

AGENDA REPORT

Resolution: Authorization of Certain Actions Pursuant to the Tax Equity & Fiscal Responsibility Act of 1982, in Connection with the Financing and Refinancing of Various Port Capital Improvements. **(Finance & Admin.)**

MEETING DATE: 9/30/2021

AMOUNT: \$550 Million [Choose an item.](#)

PARTIES INVOLVED: N/A

SUBMITTED BY: Julie Lam, Chief Financial Officer

APPROVED BY: Danny Wan, Executive Director

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

Federal law requires issuers of certain types of tax-exempt debt to hold a public hearing on proposed debt obligations, and on the improvements to be financed. Following the public hearing, the debt issuance must be approved by the highest elected representative in the issuing jurisdiction. The actions recommended in this agenda report would authorize staff to hold the public hearing and obtain approval to issue certain tax-exempt debt pursuant to federal law from the Mayor of the City of Oakland, the highest elected representative. The proposed actions fulfill one requirement imposed on governmental agencies to issue certain types of tax-exempt notes or bonds and would be valid for three years. The proposed actions do not authorize the issuance of any bonds but would allow the Port of Oakland (Port) to continue to issue certain tax-exempt commercial paper notes that were previously authorized. Any future bond issuance by the Port would require the approval of the Board of Port Commissioners (Board).

BACKGROUND

The issuance of tax-exempt debt has been, and remains, an important tool of the Port to finance and refinance capital improvements and other costs. For example, the Port's commercial paper program totals \$200 million in capacity and provides flexibility to borrow funds on short notice to (i) fund a portion of the capital program until a long-term financing is undertaken, (ii) provide interim financing for cash management (e.g. due to lags in grant reimbursement), and (iii) provide emergency funding. In addition, the Port may have refinancing opportunities of its existing debt obligations.

In order to issue certain types of tax-exempt notes or bonds, one requirement imposed on governmental agencies is to allow public comment on the proposed issuance and projects to be financed, followed by approval of the proposed debt. Specifically, the Tax Equity and Fiscal Responsibility Act of 1982 (or TEFRA) requires agencies to hold a public hearing in order to give interested persons an opportunity to express their views on proposed debt obligations, and on the nature of the improvements to be financed or refinanced. Accordingly, the notice of public hearing must describe the purpose for which the debt may be issued, the improvements that may be made, and their location (Plan of Financing and Refinancing or Plan). After the hearing, the Plan must be approved by an applicable elected official of the governmental body issuing the debt. With respect to the Port, this approval would come from the Mayor of the City of Oakland (Mayor).

This TEFRA authorization would replace the Port's prior authorization, which became effective in December 2018 and expires on December 3, 2021. The proposed new TEFRA authorization will be valid for three years following the first issuance of debt obligations under this new TEFRA authorization which is expected to occur on November 1, 2021 in connection with the roll of \$58.2 million in outstanding commercial paper under a new Tax Certificate intended to replace one expiring on November 4, 2021. The proposed issuance of debt obligations under this new TEFRA amounts to \$550 million and includes the refinance of existing debt as well as the financing of new projects.

ANALYSIS

The Port's current TEFRA is valid through December 3, 2021, and new authorization is required to issue certain tax-exempt debt after this date. As a result, staff proposes to: 1) publish a Notice of Public Hearing at least seven days prior to the hearing date itself; 2) appoint the Chief Financial Officer or Manager of Financial Planning to conduct the hearing, pursuant to TEFRA requirements; and 3) hold a public hearing. Staff would then compile the minutes of the hearing along with other materials and submit them to the Mayor, who would approve the issuance of tax-exempt debt. Staff anticipates holding the public hearing in the month of October 2021.

In the absence of a new TEFRA authorization, the Port would be unable to finance or refinance capital projects or roll certain existing commercial paper on a tax-exempt basis after December 3, 2021 and would be required to issue such debt on a taxable basis. This would result in higher borrowing costs, as interest on taxable debt is generally higher than comparable tax-exempt debt.

The proposed actions fulfill one requirement imposed on governmental agencies to issue certain types of tax-exempt notes or bonds. The proposed actions do not authorize the issuance of any bonds but would allow the Port to continue to issue certain tax-exempt commercial paper notes that were previously authorized. Any future bond issuance by the Port would require the approval of the Board.

BUDGET & STAFFING

The proposed action does not have any budget or staffing impact.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters included in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

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: Grow Net Revenues
- 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 (the "Living Wage Regulations"), do not apply because the requested action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage Regulations.

SUSTAINABILITY

There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that present sustainability opportunities.

ENVIRONMENTAL

California Environmental Quality Act (CEQA) Determination: The proposal to advertise and conduct a public hearing on proposed debt obligations, and on potential improvements to be financed was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA). The general rule in Section 15061(b)(3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that conducting a public hearing and associated actions related to TEFRA requirements will result in a physical change in the environment, and therefore they are not subject to CEQA and no further environmental review is required. Appropriate CEQA review will be conducted prior to Board approval of any specific projects that may be undertaken with Port bonds. Therefore, this action is not subject to CEQA and no further environmental review is required.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

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

- Approve (1) publication of a Notice of Public Hearing (Attachment A); (2) appointment of the Chief Financial Officer or Manager of Financial Planning to conduct the hearing; and (3) the holding of a public hearing, all pursuant to TEFRA requirements. These are the recommended actions.
- Do not approve (1) publication of a Notice of Public Hearing (Attachment A); (2) appointment of the Chief Financial Officer or Manager of Financial Planning to conduct the hearing; and (3) the holding of a public hearing, all pursuant to TEFRA requirements. Under this option, the Port will not be able to issue certain tax-exempt debt to finance or refinance capital projects after December 3, 2021 and may not achieve the lowest borrowing cost possible for Port capital projects or other cash flow purposes.

