Development. The Historic Core site already has an IFD formed over it to capture tax increment from the project. Table 3 below shows all revenues from the Port's CFDs and IFDs.

Mission Rock	FY24	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	Total
CFD/IFD*	7,753,344	7,908,410	8,066,579	12,848,567	13,105,539	13,367,649	13,635,002	20,490,673	20,900,487	21,318,496	139,394,746
Shoreline	652,155	921,964	1,482,271	1,511,916	1,542,155	1,572,998	1,604,458	1,636,547	1,669,278	1,702,663	14,296,405
<b>Total</b>	<b>8,405,499</b>	<b>8,830,374</b>	<b>9,548,850</b>	<b>14,360,483</b>	<b>14,647,694</b>	<b>14,940,647</b>	<b>15,239,460</b>	<b>22,127,220</b>	<b>22,569,765</b>	<b>23,021,159</b>	<b>153,691,151</b>

  

Pier 70	FY24	FY25	FY26	FY27	FY28	FY29	FY30 <sup>b</sup>	FY31	FY32	FY33	Total
CFD/IFD*	1,719,288	1,909,177	3,066,629	3,627,926	4,943,045	5,041,906	6,198,564	6,322,535	6,448,986	6,577,965	45,856,020
Shoreline	-	114,174	116,457	453,418	462,486	522,052	927,601	946,153	965,076	984,378	5,491,795
<b>Total</b>	<b>1,719,288</b>	<b>2,023,351</b>	<b>3,183,086</b>	<b>4,081,344</b>	<b>5,405,531</b>	<b>5,563,958</b>	<b>7,126,165</b>	<b>7,268,688</b>	<b>7,414,062</b>	<b>7,562,343</b>	<b>51,347,815</b>

  

Orton	FY24	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	Total
IFD	688,418	709,071	730,343	752,253	774,821	798,065	822,007	846,667	872,067	898,229	7,891,941
CFD	1,139,110	1,161,892	1,185,130	1,208,832	1,233,009	1,257,669	1,282,823	1,308,479	1,334,649	1,361,342	12,472,935
<b>Total</b>	<b>1,827,528</b>	<b>1,870,963</b>	<b>1,915,473</b>	<b>1,961,085</b>	<b>2,007,830</b>	<b>2,055,734</b>	<b>2,104,830</b>	<b>2,155,146</b>	<b>2,206,716</b>	<b>2,259,571</b>	<b>20,364,876</b>

  

<b>Total Revenue</b>	<b>11,952,314</b>	<b>12,724,688</b>	<b>14,647,409</b>	<b>20,402,913</b>	<b>22,061,054</b>	<b>22,560,339</b>	<b>24,470,455</b>	<b>31,551,054</b>	<b>32,190,542</b>	<b>32,843,073</b>	<b>225,403,841</b>
----------------------	-------------------	-------------------	-------------------	-------------------	-------------------	-------------------	-------------------	-------------------	-------------------	-------------------	--------------------

\* CFD/IFD revenues reimburse infrastructure expenses for the Mission Rock and Pier 70 project.

Note, future revenues for Mission Rock and Pier 70 utilize estimated development progress and will change based on when vertical development actually occurs. Additionally, Mission Rock and Pier 70 CFD and IFD revenues are pledged to reimburse the costs of horizontal development at the site and are not available for other purposes.

## PIER 70 HISTORIC CORE COMMUNITY FACILITIES DISTRICT

The Pier 70 Historic Core Lease includes a provision for the Port to form a Community Facilities District (CFD) over the Historic Core with a Facilities Special Tax and a Services Special Tax.

The CFD Facilities Special Tax rate is set by a prescribed formula based on an appraisal, as described in the Historic Core lease:

The maximum Facilities Special Tax on the leasehold interest in the Premises will be established in the formation proceedings for the community facilities district and shall be calculated as follows: (i) the Port will commission an appraisal of the leasehold interest in the Premises and specifically request that the appraiser estimate the market value on a per square foot of net leasable area basis, (ii) the Port will multiply the market value per square foot of net leasable area by 0.63% and the product will be the maximum Facilities Special per square foot of net leasable area for the initial fiscal year in which the Facilities Special Tax is levied and (iii) thereafter, the maximum Facilities Special Tax will escalate on each July 1 by 2% of the previous fiscal year's maximum Facilities Special Tax."

The CFD Services Special Tax is set "so that the leasehold interest in the Premises will pay an equitable share of any Pier 70 wide maintenance costs" according to the lease.

