

## MEMORANDUM

December 9, 2016

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

**FROM:** Elaine Forbes  
Executive Director

**SUBJECT:** Informational Presentation on the Port's Proposed FY 2016-17 Federal and State Legislation Program

**DIRECTOR'S RECOMMENDATION:** Informational Only; No Action Required

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### EXECUTIVE SUMMARY

On September 27, 2016, the Port Commission heard an informational presentation about the Port's legislative strategy<sup>1</sup>. This staff report describes the Port's proposed Fiscal Year ("FY") 2016-17 federal and state legislation program, which is pending approval by the Mayor's Office and the City's State Legislative Committee. The primary focus of the Port's federal and state legislative program for FY 2016-17 is securing funding sources for the Seawall Resiliency Project and shoreline improvements to address sea level rise. Major additional goals include obtaining funding for the Mission Bay Ferry Terminal and projects to improve the Port's Piers 80-96 Maritime Eco-Industrial Park.

### PROPOSED STATE SEAWALL AND SEA LEVEL RISE LEGISLATION

The focus of the Port's state legislative program is developing legislation enabling the State of California to assist the City in financing the Seawall Resiliency Project and shoreline improvements to address sea level rise.

**THIS PRINT COVERS CALENDAR ITEM NO. 11A**

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<sup>1</sup> For a copy of the September 23, 2016 staff report describing the Port's legislative strategy, please go to:

<http://sfport.com/sites/default/files/Commission/Documents/Commission%20Meeting%20Staff%20Report%202016%20Commission%20Meeting%20Items/SEP27/Item%2010C%20Legislation%20Strategy%20Staff%20Report%20Final.pdf>

## **History of State Interest in Climate Change**

The State of California has been a national and international leader in the effort to address climate change. The State's landmark legislation – AB 32 (Assembly Members Nunez and Pavley), SB 375 (Senator Steinberg), and SB 32 (Senator Pavley) – has charted a course for California to reduce greenhouse gas emissions to 40% below 1990 levels by 2030, strengthen California's Cap-and-Trade Program, and encourage local communities to invest in transit-oriented development.

It is critical that California continue in its leadership role in an era when denial of the human causes of global warming has reached the highest levels of U.S. government, and federal institutions are likely to be less responsive to the impacts of climate change including sea level rise in the foreseeable future.

The threat of sea level rise requires public investment in natural habitat and developed areas. California can provide a model for the country in how states can partner with local communities to address sea level rise.

## **State Role in Seawall Resiliency**

The Port's Seawall Resiliency Project, an effort to strengthen the City's Seawall along three miles of densely developed urban waterfront, represents perhaps the first major urban waterfront in California that requires near-term action to address sea level rise. There is a 72% chance of a major temblor along a nearby Bay Area fault which could result in failure of the Seawall and significant damage to The Embarcadero, the finger piers in the Embarcadero Historic District, and vital utility and maritime infrastructure within the zone of influence of the Seawall. As a result, the City is motivated to invest in the Seawall over the next ten years, to avoid the damage to infrastructure, interruption to business and employees.

Investment to address seismic risk in the Seawall – potentially a \$2 to 5 billion effort – requires that the City take action now to protect MUNI, BART and The Embarcadero from foreseeable future flood risk. In the absence of seismic risk to the Seawall, the City could likely afford to wait 10 or 20 years to address sea level rise. Hurricane Sandy provided an important lesson for dense, urban areas to invest in resiliency before natural disasters strike.

The costs to address the Seawall are well beyond the ability of the Port and City to pay on its own. The Seawall Resiliency Project has the potential to double or quadruple the Port's already daunting capital state of good repair need, which exceeds \$1.4 billion. The Seawall Resiliency Project is also beyond the ability of the City's General Obligation Bond program to fund: if funded through General Obligation bonds alone, this project would crowd out virtually all other City capital spending on critical City infrastructure for a decade or more. Infrastructure projects of this scale almost always require a combination of local, state and federal sources.

