

MEMORANDUM

January 5, 2018

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

FROM: Elaine Forbes
Executive Director

SUBJECT: Informational presentation regarding the Port's Federal and State
Legislation Program

DIRECTOR'S RECOMMENDATION: Informational Only; No Action Required

EXECUTIVE SUMMARY

On September 27, 2016, Port staff provided the Port Commission an informational presentation regarding the Port's legislative strategy and the Port Commission requested periodic updates regarding the Port's legislative program.

On December 13, 2016, Port staff provided an informational presentation to the Port Commission on the Port's proposed FY 2016-17 Federal and State Legislation Program. On May 4, 2017, Port staff updated the Port Commission regarding implementation efforts.

The purpose of this report is to provide an informational presentation regarding Port staff's 2018 legislative program, which includes input from the City's State Legislative Committee. This report also summarizes recent Port legislative outreach efforts.

PROPOSED 2018 STATE AND FEDERAL LEGISLATIVE PROGRAM

Key State and Federal Legislative Goals

- Secure State Infrastructure Financing District ("IFD") and potential Cap and Trade funding for the Seawall Resiliency Project

THIS PRINT COVERS CALENDAR ITEM NO. 11A

- Receive a “new start” project initiation allocation for the Seawall Resiliency Project General Investigation
- Ensure funding is available for the Mission Bay Ferry Landing Project
- Preserve federal historic tax credits and private activity bonds for Port projects
- Ensure that the Seawall is eligible for historic tax credits
- Rationalize U.S. Army Corps of Engineers permitting along the Port’s jurisdiction
- Pursue changes to the Water Resources Development Act that will support the Seawall Resiliency Project
- Communicate with the U.S. Army Corps of Engineers the current status of Shipyard solicitation and retain ability to dredge the Central Basin

Strategic Objectives

The Port’s State and Federal Legislative Program supports the Strategic Plan as follows:

Renewal: Enhance and balance the Port’s maritime and economic purpose, rich history, and its changing relationship with the City, so the waterfront continues to be a treasured destination.

(5) Advance adaptive reuse and funding strategies to support rehabilitation of the Port’s historic piers and facilities in the Embarcadero and Union Iron Works Historic Districts.

Livability: Ensure Port improvements result in advances in the environment, social equity and quality of life for San Francisco residents and visitors

(4) Work with ferry and water transit partners to develop an expanded plan of water transportation facilities along the waterfront, including the development of the Mission Bay Ferry to introduce service in the Southern Waterfront.

Resiliency: Lead the City’s efforts in addressing threats from earthquakes and flood risks through research and infrastructure improvements to the Seawall and Port property

*(1) Study and plan for Seawall repairs to address seismic and flood risk.
(4) Work with City leadership to develop resilience and adaptation strategies that support needed seismic repairs to the Port’s Seawall and protect the Port and City from flood risk due to climate change and rising sea levels.*

Economic Vitality: Attract and retain maritime and non-maritime commerce to contribute to the long term viability of the Port and the City

*(1) Attract and contract with a new Pier 70 shipyard operator.
(4) Work with agency partners, plan and build a network of ferry and water taxi landings to service new land uses and special events.*

Proposed State Legislative Program Deliverables

1. State Funding for the Seawall Resiliency Project and Sea Level Rise

Port staff, in consultation with staff from the Mayor's Office and the City's state advocate (Shaw/Yoder/Antwih), is investigating potential amendments to state law that would allow the Port to capture the State of California's share of tax increment growth generated from Port property ("State's Share of Tax Increment") to fund the Seawall Resiliency Project and other improvements to Port property to address sea level rise.

The Seawall Finance Working Group recommended that the Port seek legislation to capture the State's Share of Tax Increment to fund the Seawall Resiliency Project in its July 2017 report¹. Port staff estimates that the legislation would generate approximately \$50 million within the next 10 years for Phase I of the project, with an additional \$50 million estimated for Phase II. Planned development of Seawall Lot 337 would be the primary generator of this tax increment, but other Port sites such as the Teatro Zinzanni Hotel/Theater/Park project would also contribute.

