



AGENDA REPORT

Finance Department

DATE:	March 15, 2022
TO:	Mayor Butt and Members of the City Council
FROM:	Anil Comelo, Interim Deputy City Manager Belinda Brown, Director of Finance Joe Leach, PE, Director of Public Works Lina Velasco, Director of Community Development
Subject:	Adoption of a Resolution of Intent to Establish a Community Facilities District (CFD) for Point Molate, Adoption of Goals & Policies Statement for Community Facilities Districts, specifically for the Point Molate CFD
FINANCIAL IMPACT:	A Fiscal Impact Study was prepared on behalf of the developer, and the Study was peer reviewed by the City's consultant. The Study projects a positive long-term impact of the development. However, with more conservative assumptions than those used in the peer reviewed study, a negative fiscal impact is possible. Developer has now agreed to additional security measures to ensure that possible negative fiscal impacts to the General Fund are more fully addressed.
PREVIOUS COUNCIL ACTION:	November 23, 2021 January 25, 2022 February 1, 2022 February 24, 2022 The Council considered this item without taking formal Action in a Study Session on February 24, 2022. This item was agendized for January 25, 2022, and carried over to the February 1, 2022, Council Meeting; The City Council did not take formal Action.

	<p>The technical consulting team for the Community Facilities District formation was approved at the meeting of November 23, 2021.</p>
<p>STATEMENT OF THE ISSUE:</p>	<p>Within its Disposition and Development Agreement and its Development Agreement with the entitlement holders of Point Molate, the City has agreed to cooperate in the formation of financing districts, including landscape and lighting maintenance districts, community facilities districts, benefit assessment districts, geologic hazard abatement districts, and tax-exempt financing mechanisms. Certain actions are required of the City to comply with these agreements. This item presents documents required for the first formal step in the process of forming a Community Facilities District. Presented herewith are a Resolution Adopting Local Goals and Policies Relating to Community Facilities Districts, a Resolution of Intention for the establishment of a Community Facilities District for Point Molate, and a Resolution of Intention to Incur Bonded Indebtedness within the Community Facilities District for Point Molate.</p>
<p>RECOMMENDED ACTION:</p>	<p>ADOPT a resolution adopting Local Goals and Policies Relating to Community Facilities Districts; ADOPT a resolution of intention to establish the City of Richmond Community Facilities District No. 2022-1 (Point Molate), and to Designate Three Improvement Areas therein, to Authorize the Levy of a Special Tax to Pay the Cost of Acquiring or Constructing Certain Facilities, Provide Certain Services and Pay for Certain Incidental Expenses and to Pay Debt Service on Bonded Indebtedness; and ADOPT a resolution of intention to Incur Bonded Indebtedness Within the City of Richmond Community Facilities District No. 2022-1 (Point Molate), and Each of the Three Improvement Areas Therein. There is no requirement of General Fund support for these Bond measures - Public Works Department (Joe Leach 510-620-5478).</p>

DISCUSSION:

Background. The formation of land-secured financing districts, as permitted by State law, are utilized to finance the construction, development, and operation of the master infrastructure, offsite improvements, and master developer amenities in connection with various projects and the development of a property.

During the entitlement phase of land use planning, a Fiscal Impact Study¹ was prepared by Economic Planning Systems, Inc. (“EPS”) on behalf of the developer, Winehaven Legacy, and the Study was peer reviewed² by the City’s consultant, BAE Urban Economics. These studies were reviewed by the City Council prior to the granting of development entitlements in September 2020. The EPS study projected a positive long-term impact of the development. However, adverse fiscal impacts in the short term are possible and have been considered at previous City Council meetings. This impact has the potential to occur should operating costs exceed the tax revenues derived from the project before the project is completely built out.

Also during the entitlement phase of the land use planning and/or project planning for Point Molate, the City was asked and agreed to include provisions in its Disposition and Development Agreement (“DDA”) and its Development Agreement (“DA”) to cooperate with developers in the formation of financing districts, including landscape and lighting maintenance districts, community facilities districts, benefit assessment districts, geologic hazard abatement districts, and tax-exempt financing mechanisms.

The City is obligated under the terms of its DDA and its DA to work with Winehaven Legacy, aka SunCal, to form a Community Facilities District (“CFD”) for the potential Point Molate project. However, the City is not obligated by the DDA and DA to proceed if the financing mechanism requires General Fund support.