Locally, the Port is working with the City's Capital Planning Committee to identify an opportunity to place a General Obligation Bond on the ballot to provide up to \$500 million in funding for the Seawall. The Port is also collaborating with its major development partners to develop special tax sources to address sea level rise. Finally, the Port is working with the Mayor's Budget Office to identify opportunities to use the Port's existing Infrastructure Financing District powers to fund conceptual design and environmental studies of the Seawall. The second part of this staff report describes federal funding opportunities for the Seawall.

To complement these local and federal funding strategies, Port staff believes there is a near term opportunity for the State of California to partner with San Francisco to address seismic risk and sea level rise through a financing tool that could be replicated to assist other developed areas of the state that face similar threats.

### **State Share of Tax Increment for the Seawall and Sea Level Rise**

Port staff proposes an expansion of the Port's Infrastructure Financing District powers to capture the future growth in the State's share of property tax ("State's Share of Tax Increment") to fund the Seawall Resiliency Project. The Port has a long track record of working with the Legislature to develop this financing mechanism, including:

SB 1085      In 2005, the California Legislature adopted SB 1085 (Senator Carole Migden), permitting the Board of Supervisors to form Infrastructure Financing Districts (IFD) on Port property that allow the capture of growth in property (or possessory interest) tax increment to fund public improvements along the waterfront using the City's Share of Tax Increment<sup>2</sup>. On leased public lands such as the Port's, property tax is collected on leasehold interests in the form of possessory interest tax.

AB 1199      In 2010, the California Legislature adopted AB 1199 (Assembly Member Tom Ammiano), permitting the Port to establish a Pier 70 IFD that may issue debt repayable with both the City's Share of Tax Increment and the State's Share of Tax Increment.

The result of these two laws is that the Port has a strong financing tool to finance capital improvement along the entire waterfront – and an even more robust tool at Pier 70, where the State of California is contributing the State's Share of Tax Increment to fund the extraordinary costs of improving this brownfields site with its own National Register Historic District, the Union Iron Works Historic District.

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<sup>2</sup> In accordance with the California Revenue and Taxation Code, the Board of Supervisors annually approves the share of City property tax dollars allocated to the City (\$0.646 in FY 2012-2013; the "City's Share of Tax Increment", and the State annually approves the State's share of City property tax dollars (\$0.253 in FY 2012-2013; the "State's Share of Tax Increment").

With Pier 70, the California Legislature recognized the State's interest in promoting transit-oriented development, preserving a National Register Historic District, addressing legacy environmental contamination and building parks on public trust property. These interests provided the basis for the Legislature's decision to allow the City to capture the State's Share of Tax Increment. Exhibit A contains the Senate Appropriations and Senate Floor policy analysis of AB 1199.

In 2011, the California Legislative adopted ABX1 26 repealing community redevelopment law in California, based primarily on concerns about abuse of local redevelopment powers and the impact of local redevelopment powers – which included the ability to capture the State's Share of Tax Increment – on the State's budget. The repeal of community redevelopment law eliminated the primary tool through which local communities captured the State's Share of Tax Increment.

Port staff believes that there are focused instances – such as the need to address Seawall seismic vulnerability and sea level rise to protect densely developed areas – where the local capture of the State's Share of Tax Increment can play an important role in encouraging local action. To that end, staff proposes to seek an author for state legislation that would:

- Enable the capture of the State Share of Tax Increment along the entire Port of San Francisco waterfront, to fund improvements to the Seawall and to address sea level rise, through Enhanced Infrastructure Financing Districts such as the Pier 70 IFD that the State authorized through AB 1199;
- Require the Port and the City and County of San Francisco to demonstrate secure, locally-generated investment in the Seawall and sea level rise in addition to the State's Share of Tax Increment, by reporting to the Governor's Director of Finance;
- Require the Port and the City and County of San Francisco to report its Seawall and sea level rise investments to the California Natural Resources Agency, in collaboration with the Ocean Protection Council.

