

AGENDA REPORT

Resolution: Authorize the Executive Director to Execute a Feasibility Cost Sharing Agreement with the U.S. Army Corps of Engineers and Approve a Budget of \$1,500,000 for the Oakland Harbor Turning Basins Widening Feasibility Study. **(Maritime)**

MEETING DATE: 5/28/2020

AMOUNT: \$1,500,000 (over 3 years)
Operating Expense

PARTIES INVOLVED: U.S. Army Corps of Engineers
John D. Cunningham, Lieutenant Colonel

SUBMITTED BY: Delphine Prevost, Acting Maritime Director

APPROVED BY: Danny Wan, Executive Director

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

Staff requests authorization to execute a Feasibility Cost Sharing Agreement ("FCSA") with the U.S. Army Corps of Engineers ("USACE") to perform an Oakland Harbor Turning Basins Widening Feasibility Study ("Feasibility Study"). This Feasibility Study will identify the constraints of the Oakland Inner Harbor and Outer Harbor turning basins and evaluate potential navigation improvements for handling ultra-large container vessels ("ULCVs") in Oakland. Staff also requests budget approval of \$1,500,000, which comprises the Port of Oakland's ("Port's") cost share for the Feasibility Study.

BACKGROUND

To remain competitive and capable of servicing the world's global container vessel fleet, the Port, USACE, and Port tenants have and continue to make significant investments in the Port's maritime facilities ("Seaport or Oakland Seaport"). This includes, but is not limited to, the deepening of navigation channels, waterways, and berths; the modernization of marine terminals; up-sizing cargo handling equipment; increasing rail trackage; and developing new warehousing facilities that support trade and commerce.

On November 21, 2019 Port Staff presented an update to the Board of Port Commissioners ("Board") to highlight the rapid growth in the size of container vessels and the deployment of ULCVs at the Seaport and the current navigational constraints imposed by the existing Inner and Outer Harbor turning basins of the Oakland Harbor. Namely, ULCVs with lengths greater than 1,210 feet (which generally aligns with container vessel capacities of 15,000 twenty-foot equivalent units (TEUs)), are unable to turn in the Inner Harbor Turning Basin ("IHTB"). The

Outer Harbor Turning Basin (“OHTB”) is 150 feet wider than the IHTB and is generally capable of handling up to 18,000-TEU container vessels. Exhibit A provides more background information on the Oakland Harbor, the turning basins, and ULCVs that was previously shared with the Board on November 21, 2019.

In April 2017, the Port submitted a Letter of Intent (“LOI”) to the USACE raising awareness to the constraints of handling ULCVs at the Seaport. The LOI also confirmed the Port’s desire and commitment, as a non-Federal sponsor, to participate and provide the monetary contribution in accordance with a FCSA to explore the feasibility of expanding both turning basins.

In 2018 the USACE completed an Initial Appraisal Report (“IAR”) to investigate if further feasibility-level studies are warranted to review changed conditions in the Port (i.e. increased vessel size). The IAR found that “the accelerating expansion of the volume of trade has led to the design vessel in the Oakland Harbor Navigation Improvement (-50 Foot) Feasibility Study being superseded in use in the Port much sooner than expected.” The IAR further concluded “there has been a material effect on economic conditions and engineering design incurring economic inefficiency associated with ULCV’s operations and navigational safety hazards...and further feasibility-level studies are warranted...” Following the recommendations outlined in the IAR, the Port requires USACE’s collaboration to conduct further feasibility level studies, which is initiated with a formal Feasibility Study.

ANALYSIS

In 2019, even with a favorable IAR determination, Staff was unsure if/when the USACE would receive Congressional appropriations for a “New Start” Feasibility Study. Therefore, Port Staff prepared and planned for a Feasibility Study process authorized under Section 203 of Water Resources Development Act (“WRDA”) 1986 (“Section 203”), under which the Port would initially fully fund and manage the Feasibility Study. The Port had previously followed this process for the -50 Foot Project. On November 21, 2019, Port Staff presented a schedule and process to the Board for this Section 203 process. At that time, Port Staff recommended to: (1) proceed with a USACE Memorandum of Agreement (“MOA”) whereby the USACE would be able to provide technical support to the Port-led Feasibility Study at the Port’s cost, and (2) issue a Request for Proposals (“RFP”) to solicit a consultant firm capable of performing and developing a final Feasibility Study document. Port Staff anticipated returning to the Board in Q1 or Q2 2020 for budget and contract authority for both the MOA and RFP contract.