RECOMMENDATION

Adopt a resolution to approve (1) publication of a Notice of Public Hearing (Attachment A); (2) the holding of a public hearing, and (3) appointment of the Chief Financial Officer or Manager of Financial Planning to conduct the hearing, all pursuant to the requirements of the Tax Equity and Fiscal Responsibility Act of 1982, as codified in Section 147(f) of the Internal Revenue Code of 1986, as amended.

ATTACHMENT A

**NOTICE OF PUBLIC HEARING
FOR THE
PORT OF OAKLAND**

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The Port of Oakland (Port) will hold a public hearing on October __, 2021 at _____[upon approval of this hearing by the Board, the location of the hearing and links to participate remotely, will be added to this Notice], in connection with the issuance of certain Revenue Bonds, Refunding Revenue Bonds and/or Commercial Paper Notes (collectively, Obligations) pursuant to a plan of financing that includes the issuance of Obligations (i) to finance the Projects described below, and (ii) to refinance the repayment of existing Obligations, including, without limitation, all or a portion of its outstanding Commercial Paper Notes, originally issued to finance the Projects.

PROJECTS:

The Projects to be financed and refinanced pursuant to a plan of financing and refinancing include airport, dock, and wharf, improvements within the meaning of Sections 142(a)(1) and 142(a)(2) of the Internal Revenue Code of 1986, as amended, relating to the Oakland International Airport generally located at One Airport Drive, Oakland, California and at the Port's seaport facilities located in Oakland, California and generally bounded by the I-80 to the north, West Grand Avenue to the northeast, the I-880 to the east and northeast, Oakland Estuary/Inner Harbor Channel to the south, and Oakland Outer Harbor to the west, including the marina and Port owned facilities located in the area generally known as Jack London Square, which is located in the bounded area described above (Projects). Additional details regarding the financed and refinanced Projects are as follows:

Oakland International Airport (Airport), One Airport Drive:

Capital improvements involving existing structures, construction, expansion and redevelopment of the terminal complex, roadways, automobile and aircraft parking areas, gates, aprons, taxiways, runways and airfields; perimeter dike improvements; environmental mitigation; security system upgrades; seismic, storm water system and utility program expansion and upgrades. The capital improvements developed will serve various Airport air carriers and tenants which include but are not limited to Alaska Airlines, Allegiant Air, Azores Airlines, Contour Airlines, Delta Air Lines, Frontier, Hawaiian Airlines, JSX, Southwest Airlines, Spirit Airlines, Volaris.

The Port's seaport, in which all of the following marine terminals are located:

Berths	Marine Terminal Operator	Address
20-24	No Operator. Partially occupied by TraPac, LLC, and other parties on a limited-term basis. ¹	1599 Maritime Street
25-32	TraPac, LLC	2800 7 th Street
33-34	Partial: TraPac, LLC; Everport; and other parties on a limited-term basis	3050 7 th Street
35-37	Everport Terminal Services, Inc.	5190 7 th Street
55-56	SSA Terminals (Oakland), LLC	2505 Middle Harbor Road
57-59	SSA Terminals (Oakland), LLC	1717 Middle Harbor Road
60-63	SSA Terminals, LLC	1579 Middle Harbor Road
67-68	No Operator	1 Market Street

The seaport property also includes:

- A portion of the former Oakland Army Base, generally bounded by the Union Pacific Railroad yard to the south, Maritime Street to the west/northwest, and West Grand Avenue and the East Bay Municipal Utility District wastewater treatment plant to the north/northeast.
- Middle Harbor Shoreline Park, 2777 Middle Harbor Road, which is bounded by the Oakland Harbor Channel to the south, marine terminals to the east and 7th Street to the north and west.

Capital improvements to the above marine terminals and other properties include the repair, renovation and expansion of existing infrastructure comprised of cranes, wharves, and berths; rail facilities; various maritime ancillary services including freight warehousing, transloading facilities, and container and equipment yards; roadways; utilities; communications networks, security systems; and shoreline public access. Other improvements include dredging, and the mitigation/remediation of environmental issues.

INITIAL OWNER AND OPERATOR:

The Projects will be initially funded by the Port, and in most cases, would be operated by Port tenants. However, the Port would own the Projects and they would be returned

¹ Negotiations are also underway with a bulk terminal operator to occupy portions of Berths 20-21 under an extended lease.

to the Port before or upon the expiration of tenant leases, depending on the exact terms of each lease.

AMOUNT:

The total principal amount of the Obligations to be issued to finance or refinance the costs of the Projects will not exceed \$550 million.

The Obligations will be limited obligations of the Port. Neither the faith and credit nor the taxing power of the City of Oakland, the State of California or any political subdivision thereof will be pledged to the payment of the principal of or interest on the Obligations or other related costs.

This notice is intended to comply with the public notice requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

Those wishing to comment on the proposed nature or location of the Projects, or the financing may either appear in person at the public hearing or submit written comments. Written comments must be received at the following address at least 24 hours prior to the hearing:

Chia-Jung Yang
Manager, Financial Planning
530 Water Street, 2nd Floor
Oakland, California 94607
(510) 627-1670