Policy Analysis – The proposed development of 28 acres of Port land on Seawall Lot 337 in Mission Bay – a project called Mission Rock – includes plans to use an Infrastructure Financing District (“IFD”) with an Infrastructure Financing Plan that will direct the City's Share of Tax Increment to fund infrastructure to support the development.

If the Port were able to capture the State's Share Port-wide for the Seawall and sea level rise, the Mission Rock development project would generate by far the most significant source of the State's Share of Tax Increment for the Seawall and sea level rise, as shown in Table 1.

**Table 1: Mission Rock Development Projected Tax Increment  
City Share of Tax Increment for Project Infrastructure & Parks;  
State Share of Tax Increment (subject to State legislation) for the Seawall (1)  
(\$ millions)**

	NPV City Share – Project Infrastructure	Nominal City Share – Project Infrastructure	NPV State Share – Seawall	Nominal State Share – Seawall
<b>Mission Rock Pay-Go (2) IFD</b>	\$167	\$295	\$64	\$113
<b>Mission Rock IFD Bond Proceeds</b>	<u>179</u>	<u>260</u>	<u>69</u>	<u>100</u>
<b>Total</b>	\$346	\$555	<b>\$133</b>	\$213

**Table 1 Notes:**

- (1) Totals detailed in **Table 1** represent Mission Rock IFD tax increment projected from Phase 1 (2019) through Phase 4 (2031), until all infrastructure investments are fully paid. The City’s Share is required to fund project infrastructure until fully paid. The State’s Share cannot be captured without amendments to State law. These amounts do not include potential pay-go and bond proceeds available after project infrastructure is paid, when 100% of project tax increment, net of that pledged to outstanding bonds, will be available for capture.
- (2) Pay-Go means annual taxes collected by an IFD not pledged to bond debt service and spent directly on public improvements.

The Port is negotiating other planned development<sup>3</sup>, including the Broadway Hotel. By way of contrast, the Broadway Hotel project would generate \$5.4 million of the State’s Share of Tax Increment on a net present value basis. However, when applied to small and large projects, this funding source would be very significant. Enabling the Port to capture the State’s Share of Tax Increment along the waterfront would provide a strong tool to address the Seawall and sea level rise, but this tool must be matched by even greater local, state and federal investment.

Port staff expects – and welcomes – an aggressive analysis of this proposal by the California Legislature and the Governor’s staff. We propose to work with staff of the California State Lands Commission (“State Lands”) and the San Francisco Bay Conservation and Development Commission (“BCDC”) to present the policy arguments in favor of early and collaborative resiliency planning.

We also expect tough questioning about the financial implications for the State. In preparation for this effort, Port staff, led by the Mayor’s Senior Fellow, is preparing a financial analysis comparing the cost of action (investing the State’s Share of Tax Increment in the Seawall and sea level rise) with the cost of inaction, in the form of lost state tax revenues from a damaged and non-functioning waterfront and state disaster assistance after a major earthquake. Staff expects preliminary drafts of this analysis in early 2017.

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<sup>3</sup> The Port is already planning to capture the State’s Share of Tax Increment at Pier 70 as permitted by AB 1199 to make development of that area feasible and resilient to sea level rise of up to 5 feet.

Next Steps – The next steps for this work include:

- Identifying an author for the proposed legislation;
- Briefing State Lands and BCDC staff and seeking their assistance;
- Briefing Governor Jerry Brown’s staff; and
- Briefing key legislative staff in the California Legislature.

## **ADDITIONAL STATE PRIORITIES**

In addition to the major legislative effort described above, Port staff intends to focus efforts on the following state priorities:

### **California Seismic Safety Bond – Seawall**

Port staff will explore a potential statewide coalition for a California Seismic Safety Bond that would finance investment in vital public infrastructure like the Seawall. Potential avenues for coalition-building including the California Association of Port Authorities and the West Coast Mayor’s Conference in December 2016.