The key advantage of the Section 203 process is that with it being Port-led, the Feasibility Study can commence immediately without Congressional appropriations – the estimated time savings as of November 21, 2019, was one to two years. The key risks of the Section 203 process are: 1) the Port would not receive 50% USACE reimbursement for Feasibility Study costs, estimated at \$1.5 million, unless the project proceeded to construction, 2) USACE may not initiate National Environmental Policy Act (“NEPA”) environmental review until the document is final and submitted to the Assistant Secretary of the Army (Civil Works) – this could add significant time to a Section 203 Feasibility Study planning effort and

would conflict with California Environmental Quality Act (“CEQA”) analyses timing, and 3) the USACE could not accept the final Feasibility Study document or require significant reviews and revisions causing the total cost to exceed \$3.0 million.

Given the risks mentioned above, the Port advocated with USACE headquarters and local staff to receive clarity on the NEPA/CEQA timing in a Section 203 Feasibility Study process. In February 2020, the USACE released its fiscal year 20 workplan which authorized a “New Start” Feasibility Study with full Federal funding of \$1.5 million, the total required Federal cost share for a USACE-led Feasibility Study. This authorization is one of only two navigation studies selected nationwide in 2020 by the U.S. Federal Government. With an approved budget of \$1.5 million, the USACE, through its South Pacific Division (“SPD”) and local San Francisco District (“SPN”), is now fully funded to initiate the Feasibility Study in the traditional manner (i.e., USACE leads the Feasibility Study in lieu of the Port doing so under the Section 203 process previously contemplated).

With the USACE now authorized to lead the Feasibility Study, the Port’s role and risks change. Under this traditional option, the Port is in a supporting role and the three key risks of the Section 203 process mentioned above are eliminated. However, the Port is beholden to the USACE’s schedule which is largely outlined and governed by the requirements (set forth in the Water Resources Reform & Redevelopment Act (WRRDA) of 2014) that requires the USACE to follow the Federal 3x3x3 Rule (“Rule”) once the USACE initiates a feasibility study. This Rule provides that the USACE will 1) complete a feasibility study in less than 3 years, 2) spend no more than \$3 million¹ in aggregate for both Federal and non-Federal sponsor cost shares, and 3) requires three levels of USACE review – district, division, and headquarters – throughout the Feasibility Study.

Given the recent Congressional appropriation for the “New Start” and discussions with the USACE staff, Port Staff recommends proceeding with a USACE-led Feasibility Study because the completion schedule aligns with the Port’s projection of its ability to complete a Section 203 Feasibility Study. A schedule comparison is provided as Exhibit B. Commencing a USACE-led Feasibility Study requires authorization for the Port to enter into the FCSA with USACE to proceed with the Feasibility Study. Key terms of the FCSA include:

- The USACE-led Feasibility Study must be completed in three years from the date the FCSA is executed;
- The Feasibility Study is anticipated to cost \$3 million² – the Port and USACE are each required to provide up to \$1.5 million in funding for this effort;
- Any cost increase beyond \$3 million requires agreement by both the Port and USACE and an amendment to the FCSA prior to proceeding with said work; and,
- Either the Port or USACE may terminate the FCSA, resulting in the termination of the Feasibility Study, upon 30 calendar days written notice to the other party, at any time.

¹ This \$3.0 million total project cost does not include CEQA environmental review costs.

² This \$3.0 million total project cost does not include CEQA environmental review costs.

