



## Legislation Text

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**File #:** 2019-0422, **Version:** 1

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**DATE:** November 5, 2019

**SUBJECT:**

**RESOLUTION AUTHORIZING (A) JOINT COMMUNITY FACILITIES AGREEMENT WITH THE CITY OF CHULA VISTA FOR THE BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT, WITH CONDITIONS; AND (B) THE VOTE OF THE DISTRICT IN FAVOR OF THE BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT, WITH CONDITIONS**

**EXECUTIVE SUMMARY:**

The financing agreement<sup>1</sup> (Financing Agreement) for the Chula Vista Bayfront Master Plan (CVBMP) was entered into between the District and the City of Chula Vista (City) in 2012 and subsequently amended and restated on June 20, 2017 (Amended and Restated Financing Agreement). The Amended and Restated Financing Agreement sets forth the framework for the financing and development of the public improvements and infrastructure (Phase 1A Infrastructure) necessary for the development of a resort hotel and convention center (RHCC) within the CVBMP and the convention center component of the RHCC (Convention Center). The Convention Center and Phase 1A Infrastructure are referred to collectively as, the Public Improvements, and the RHCC and Phase 1 Infrastructure are collectively referred to as, the Project. The development of the Public Improvements is necessary for the implementation of the CVBMP in accordance with the certified Final Environmental Impact Report (FEIR)<sup>2</sup> and Port Master Plan Amendment, and for other development within the CVBMP to move forward.

As contemplated in the Amended and Restated Financing Agreement, a plan of finance would need to be developed by the District and the City to further define and implement the public financing needed to finance the Public Improvements. In the process of evaluating the financial feasibility of the Project, it was determined that for the Project to be developed a public financial subsidy would be needed (Public Contribution). The Public Contribution is anticipated to be delivered to the Project through future bond offerings to be issued by the Chula Vista Bayfront Facilities Financing Authority (JEPA). A Disposition and Development Agreement was entered into among RIDA Chula Vista, LLC (RIDA), the District, and the City dated May 7, 2018 (DDA) to set forth the necessary steps that must be completed for the parties to issue the public and private financing for the Project and commence construction of the Project, ultimately leading to a ground lease and related subleases for the development and operations of a world-class hotel and convention center.

The Amended and Restated Financing Agreement also contemplated that the City would contribute revenues generated by a special tax district toward the debt service for the Public Contribution. The special tax district contemplated here would be called the Bayfront Project Special Tax Financing District (Special Tax District). The funds from the Special Tax District (Special Tax Revenues) were expected to be used to pay for the costs of the Public Improvements. The Schedule of Performance

attached to the DDA contemplated that the City would complete all documents and actions necessary to commence formation of the Special Tax District by November of 2018 and authorize the levy of the tax after certain actions had been taken by the parties to the DDA, such as the approval of the Plan of Finance and preparation of the bond documents for the bond issuance by the JEPA.

RIDA's development schedule contemplates that the close of escrow under the DDA will occur in 2020. To make this happen, the District and City need the Special Tax Revenues from the Special Tax District to make the Project economically feasible. Time is of the essence to continue to advance the funding agreements necessary for the District and the City to deliver the various components of the Public Contribution pursuant to the DDA. As discussed above, a funding mechanism that would contribute an amount equal to 5% of room occupancy revenue from the RHCC and new recreational vehicle (RV) park is essential to the economic feasibility of the Project. In addition, through ongoing discussions with the City, it has become clear that a source for payment of the operations and maintenance (O&M) of the various public improvements throughout the CVBMP is essential to reduce the general fund exposure to both the City and District. Similarly, it has become clear to the District and the City that the Special Tax Revenues may also be used to fund public improvements already contemplated by both parties, such as the Convention Center and 1600-space parking garage primarily serving Parcel H-3 (Parking Garage).

Staff has engaged in conversations with City staff to refine the details of the Special Tax District covering the CVBMP and has negotiated a Joint Community Facilities Agreement (Agreement) with the City which sets forth the terms upon which the District would agree that the City can proceed with the formation of the Special Tax District and the remaining details that must be set forth in a more detailed version of this Agreement, an implementation agreement (Implementation Agreement), that would be materially consistent with the terms of this Agreement. Staff has determined that this Agreement will be beneficial to the residents, the tenants, and visitors of the Special Tax District area. Staff recommends that the Board of Port Commissioners (Board) authorize the Executive Director, or her designee, to enter into the Agreement, in substantially the form presented to the Board at the November 5, 2019 Board meeting, which would lead to the Implementation Agreement to be presented to the Board for its consideration in December 2019. Staff also recommends that the Board authorize the Executive Director, or her designee, to vote in favor of the Special Tax District conditioned on the City Council authorizing the Agreement in substantially the form presented to the Board on November 5, 2019 and approving the formation documents for the Special Tax District substantially in the form attached to the Agreement.

### **RECOMMENDATION:**

Adopt resolution authorizing (A) the Agreement with the City for the Bayfront Project Special Tax Financing District, with conditions; and (B) the vote of the District in favor of the Bayfront Project Special Tax Financing District, with conditions.