### **Regional Measure 3 Funds (“RM3”) – Mission Bay Ferry Landing**

Port staff will work with the Water Emergency Transportation Agency and the Metropolitan Transportation Commission to support funding from the proposed Regional Measure 3 (RM3) for the Mission Bay Ferry Landing in legislation expected to be considered by the California Legislature. This state legislation would authorize Bay Area voters to consider at a future election whether to raise tolls on state-owned bridges to fund transportation improvements in bridge corridors.

### **Cap and Trade Funds – Mission Bay Ferry Landing**

Staff is exploring possible funding from Cap and Trade funds for the aspects of the Mission Bay Ferry Landing that are projected to reduce greenhouse gas emissions.

### **AB 2659 Affordable Housing – Technical Amendments**

Mayor’s Office of Housing and Community Development and Port staff are seeking technical amendments to the state legislation that authorized the proposed affordable family and senior housing development at 88 Broadway (Seawall Lot 322-1). The changes staff seeks include a change to the definition of affordable housing to conform to planned affordability levels in the project and authorization to include ground floor retail uses in the project.

## **PROPOSED FEDERAL LEGISLATIVE PROGRAM**

Port staff recognizes a variety of federal legislative priorities that will support Seawall and other infrastructure and operational needs.

## U.S. Army Corps of Engineers (“USACE”) – Seawall

On November 29, 2016 the Port of San Francisco received a report from the USACE San Francisco District Office with a finding of *federal interest* in a federal project to address flood risk along a portion of The Embarcadero near the Ferry Building under the USACE Continuing Authorities Program 103 (CAP 103).

The report states:

“This Federal Interest Determination Report (FID Report) finds that there is a high likelihood that a feasibility-level study will result in a favorable recommendation to implement a project along a separable ½ mile reach of the waterfront to address the flood problems in the study area, within the limits of the Continuing Authorities Program (CAP) Section 103. This FID Report also recommends that a General Investigations (GI) feasibility study is pursued to address flood problems along the entire San Francisco waterfront. [emphasis added]”

A General Investigation study is the major tool USACE uses to determine whether a federal interest exists to support significant federal funding for flood control projects. These USACE findings and recommendations represent a significant step forward for potential federal funding for the Seawall and flood risk along The Embarcadero.

Feasibility Study Expedited Review – Pending further consultation with USACE, Port staff’s preferred option is that the Port self-fund the Feasibility Study to support a General Investigation, in consultation with USACE to ensure it is conducted to USACE standards. The alternative would involve waiting for a Congressional authorization of a General Investigation; only 20 or so General Investigations are authorized nationally each year. The current schedule for the Seawall Resiliency Project requires quick action, rather than waiting on a potentially lengthy process to obtain Congressional approval to obtain federal funding for a General Investigation of the San Francisco Waterfront.

If the Port chooses to self-fund a Feasibility Study, Port staff also proposes to collaborate with USACE to ensure that funding is available for USACE to conduct its review of a Port-funded Feasibility Study when it is completed by the Port, and that this review is conducted expeditiously. A potential source of USACE funding is a “contributed funds agreement”, by which a local agency (like the Port of San Francisco) funds federal review.

2018/2020 Authorization – Port staff recommends a schedule for completing a Port-funded Feasibility Study in time for the Port to seek a new construction authorization in the next Water Resources Development Act (“WRDA”), the federal legislation that authorizes federal spending on flood control projects with a federal interest determination. It is possible, but unlikely that work will be complete in time for a WRDA 2018 bill (if there is one), but would definitely be ready for a WRDA 2020 request. Such an authorization has the potential to fund 2/3 of the Seawall Resiliency Project.

2019/2021 “New Start” Construction Appropriation for Phase 1 – Subject to a WRDA authorization in 2018-2020, the Port and the USACE would seek “new start” construction appropriations, initially seeking to fund the first phase of the Seawall Resiliency Project.