### Facilities Special Tax

The Port originally contracted with Runde & Associates (Appraiser) to perform an appraisal of the Pier 70 Historic Core in December 2019 to set the Facilities Tax Rate, which is a prescribed mechanism in the lease. At the same time, staff engaged Orton Development to

discuss the Services Tax Rate. Early formation discussions took longer than expected as Orton disagreed with several aspects of the CFD formation including the uses of taxes and methodology for an equitable share of maintenance costs. Those are still ongoing discussions, which is the reason for the noted services tax range as discussed below.

After several months of negotiations, the COVID-19 pandemic began, and the Port delayed CFD formation due to both the health and economic impacts of the pandemic. Through this delay, the Port indirectly provided at least \$3 million in tax relief concessions to the Historic Core development in the form of uncollected taxes by postponing CFD formation and the associated tax levying.

Port staff re-engaged Orton in Spring 2022 to restart discussions about the CFD formation process. In early 2023, the Port re-initiated the appraisal process with the Appraiser. The Appraiser completed the final appraisal in May 2023 after considering input from ODI and approval by the City's Director of Real Estate, through which the appraisal is contracted directly. **Based on the methodology in the lease and the appraisal, the Facilities Special Tax Rate will be \$2.73 per square foot.** Note, this is a maximum annual rate, subject to annual escalation. The Port reserves the right to levy or otherwise bill amounts less than that amount if the Port determines the full amount is either not needed or is otherwise not warranted that year.

### Services Special Tax

To determine the Historic Core's equitable share for the Services Tax, Port staff compared Pier 70 Leased Property CFD rates and uses to the Historic Core. In Fiscal Year 2023-24, the Pier 70 Leased Property CFD Service Tax Rate is \$1.22 per square foot for non-residential properties. The tax category is the closest use to those at the Historic Core (the other areas are for residential property). However, the PDR and historic rehabilitation space within the Historic Core Development have lower financial value than the new office and non-residential spaces anticipated within the Pier 70 Development. Thus, equity requires that Historic Core's share of costs be lower than the Pier 70 Leased Properties' share of costs.

Based on this adjustment, the Service Tax Rate would be at least \$0.87 per square foot per year to maintain an equitable share of Pier 70 wide maintenance costs. Orton Development has proposed a lower rate for the Port to consider. To date, the proposed Services Tax Rate based on a variety of methodologies has ranged from \$0.30 - \$1.30 per sq. ft. per year, subject to annual escalation. Port staff recommend a rate of \$0.80 per sq. ft. per year based on equity considerations with the Pier 70 Leased Properties CFD, comparisons between uses, and maintenance costs across the Pier 70 site.

Note, the levy for the Historic Core CFD Special Taxes is intended to begin in FY2023-24, with taxes being billed back to July 1, 2023.

The Services Special Tax will partially fund maintenance costs at Crane Cove Park and is a critical component of the operating budget for that park. Based on the \$0.80 per sq. ft rate and a development square footage of 322,694 sq. ft., the Services Tax will generate \$258,155 in FY24. This amount will increase annually based on regional CPI up to a maximum of 5 percent.

## **SPECIAL FUND ADMINISTRATION AGREEMENT**

A Special Fund Administration Agreement has been drafted to provide for the administration and disposition of Allocated Tax Increment and Mello-Roos Taxes consistent with the terms of the Pier 70 Historic Core Lease, the CFD Resolution of Formation, the RMA, the IFD Financing Plan, including Appendix G-1, any Indentures, and any Pledge Agreements. The Port conducted an RFP process to select a Special Fund Trustee to administer the Agreement and maintain the funds on behalf of the CFD and IFD. The RFP recently concluded, and staff are negotiating with US Bank to serve as the Special Fund Administrator. The Special Fund Administration Agreement, which requires approval by the Port Commission and Board of Supervisors, will be brought for approval along with the formation of the CFD.

## **CONCLUSION**

The public private partnership between Port and Developer for the rehabilitation of the Pier 70 historic core is nearly complete. This dynamic partnership has resulted in the successful rehabilitation of eight historic waterfront structures, bringing new energy and activity to the Port's southern waterfront. The Project has begun to generate significant revenues for the Port and will soon include CFD taxes to help maintain and enhance public areas of the Pier 70 neighborhood. The Port looks forward to continuing our relationship with the Developer.

## **NEXT STEPS**

After an expected upcoming approval by the Board of Supervisor for the formation of the CFD, in Fall 2023 / Winter 2024, Port will work with Developer to close out and terminate the LDDA. The Port will not be seeking any of the tax proceeds that would otherwise have been available if the CFD was formed at the time originally contemplated in the lease.