The Port's Feasibility Study cost share, or \$1.5 million, can be provided two ways:

1. *Direct Cash Payment to USACE:* Under this option, the Port provides annual payments to the USACE in advance of work being performed and in alignment with the USACE's schedule and budget requirements.
2. *In-Kind Contributions:* Under this option, the Port contracts for, and Port staff manages, certain services and/or technical studies that support the Feasibility Study. Port costs, including Staff time, incurred for providing or performing these activities are eligible as in-kind contributions to the Port's cost share. In-kind contributions are products and analyses that are integral to the Feasibility Study and would otherwise have been undertaken by the USACE.

The Port anticipates that its cost share will likely be provided by a combination of cash payment and in-kind contributions. The Port and USACE have been in active discussions about the Port's level of participation (e.g., cash versus and/or in-kind contributions). The roles of the Port and USACE will be negotiated and memorialized in the project management plan which will be completed immediately after the parties enter into the FCSA. The Port currently anticipates that it will have responsibility to perform certain work products (e.g., analysis, studies, research, etc.) for the Feasibility Study.

Preliminary Work Completed by the Port for the IHTB/OHTB Expansion

As shared with the Board on November 21, 2019, Port Staff planned to contract with a consultant to conduct a preliminary economic analysis for widening both the IHTB and OHTB. This work is now complete, and the report is final. Utilizing conservative estimates, the preliminary economic analysis concluded that positive annual net benefits would be realized from widening the Turning Basins – that is, annual benefits exceed annualized construction costs. This analysis further determined the benefit potential of expanding the IHTB and OHTB is sufficient to recommend a full National Economic Development (“NED”) analysis related to a feasibility study effort.

To assist with a quick start to support the USACE-led Feasibility Study, Port Staff advertised a Request for Qualifications (“RFQ”) on April 10, 2020, for a consultant team that has experience and ability to perform technical services and studies (e.g., the in-kind contributions) to support the USACE-led Feasibility Study. In addition, the RFQ requests qualifications for conducting CEQA analyses. Statements of qualifications are due May 21, 2020. It is important to note the USACE will complete NEPA as part of the USACE-led Feasibility Study. The USACE will not complete CEQA. The Port is solely responsible to perform CEQA analyses at its sole cost, which is in addition to the \$1.5 million required for the USACE-led Feasibility Study. Port Staff plans to return to the Board in Q3 2020 for contract and budget authority to perform CEQA analyses related to the Feasibility Study.

Next Steps: Port Staff recommends the following steps to commence the Feasibility Study:

1. *Port enters into FCSA with USACE:* The USACE cannot initiate/commence the Feasibility Study until the non-Federal sponsor (Port) signs the FCSA. This will allow the USACE to prepare and finalize the Project Management Plan (“PMP”). The USACE is required to draft and finalize the PMP for each new feasibility study. The preparation of the PMP is initiated with a signed FCSA. The PMP defines the scope of a feasibility study and identifies if and how Port takes the lead on any various supporting technical studies.
2. *Port Completes RFQ Process for Feasibility Study-Related Technical Studies:* Port Staff anticipates the RFQ solicitation process will conclude in July 2020. Port Staff will return to the Board in Q3 2020 to request authority to enter into an agreement with the best qualified consultant firm(s) with a scope of work and outlined budget to perform CEQA analyses and various technical studies deemed to be the responsibility of the Port as outlined in the PMP.

It is important to understand that entering into the FCSA and performing in-kind contributions, the Port is not committing itself to the construction of a proposed project. Port-led studies directly related to the Feasibility Study would be performed in accordance with the Port’s contracting procedures, including Board approval where required.

BUDGET & STAFFING

The Port’s proposed 5-Year Operating Budget (FY21 through FY25) includes \$3.0 million for (a) the Port’s Feasibility Study cost share of \$1.5 million; and (b) the Port’s responsibility to perform CEQA analyses at its sole cost and potential or unanticipated third-party costs such as outside legal counsel and miscellaneous consultants as needed, estimated at \$1,500,000.

The action requested in this Agenda Report is to authorize the Port’s Feasibility Study cost share of \$1.5 million. Port Staff plans to return to the Board in Q3 2020 for contract and budget authority to perform CEQA analyses and other third-party costs, if necessary, that are not included in the FCSA.