### **National Park Service and Internal Revenue Service - Historic Tax Credits for Seawall**

Subject to further research and advice from outside tax counsel, staff proposes seeking a ruling from the National Park Service and Internal Revenue Service that costs to fix the Seawall, if conducted in conjunction with bulkhead or pier rehabilitation with private capital under a long term lease, are qualifying costs for historic tax credits. If tax credits were available for the Seawall, this would allow the Port to fulfill its historic preservation mandate, address seismic risk and respond to sea level rise.

### **Federal Emergency Management Agency (“FEMA”) Pre-Disaster Mitigation Funds – Seawall**

Staff proposes to explore this FEMA funding source for seismic or resiliency aspects of the Seawall to compliment USACE flood control protections.

### **Department of Transportation - Transportation Infrastructure Finance and Innovation Act (“TIFIA”) Loans – Seawall**

Staff proposes to explore the utility and benefits of federal low cost loans (tied to the federal Treasury Rate) to support the Seawall project through the TIFIA program. It is common for local jurisdictions to utilize tax increment to repay TIFIA loans, which can have a 35 year term, with an interest only period for the first five years.

### **Department of Homeland Security (“DHS”), Office of Infrastructure Protection – Seawall**

Staff will explore DHS funding opportunities as a possible source for the Seawall Resiliency Project.



## **USACE Continuing Authorities Program (“CAP”) 107 – Central Basin**

The Central Basin dredging project is fully funded, but the schedule for completion in time for a 2017 dredge has very little margin for error. See Port Commission Item 12A on this calendar for a complete discussion of this funding source.

## **USACE, Appropriation Against WRDA07 Authority - Pier 70, Wharves 6-8 Removal**

The Pier 70 pilings removal project would remove pier remnants at Pier 70 to improve navigation and the shoreline and remove creosote-treated pilings from the Bay. Port staff seeks funding for this \$8.5 million (\$5.7 million federal share) project through the President’s Budget or through the USACE work plan. San Francisco District Commander Lt. Col. Morrow executed a Letter Report for this project in August of this year, making USACE-SF eligible for receipt of funds for this project.

## **Department of Transportation (“DOT”) TIGER Grant – Mission Bay Ferry Landing**

Port staff, in consultation with the Mayor’s Office, will seek TIGER funding in FY 2017 or FY 2018 for new ferry infrastructure in Mission Bay, depending on project readiness for an application. Next steps to prepare for this application include developing conceptual and schematic designs for the Mission Bay Ferry Landing under the contract recently approved by the Port Commission, developing a coalition to support a TIGER application, and initiating environmental review under the California Environmental Quality Act (“CEQA”) and the National Environmental Policy Act (“NEPA”). TIGER-funded projects must commence construction within 18 months of an award of federal funds; projects that are “shovel-ready” are favored in the application process.

## **DOT FASTLANE Grant – Port Freight Infrastructure**

Port staff, in consultation with the Mayor’s Office, will seek FASTLANE funding in FY 2017 or FY 2018 for freight infrastructure in the Port’s Maritime Eco-Industrial Park, including funding to rebuild Cargo Way and Amador Street. Next steps to prepare for this application include developing conceptual and schematic designs for roadway improvements consistent with prior public planning efforts for Cargo Way, developing a coalition to support a FASTLANE application, and initiating environmental review under CEQA and NEPA. FASTLANE-funded projects must commence construction within 18 months of an award of federal funds; projects that are “shovel-ready” are favored in the application process.

## **DHS Port Security Grant Program – Port Security Improvements**

Port staff will continue to support the Port Security Grant Program to fund Port improvements to security infrastructure through FEMA grants. In past sessions, Congress has taken under consideration block-granting these funds to states, which Port staff thinks would disadvantage Port of San Francisco interests.

## **DIRECTION AND NEXT STEPS**

Port staff seeks direction from the Port Commission as to these proposed state and federal policy priorities. The efforts proposed in this report will require strong political and technical support.

Port staff will need support from the City's State Legislative Committee to proceed. Port staff will consult with the Mayor's Legislative Staff and the City's state and federal lobbyists for advice and support in tailoring our strategy to succeed.

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