### **FISCAL IMPACT:**

The Agreement identifies the mechanics for the Bayfront Project Special Tax Financing District, a funding source that might be used by the District and the City to fund debt service for the Public Contribution, which would pay for the Public Improvements required to implement the CVBMP. The Special Tax Revenues from the Special Tax District could also be used to offset the cost to the District of O&M throughout the CVBMP and help fund the Parking Garage.

## **COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A financially sustainable Port that drives job creation and regional economic vitality.

## **DISCUSSION:**

The Amended and Restated Financing Agreement establishes that the District and the City will develop a plan of finance (Plan of Finance) that sets forth the types of revenues that may be used by the District and the City to repay the Public Contribution. Since June 2017, it has been contemplated that the City would contribute revenues generated by a special tax district toward the debt service for the Public Contribution. The Special Tax District replaced the Tourism Marketing District (TMD) Assessment contemplated by the City and the District in the Financing Agreement, in which 80% of the assessments generated from the TMD would be (i) pledged or paid in accordance with applicable law to support debt service payments on assessment bonds sold to the JEPA or (ii) directly pledged or paid by the City to support debt service payments on the bonds issued by the JEPA. The “Conceptual Outline of Joint Exercise of Powers Authority (JEPA) Plan of Finance” (Conceptual Plan of Finance) attached to the DDA as Attachment 4 further defined the CFD as: “New Special Tax Revenues levied in the H-3 Community Facilities District (“CFD”), shall be equal to 5% room revenue on the RHCC and may include non-room revenue taxes” that totaled approximately \$1 Billion over a period of approximately 62 years. The Conceptual Plan of Finance further explained that the taxes would be paid monthly by RIDA and remitted to the JEPA. This is referenced as “TOT Augment RIDA 5%” in Section 13 of the Conceptual Plan of Finance. (Attachment A.) The Special Tax District funds were expected to be used by the JEPA to pay for the cost of the Phase 1A Infrastructure. The Schedule of Performance attached to the DDA contemplated that the City would complete all documents and actions necessary to commence formation of the Special Tax District by November of 2018 and authorize the levy of the tax after certain actions had been taken by the parties, such as the approval of the Plan of Finance and preparation of the bond documents for the bond issuance by the JEPA.

## **Description of the Special Tax District**

The Special Tax District proposed by the City includes parcels that are both within and outside the CVBMP. The proposed boundary map for the Special Tax District includes Parcels H-3, H-23, O-3A, O-3B and S-1, which are the sites of the RHCC (H-3), a potential overflow hotel for the RHCC and surface parking (H-23), and the new recreational vehicle (RV) park under construction by Sun Chula Vista Bayfront RV LLC (S-1, O-3A, and O-3B). (Attachment B.) In addition to these parcels, the Special Tax District also includes parcels owned by the City, Pacifica, MTS, SDG&E, LDA, and the owner of Seven Mile casino, but the District is the majority landowner of the Special Tax District boundary area. The parcels owned by the City are located adjacent to the CVBMP (east of the 5 Freeway) and are proposed for hotel development.

The Special Tax District is a critical element of the Public Contribution and is necessary for the economic feasibility of the Project, and the overall success of the CVBMP. As discussed above, a funding mechanism that would contribute an amount equal to 5% of room occupancy revenue from the RHCC and new RV park is essential to the economic feasibility of the Project. In addition, through ongoing discussions with the City, it has become clear that an independent funding source is necessary to pay for the O&M throughout the CVBMP to reduce the general fund exposure to both the City and District. Currently, it is estimated that the cost to perform the O&M on all public improvements that need to be constructed as part of Phase 1A of the CVBMP and current parks and roads would total approximately \$2.7 Million per year. In addition, the Special Tax District could be used to fund certain improvements already contemplated for the CVBMP, such as the Convention Center, Parking Garage, and Phase 1A Infrastructure. As such, the Special Tax District makes sense as a funding source for these various components.

## Agreement

The purpose of the Agreement is to negotiate the terms upon which the District would agree that the City can proceed with the formation of the Special Tax District and set forth the mechanism upon which the Parties can enter into a future implementation agreement that would supplement the Agreement by providing further detail on the components of this Agreement that are materially consistent with the terms therein.

The table below provides a summary of the essential terms of the Agreement:

Category	Essential Terms
Area	The boundaries of the Special Tax District shall be the same as Attachment B.
Term	The term of the Special Tax District shall be 40 years.
Use of Special Tax Revenues	Priority Use: (1) Convention Center; (2) Phase 1A Infrastructure; (3) Parking Garage; and (4) O&M of Phase 1A Infrastructure (Priority O&M). Other Uses: If Special Tax Revenues are available after the Priority Use, to fund (1) other public improvements within the CVBMP or a mitigation measure outside the CVBMP if required to be performed by the District or City pursuant to the Mitigation, Monitoring and Reporting Plan (MMRP) attached to the FEIR; or (2) other O&M for the Special Tax District provided that such improvements and services are identified in the formation documents for the Special Tax District.
Reimbursement Process	District may be reimbursed for its contributions of general fund revenues toward the Priority Use and Other Uses provided that such amounts would be reduced by any amounts that have already been reimbursed to the District through other sources. The District may receive the reimbursement in installments and may request the reimbursement within three years after completion or delivery.
Material Changes to the Special Tax District	The District has the right to vote on any material changes to the formation documents of the Special Tax District in accordance with Section 3.61 of the City Municipal Code or the Mello-Roos Community Facilities Act of 1982.