As noted previously, one mechanism of land-secured financing is the CFD. On November 23, 2021, the City Council authorized the City to assemble a team to study the proposed project and develop the various quantitative analyses and legal documents that are necessary for the formation of a Community Facilities District.

Initially the developer’s fiscal impact analysis by EPS showed no impact on the General Fund over the expected absorption timeframe of seven years for buildout. Over a number of public meetings, this analysis was expanded to 15- and 30-year buildout scenarios. Because a police and fire station must be constructed and staffed at the early stage of project development, the speed of development and sales is critical. To prevent a negative fiscal impact, the developer first offered \$2 million per

¹ *Richmond Point Molate Fiscal and Economic Impact Analysis*, prepared for Winehaven Legacy LLC by Economic Planning Systems, Inc. (“EPS”) and submitted on June 17, 2020.

² *Peer Review of Winehaven Prepared Fiscal Impact Analysis for Proposed Point Molate Mixed-Use Development Project*, prepared for City of Richmond by BAE Urban Economics Inc. (BAE) and submitted on June 29, 2020.

year for five years to support operations. The finance team for the City further suggested using the \$22.5 million revenue from the sale of the land, as an early development security fund, that would eventually be transferred to the City's General Fund. The City Council then questioned the assumed sales prices of the units which created the possibility of a negative impact within the 30-year buildout scenario.

The City's financial team went back to the developer and requested that the City's \$22.5 million commitment as security be removed, and the developer fund the public safety operations until the costs can be fully carried by the CFD. The developer has responded favorably and will provide an operational subsidy as needed. The City's police and fire station services costs are projected at \$5.355 million, and the developer will provide \$6 million with a 12 percent contingency, which payment would escalate at the maximum CFD rate of 6 percent. The need for the \$22.5 million Security Fund from the City is eliminated. With this, the City's financial team thinks the City Council's efforts have now substantially improved the City's position.

Risk Assessment. With this summary, the City Council and technical consultants have identified policy questions and risks. The team has designed for City Council consideration a CFD that mitigates or eliminates risks.

The following risks have been identified with respect to the formation of a CFD for Point Molate:

- Risk 1: The CFD allows the development of Point Molate to proceed, and the project has an adverse fiscal impact on the City's General Fund.
- Risk 2: The CFD is formed, but bonds are never issued, and the project is de facto abandoned.
- Risk 3: The CFD issues bonds and the bonds go into default.
- Risk 4: The CFD issues bonds but the development of the project proceeds very slowly or is stalled for years.

Below is a more detailed discussion of each risk described above:

Risk 1: The CFD allows the development of Point Molate to proceed, and the project has an adverse fiscal impact on the City's General Fund.

The primary fiscal challenge associated with the development of Point Molate is the need for both a fire station and a police substation to serve the area. While the DDA specifies that a combined police and fire station must be completed at the expense of the developer prior to sale or rental of housing units in Point Molate, there is no such special provision in the DDA regarding developer funding of the operational costs.

As previously noted, during the entitlement phase of land use planning, a Fiscal Impact Study was prepared by EPS on behalf of the developer, and the Study was peer reviewed by the City's consultant, BAE. The EPS study projects a positive long-

term fiscal impact from the development, taking into consideration the full operational costs for the new fire and police stations in Point Molate. City staff has checked the assumptions on fire and police operating expenses and found them substantially accurate. The combined costs of staffing and operating the proposed combined police and fire station in Point Molate projected by the Fiscal Impact Study done in 2020 were estimated to be \$5.2 million per year. City staff has done a detailed analysis of the costs to staff and operate the proposed combined police and fire station in Point Molate. The updated staff analysis indicated an annual cost of \$5.355 million per year.

However, the staff analysis also indicated a cost of about \$1.65 million to acquire police and fire rolling stock for the new station. If leased, an annual lease payment for rolling stock is projected to be less than \$300,000 per year. This equipment will need to be replaced over time. City staff's analysis:

**Summary Public Safety Costs for the
Start-Up & Staffing of Station at Point Molate**

Annual Costs for Staffing	
Police	\$2,090,945
Fire	\$3,264,037
Total	\$5,354,982
One-Time Start-Up Costs	
Police	\$228,800
Fire	\$1,412,380
Total	\$1,641,180

Given all these considerations, the peer-reviewed fiscal impact analysis would indicate, when adjusted for SunCal's current development plans for Point Molate, an annual fiscal surplus of approximately \$7.5 million per year at full build out.