Assemblymember David Chiu (SF, District 17) has offered to author this legislation on behalf of the City. Staff will investigate two potential avenues to obtain the State's Share of Tax Increment, as follows:

- **Pursue Statewide legislation** allowing all developed communities facing flood risk from sea level rise or seismically-vulnerable liquefaction zones to capture the State's Share of Tax Increment to fund seismic and sea level rise improvements.
- **Amend the Port's Infrastructure Financing District legislation** (SB 1085, 2005, Senator Migden²) to enable the Port to use the State's Share of Tax Increment from new development on Port property to fund the Seawall Resiliency Project or other sea level rise improvements to Port property. This legislation would be a **District bill** very similar to AB 1199 (Chapter 664 of the Statutes of 2010, Assemblymember Ammiano), which allows the Port to capture the State's Share of Tax Increment to fund improvements to Pier 70.

In addition, the City's state advocate Shaw/Yoder/Antwih has recommended exploring Cap and Trade funding for the Seawall Resiliency Project.

¹ <http://onesanfrancisco.org/announcement/seawall-finance-work-group-report-released-week>

² For a copy of the Port Commission staff report regarding SB 1085, please see:

<http://sfport.com/ftp/uploadedfiles/sfport/meetings/supporting/2005/Item%206b%20SB%201085%20Infrastucture%20Financing%20District.pdf>

Strategy – Statewide tax increment legislation

Port staff will work closely with the Mayor’s Office and the Office of Assemblymember David Chiu to formulate this legislation, explore political support for the legislation and develop a statewide coalition to support a statewide bill, including outreach to the following groups:

- Other California ports, primarily through the California Association of Port Authorities, which formed a Sea Level Rise subcommittee at the Port’s request
- Bay Area cities that are participating in the San Francisco Bay Conservation and Development Commission’s Adapting to Rising Tides Project³ or the Resilient by Design Bay Area Challenge⁴
- Bay Area coastal communities that are designated as Priority Development Areas⁵ by the Metropolitan Transportation Commission under SB 375 (The California Sustainable Communities and Climate Protection Act of 2008, Senator Steinberg).
- Southern California coastal communities such as San Diego, Los Angeles, Newport Beach and Long Beach.

Since the Governor and his Administration several years ago drove the legislative effort to disengage the use of tax increment financing from redevelopment purposes, Port staff will meet with representatives of the Governor to ensure there is an appetite for a statewide approach that dedicates the State’s Share of Tax Increment funds to local climate resiliency projects.

Strategy – District tax increment bill

A District bill that provides the State’s Share of Tax Increment to the Port for the Seawall is a secondary option in the event that the Governor or leadership in the California Legislature recognizes the importance of the Seawall Resiliency Project, but are not ready to commit the State’s Share of Tax Increment statewide and prefer using the Port as a “pilot” for this approach to funding sea level rise.

³ <http://www.adaptingtorisingtides.org/>

⁴ <http://www.resilientbayarea.org/>

⁵ <https://mtc.ca.gov/sites/default/files/0-Introduction.pdf>

Strategy – Cap and Trade appropriations

Shaw/Yoder/Antwih has begun to explore an alternative, supplementary funding source; namely, that some amount of one-time or ongoing Cap and Trade funds be dedicated to climate resiliency projects. Passage of AB 398 (E. Garcia) in 2017 not only extended the State’s Cap and Trade regulation to 2031, it also broadened the eligible expenditures of auction proceeds generated under the Cap and Trade program. Most importantly for the Port, Cap and Trade funds can now be spent on climate change adaptation and resiliency projects (formerly limited to mitigation projects). California most recent Cap and Trade auction resulted in \$800 million in revenue; even a small percentage allocation to shoreline resiliency could create a significant funding stream for projects like the Seawall Resiliency Project.

2. SB5

Senate Bill 5 (Senate Pro-Tem De Leon) was proposed in the 2017 legislative session to create a \$4 billion dollar funding source for state and local parks, clean water and drought relief projects, coastal protection and flood protection and will be submitted to California voters in June of 2018. The measure includes \$14 million for the San Francisco Bay Area Conservancy Program. Should the bond succeed at the ballot in June of 2018, the Port would work with the City to consider an application to the San Francisco Bay Area Conservancy for an amount as high as \$14 million (depending on competing needs within the City) for the flood protection along the San Francisco waterfront.