Port Staff intends to regularly update the Board on the progress of the Feasibility Study. Any additional analyses, reviews, or studies that are required beyond the scope of the PMP, resulting in an increase to the original Feasibility Study total budget of \$3.0 million, would require an amendment to the FCSA, which would have to be approved by the Board.

Table 1 (below) summarizes Staff’s best current estimate of expenses related to the Port’s cost share, environmental review, and potential additional third-party costs to support the Feasibility Study – these additional costs are noted as “Other” in the table below.

Table 1. Proposed Budget

Oakland Turning Basins Widening Feasibility Study						
	FY21	FY22	FY23	FY24	FY25	Total
FCSA - Cash and/or In-Kind Contributions	\$400,000	\$600,000	\$500,000		\$0	\$1,500,000
CEQA/Other ³	\$100,000	\$550,000	\$500,000	\$350,000	\$0	\$1,500,000
Total	\$500,000	\$1,150,000	\$1,000,000	\$350,000	\$0	\$3,000,000

No staffing impact is anticipated by the proposed action.

MARITIME AVIATION PROJECT LABOR AGREEMENT (“MAPLA”)

Entering into a FCSA with the USACE is not within the scope of the Port’s Maritime and Aviation Project Labor Agreement (“MAPLA”) and the provisions of the MAPLA do not apply to this work.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port’s Strategic Business Plan 2018-2022.

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

- Goal: Improve Customer Service
- Goal: Modernize and Maintain Infrastructure

LIVING WAGE

Living wage requirements, in accordance with the Port’s Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements, do not apply to this agreement because the USACE is a government agency.

SUSTAINABILITY

The action proposed in this Agenda Report is to initiate a Feasibility Study to review navigational constraints and evaluate opportunities for turning basin improvements associated with the handling of ULCVs in Oakland. Sustainability opportunities will be reviewed during the development of the Feasibility Study.

³ Estimated costs to perform CEQA analyses and other related costs not included in the FCSA. Budget and contract authority for these expenditures is not being requested at this time.

ENVIRONMENTAL

The action to initiate a Feasibility Study to review navigational constraints and evaluate opportunities for turning basin improvements to remove limitations and inefficiencies with handling ULCVs in Oakland was reviewed in accordance with the requirements of CEQA. Per Section 15061(b)(3) of the CEQA Guidelines, this action is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that this Feasibility Study may have a significant effect on the environment and this action is not subject to CEQA. The Feasibility Study will include CEQA review of the preferred project identified as part of the Feasibility Study.

GENERAL PLAN

This project is for professional services and will not directly include any alteration of property. Development projects that result from these professional services will be subject to separate findings of conformity with the City of Oakland General Plan in accordance with Section 727 of the Charter.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

This action is not subject to the Port's Owner Controlled Insurance Program ("OCIP") as it is not a capital improvement construction project.

OPTIONS

Staff has identified the following options for the Board's consideration:

- 1) Adopt a resolution authorizing the Executive Director to execute a Feasibility Cost Sharing Agreement with the U.S. Army Corps of Engineers and approve a budget of \$1,500,000 for the Port's cost share of the Oakland Turning Basins Widening Feasibility Study. **This is the recommended option.**
- 2) Authorize the Executive Director to Execute a Feasibility Cost Sharing Agreement and budget under different terms than those proposed herein. If directed, Staff can discuss the implications of changing various terms.
- 3) Do not authorize the Executive Director to execute a Feasibility Cost Sharing Agreement with the U.S. Army Corps of Engineers nor approve a budget of \$1,500,000 for the Oakland Turning Basins Widening Feasibility Study as described herein. Under this option, the Federal Government share of \$1.5 million will likely be lost, the Feasibility Study will not proceed, and future re-initiation of the Feasibility Study would be at risk.

RECOMMENDATION

Staff recommends that the Board adopt a resolution approving the Executive Director to execute a Feasibility Cost Sharing Agreement with the U.S. Army Corps of Engineers and approve a budget of \$1,500,000 for the Port's cost share of the Oakland Harbor Turning Basins Widening Feasibility Study, which will evaluate the navigational constraints for handling ultra-large container vessels at the Oakland Seaport, and the potential improvements to remove any such constraints.