However, prior to build out, staff and the finance team have determined that the need to fund \$5 million+ per year in fire and police operating expenses for Point Molate will result in a negative fiscal impact prior to the completion of about 600 of the 1,400+ units planned for Point Molate.

Council has directed staff to re-evaluate the fiscal impact of the proposed development using lower estimated valuations for Point Molate than those provided by Integra Reality Resources in their February 7, 2022, analysis. Accordingly, City staff and the City's finance team used the lower estimated valuations provided by Strategic Economics in their September 8, 2020, study for the Point Molate Alliance (Attachment 6). Use of Strategic Economics' lower valuation assumptions and projecting a long 30-year build out period for Point Molate results in a negative fiscal impact on the City's General Fund. Use of a 7-year or 15-year build out period with Strategic Economics' valuation assumptions results in a positive fiscal impact on the City's General Fund.

Given the requirement that the CFD have no negative impact upon the City, the proposed Rate and Method of Apportionment ("RMA") proposed within the *Resolution of*

Intention of the City Council of the City of Richmond, California, to Establish the City of Richmond Community Facilities District No. 2022-1 (Point Molate) (Attachment 3) has been designed to fully mitigate the risk of negative fiscal impact on the City's General Fund, even in the 30-year build out scenario using the valuation estimates of Strategic Economics. This protective provision is described in detail in the section of this staff report regarding the Rate and Method of Apportionment.

Risk 2: The CFD is formed, but bonds are never issued, and the project is de facto abandoned.

The formation of a CFD for a particular real estate development, such as Point Molate, does not directly trigger or result in the issuance of bonds or the actual construction of the project. There are a number of examples in California where CFDs were formed, and years passed before bonds were issued and the project started development. In a few cases, the project was de facto abandoned by the developer.

In this case the City's fiscal risk would arise from the need to provide basic public safety services to the Point Molate area in a vacant land and/or open space state. Neither staff nor the financing team has any estimates of what these costs would be.

If bonds are not issued, the City would not have any of the risks associated with bond issuance, as described below under Risk 3.

With respect to the risk of project failure, staff and the financing team were presented with a number of questions regarding anticipated absorption rates of a development of Point Molate. These questions were addressed in the materials previously presented, and particularly for the Study Session held on February 24, 2022. As addressed then, an absorption study has not been prepared at this time because the absorption study must be prepared and dated not more than 90 days in advance of the issuance of bonds. "Best practices" amongst California public agencies with respect to the absorption study and appraisal for a potential CFD project is to require these documents at the time of bond issuance, as opposed to the time of CFD formation. Since two to three years may transpire between the time of CFD formation and the time when home construction can start, these studies are typically considered speculative at the time of CFD formation.

Risk 3: The CFD issues bonds and the bonds go into default.

As noted in a presentation to Council on November 23, 2021, the worst-case scenario for bond issuance is that the first series of bonds for a Point Molate CFD are issued, but the developer stops paying CFD special taxes and de facto abandons the project. Such a failure would most likely be accompanied by a bankruptcy filing by the developer.

Given the need to fully fund and construct a \$40 million+ utility stub across Interstate 580 and up Stenmark Drive before the first building permit can be issued, the project could conceivably remain non-developable until the utility stub is completed.

In this case, the City would be required to (1) pursue statutory foreclosure proceedings against taxable property within the CFD and (2) retain bankruptcy counsel in the event the developer files for bankruptcy as well. Again, as noted before, the City has absolutely **no** obligation to pay debt service on defaulted CFD bonds. The CFD bonds are solely secured by special taxes on taxable property within the CFD. The disclosure to potential bond investors will make this fact very clear.

Nevertheless, the legal costs of statutory foreclosure and bankruptcy proceedings can be significant. Bankruptcy counsel for the City would be very expensive and could easily run \$100,000+ per year. Note however that all of these expenses are reimbursable in full from future special taxes from the CFD. Note also that a Federal bankruptcy court has no authority to amend or extinguish the tax lien for the CFD. This means that it is extremely likely that the City will be repaid in full, with interest, for its expenses in pursuing foreclosure and representing itself in bankruptcy court.

The worst case in the City's municipal advisor's experience with respect to this interim adverse impact on the General Fund is with the Ritter Ranch CFD for the City of Palmdale. Foreclosure and bankruptcy court expenses over a six-year period totaled approximately \$1 million.