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

Port staff is working with the Water Emergency Transportation Agency (WETA) and the Metropolitan Transportation Commission to support funding from the proposed Regional Measure 3 (“RM3”) for the Mission Bay Ferry Landing - a funding measure expected to be put before voters in June of 2018. If approved by voters in the nine Bay Area counties, the measure would raise tolls on state-owned bridges to fund transportation improvements in bridge corridors. Port staff was successful in elevating the profile of the Mission Bay Ferry Landing, offering amended language to ensure the Mission Bay Ferry Landing would be eligible for WETA funds and in ensuring that \$25 million dollars is included for the Project⁶.

Proposed Federal Legislative Program Deliverables

1. Federal Tax Reform

⁶ The language made landside infrastructure improvements explicitly eligible, so as not to be disadvantaged in seeking funding by the traditional interpretation of the funding source as applying to only the ferries themselves.

On December 22, 2017, the President of the United States signed into law new tax legislation. Working through the City's federal advocate and building a coalition with other Mayors across the United States, the Port and City was able to weigh in during the bill amendment process to advocate against the proposed elimination of the Federal Historic Tax Credit, which would have had a significant impact on the Port's development projects and Historic Districts.

The final bill language retained the Federal Historic Tax Credit in full, though now requires that the tax credits be claimed over a 5-year period instead of all at once, as it was under prior tax law. This change will reduce the value of the Federal Historic Tax Credit somewhat due to the time value of money; Port staff will work with our development partners to estimate the cost of this tax policy change.

The original House version of the bill also eliminated private activity bonds, but the final version of the bill does not eliminate these bonds. Private activity bonds are tax-exempt bonds issued by or on behalf of local or state government for the purpose of providing special financing benefits for qualified projects that are most often used by a private user. Examples of a typical Port use of private activity bonds include Dock and Wharf Bonds, which the Port issued to fund construction of the James R. Herman Cruise Terminal at Pier 27. Under this arrangement, the Port could use tax-exempt debt to finance an important public facility and enter a terminal operator agreement with Pacific Cruise Ship Terminals, LLC.

The loss of private activity bonds would also have been a major blow to affordable housing production in San Francisco. According to the Mayor's Office of Housing and Community Development ("MOHCD"), many affordable housing projects in San Francisco rely on the 4% low income housing tax credit ("LIHTC") program.

Port staff commends the Mayor's Director of State and Federal Legislative Affairs and the City's federal advocate Holland & Knight for their advocacy efforts on behalf of the Port and other City departments during the very short period the proposed federal tax law was considered and passed by Congress.

2. Water Resources Development Act ("WRDA") 2018

In consultation with USACE, and the offices of Leader Pelosi, Senator Feinstein, Senator Carper, and Holland & Knight, Port staff will explore potential amendments to WRDA to 1) rationalize permitting for rehabilitation and repair of existing Port facilities, and 2) facilitate the Seawall Resiliency Project. Congress will be considering a WRDA bill in 2018. Additionally, in 2018, Congress will be considering infrastructure legislation that could possibly include funding for USACE project and will address project streamlining.

A. Permitting of Pier Rehabilitation and Repair

Congress has enacted two permitting arrangements for Port projects. In 1969, Congress declared the areas of the Port from Fisherman's Wharf to the Bay Bridge

“non-navigable”, free of the navigational servitude and not subject to permitting under the Rivers and Harbors Act and the Clean Water Act. In 2007, Congress declared the area from the Bay Bridge to Pier 40 “non-navigable”, free of the navigational servitude, but the language adopted by Congress is unclear about permitting authority.

Staff recommends a discussion with USACE to determine whether the San Francisco District could support changes adopted through WRDA that would rationalize the permitting regime for the San Francisco waterfront as follows:

- require USACE permits under the Rivers and Harbors Act or Clean Water Act for any new pile-supported structures or fill along the San Francisco waterfront; and
- eliminate the requirement for permits for repair and rehabilitation of existing piers and wharves, but require the Port, through the USACE, to consult with federal resource agencies regarding the Endangered Species Act.

Strategy

Port staff will consult with USACE District staff to explore their willingness to pursue legislation, possibly in the infrastructure legislation, that would rationalize the permitting regime along the San Francisco waterfront. If USACE District staff are supportive, staff will explore draft legislation with the City Attorney and Holland & Knight.