The table below provides a summary of the essential terms that would need to be included in the formation documents of the Special Tax District:

Category	Essential Terms
Area	The boundaries of the Special Tax District shall be the same as Attachment B.

Term	The term of the Special Tax District shall be 40 years.
Funding Priorities	The Special Tax District shall use the Special Tax Revenues to finance the construction of the following improvements in the following order of priority (collectively, the "Priority Improvements"): 1. Approximately 275,000 net usable square foot Convention Center 2. Phase 1A Infrastructure 3. Parking Garage (Not to Exceed \$40 million) The Special Tax District shall use the Special Tax Revenues to finance the O&M for the Phase 1A Infrastructure ("Priority O&M"). If there are Special Tax Revenues available after the funding of the Priority Improvements and Priority O&M, the Special Tax District may use the Special Tax Revenues for the construction of other improvements within the CVBMP, or for a mitigation measure outside the CVBMP if the District or the City is responsible for performing such mitigation measure pursuant to the MMRP attached to the FEIR ("Other Improvements").

As of the date of publication, District staff and City staff are continuing to negotiate these terms and a final version of the Agreement will be presented to the Board at the November 5, 2019 meeting.

### Next Steps

The following is the proposed timeline for the Special Tax District, should the Board authorize the Agreement:

- November 5, 2019 - Board considers Amended and Restated Revenue Sharing Agreement and Agreement.
- November 5/12, 2019 - City Council considers revised formation documents for Bayfront Project Special Tax Financing District, Amended and Restated Revenue Sharing Agreement, and Agreement.
- December 10, 2019 - Board and City Council consider Implementation Agreement.
- February 10, 2020<sup>3</sup> - Landowners vote on the Special Tax District.

Staff believes this is the right option to move the CVBMP forward and the option that eliminates the most risk for the District and the Project and has determined that this Agreement will be beneficial to the residents, the tenants, and visitors of the Special Tax District area. Staff recommends that the Board authorize the Executive Director, or her designee, to enter into the Agreement, in substantially the form presented to the Board at the Board meeting. Staff also recommends that the Board authorize the Executive Director, or her designee, to vote in favor of the Special Tax District conditioned on the City Council authorizing the Agreement in substantially the form presented to the Board on November 5, 2019 and approving the formation documents for the Special Tax District in substantially the form attached to the Agreement.

### General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda sheet as presented to it and approves it as to form and legality.

### Environmental Review:

The proposed Board action, including without limitation, a resolution authorizing a Joint Community Facilities Agreement with the City of Chula Vista for an implementation agreement for a special tax financing district, was adequately covered in the Final Environmental Impact Report (FEIR) for the Chula Vista Bayfront Master Plan (CVBMP) (UPD #83356-EIR-658; SCH #2005081077; Clerk Document No. 56562), certified by the District on May 18, 2010 (Resolution No. 2010-78), the Addendum to the FEIR, which was adopted by the Board on August 13, 2013 (Resolution No. 2013-138), and the Second Addendum to the FEIR, which was adopted by the Board on April 10, 2018 (Resolution No. 2018-0069). The proposed Board action is not a separate “project” for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the FEIR and Addendums, the District finds and recommends that the proposed Board action does not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the FEIR and Addendum due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light that (a) shows the project will have one or more significant effects not discussed in the FEIR and Addendum, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR and Addendum, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and (d) no changes to mitigation measures or alternatives have been identified or are required. Pursuant to CEQA Guidelines §15162(b), the District finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

The proposed Board action complies with Sections 21 and 35 of the Port Act which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed actions are consistent with the Public Trust Doctrine.

The proposed Board action does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because they will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District’s CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District’s certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The proposed Board action in no way limits the exercise of the District’s discretion under the District’s CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

### **Equal Opportunity Program:**

Not applicable.

**PREPARED BY:**

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**Attachment(s):**

Attachment A: Conceptual Outline of Joint Exercise of Powers Authority (JEPA) Plan of Finance  
Attachment B: Boundary Map of Special Tax District

1. Chula Vista Bayfront Master Plan Financing Agreement, dated May 8, 2012, on file in the Office of the District Clerk bearing Document No. 59001
2. Final Environmental Impact Report for the Chula Vista Bayfront Master Plan and Port Master Plan Amendment (UPD #83356-EIR-658, SCH #2005081077), dated June 18, 2010, on file in the Office of the District Clerk bearing Document No. 56562
3. This is an approximation as the date has not been confirmed by the City.