B. Facilitate the Seawall Resiliency Project

Port staff also recommends a discussion with the San Francisco District office and the City’s federal legislative delegation about potential changes that could facilitate the Seawall Resiliency Project, including changes to law that would:

- encourage local investment in flood control projects with a federal interest – such as flood control along the Port’s waterfront – before federal funding becomes available such that early funding does not threaten the federal interest determination; and
- enable USACE to evaluate seismic risk in assessing the benefit-cost of flood control projects.

Strategy

Port staff will consult with Holland & Knight and CH2M regarding these and other possible amendments to WRDA that would advance the Port Commission’s objectives with the Seawall Resiliency Project, and then consult with the City’s federal delegation and the Office of Senator Carper regarding the status of WRDA 2018.

3. U.S. Army Corps of Engineers (“USACE”) – Continuing Authorities Program 103 (“CAP103”) Seawall Project

Port staff is currently working with the San Francisco District of USACE to pursue analysis of the Port's Seawall under current legislative authority.

The CAP103 portion of the Port's Seawall Resiliency Project is a distinct analysis, led by USACE, focused on flood risk. Under the CAP103 program, projects with a *federal interest* can be funded up to \$10 million. The San Francisco District has found a federal interest in a project to improve flood control along the Port, primarily due to flood risk to the MUNI tunnel along the Embarcadero.

While this effort is limited in scope, it informs the much larger General Investigation of the seawall, described below. Since the last periodic report, USACE and Port staff have begun work on the project Feasibility Study. This work is expected to last for approximately one year. At this juncture, the project appears to have all federal funding necessary aligned in order to complete the study. Port staff will continue to monitor USACE progress and federal funding availability to ensure this project stays on track.

4. USACE General Investigation of the Seawall

Much of the work anticipated through the CAP103 Project Feasibility Study is expected to support a broader USACE investigation of the San Francisco waterfront. In the USACE letter finding a *federal interest* in the CAP103 project, USACE staff also recommended a General Investigation of the San Francisco waterfront. A General Investigation can lead to a finding of federal interest in a much larger flood control project and a USACE Chief of Engineer's report to Congress recommending funding authorization in a future WRDA in 2020 or later and subsequent appropriations in future Energy & Water appropriations bills.

Strategy

While the Port staff continuing to pursue a standard "new start" appropriation of federal funds to advance along the traditional path for initiating a General Investigation project, the Port is also evaluating two options for pursuit of a self-funded approach in parallel to the traditional approach. To assist with that process, the Port has asked Seawall Resiliency Project consultant CH2M to evaluate the advantages and disadvantages of:

1. Self-fund a General Investigation for the entire Seawall while ensuring the study has USACE oversight and the Port's study meets USACE standards, funded through the Seawall Resiliency Project ("Planning Assistance to States"); and
2. Providing funding directly to USACE to bypass awaiting a traditional "new start" study appropriation to start work.

Port staff will review the findings of CH2M and work with the Seawall Project Resiliency Team to make a recommendation to the Executive Director, and then pursue the appropriate agreement with USACE with the assistance of the Port's federal advocate.

5. USACE Continuing Authorities Program 107 (“CAP107”) – Central Basin

The final agreement needed in order to commence the Central Basin dredging project is currently awaiting a revision at the South Pacific Division level of USACE. A pending change in tenant operator at the Pier 70 Shipyard requires a USACE reconfirmation of previously-estimated federal benefits of the project.

Strategy

Port staff continues to work with partners in Washington DC to ensure that federal funding set aside for the Central Basin remains in place and is not diverted elsewhere during the procurement process for a new shipyard operator.

6. Infrastructure Legislation

As of the end of December, 2017, President Trump renewed discussion of potential federal legislation to address the nation’s lack of investment in infrastructure, and suggested a bi-partisan effort to pass such legislation. Port staff has no information about the Administration’s current proposal, nor potential responses by Congressional Democrats, but staff will continue to monitor this discussion with an eye on funding for the Seawall Resiliency Project and other Port capital needs.

NEXT STEPS

After receiving feedback from the Port Commission on the proposed program, Port staff will collaborate with the Mayor’s Director of State and Federal Legislative Affairs to seek support from the City’s federal and state legislative delegation to pursue these proposals consistent with the City’s 2018 legislative program.

Port staff will return to the Port Commission in the spring for the next update on activities related to implementation of the Port’s federal and state legislation program.

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