The City's municipal bond rating is not at risk for being downgraded because the bond rating companies (Moody's and Standard and Poor's) do not consider bonds indebtedness of a Community Facilities District to be an obligation of the City. There is no link between a CFD default and the City's bond rating.

Potential mitigation measures for this risk will be presented as part of the Statement of Goals and Policies discussion described below.

Risk 4: The CFD issues bonds but the development of the project proceeds very slowly or is stalled for years.

City staff and the City's finance team believe that the "cross-over point" where General Fund revenues from the project exceed General Fund expenses occurs when about 600 units have been constructed and certificates of occupancy have been issued in Point Molate. The question is, how does the City deal with the adverse fiscal impact of the project prior to that point?

This question goes to the core question of the anticipated absorption rate for the Point Molate project. SunCal anticipates build out over a 7-year period, measuring from the time the first building permit can be pulled. City staff and its finance team have not seen any market feasibility or absorption study prepared for SunCal. As noted above, Council members have asked appropriate questions about the likely absorption schedule for the project. However, even if such a study were publicly available now, it would remain very speculative. The time for CFD formation, design, permitting and construction of the utility stub and CFD bond issuance in all likelihood puts the first building permit at least

two years if not three years in the future. Any absorption estimates done now may not be applicable for the real estate market two or three years from now.

Procedure for Forming the Point Molate CFD. To form a CFD, the City must undertake the following actions:

- 1) Make Written Request to Establish City of Richmond Community Facilities District No. 2022-1 (Point Molate) (Attachment 1)
- 2) Adopt a Statement of Goals and Policies (Attachment 2)
- 3) Adopt a Resolution of Intention to Establish the City of Richmond Community Facilities District No. 2022-1 (Point Molate), and to Designate Three Improvement Areas therein, to Authorize the Levy of a Special Tax to Pay the Cost of Acquiring or Constructing Certain Facilities, Provide Certain Services and Pay for Certain Incidental Expenses and to Pay Debt Service on Bonded Indebtedness (Attachment 3)
- 4) Adopt a Resolution of Intention to Incur Bonded Indebtedness Within the City of Richmond Community Facilities District No. 2022-1 (Point Molate), and Each of the Three Improvement Areas Therein (Attachment 4)
- 5) Hold a public hearing no sooner than 30 days after the adoption of a Resolution of Intention to Establish the City of Richmond Community Facilities District No. 2022-1 (Point Molate)
- 6) After a public hearing, adopt a Resolution of Formation
- 7) Hold a landowner vote
- 8)

The proposed CFD formation schedule for Point Molate shows the City Council approving the Resolution of Intention to Establish the City of Richmond Community Facilities District No. 2022-1 on March 15, 2022. The public hearing would be scheduled and noticed for April 19, 2022. Adoption of the Resolution of Formation and the landowner vote would be considered subsequent to the public hearing, with both actions taking place on April 19, 2022, as well. This schedule would accommodate the formation of a CFD by April 20, 2022, as required by the City of Richmond's DDA.

Statement of Goals and Policies. State law requires that any public entity considering approval of formation of a CFD must adopt a Statement of Goals and Policies. This statement addresses the following major policies regarding CFDs within the City:

- Types of land development for which CFDs may be used.
- Types of facilities and services that CFDs may be used to fund.
- Minimum ratio of appraised or assessed value to bond amount ("value-to-lien" ratio) for any bond issuance.
- Any requirements for developer cash contributions for funding facilities.
- Method of bond sale for CFD bonds, e.g., public offering and/or private placement.
- Maximum term of any CFD bonds.
- Minimum land use entitlements required for issuance of bonds.
- Security requirements from developers for the issuance of bonds.

- Minimum requirements for CFD bond sale investor disclosure document.
- Requirements for an absorption study and an appraisal prior to the issuance of bonds.

The City Council will set all of these requirements through adoption of the Statement of Goals and Policies. The Statement of Goals and Policies is typically adopted at the same meeting that the Resolution of Intention to establish a District is adopted. Again, as noted above, the constraints in the Statement of Goals and Policies are not covered by either the Resolution of Intention or Resolution of Formation in the CFD formation process.

Discussion of proposed draft Statement of Goals and Policies. Particular attention has been given to including language in the Statement of Goals and Policies that makes the Statement robust and protective of the City's interests.

Section V - Security. This section mandates a 5-to-1 value to lien ratio (ratio between appraised value and bond amount). In addition, it also requires that the developer post a letter of credit payable to the City equal to two years of debt service on their undeveloped property at the time of bond issuance. This has the effect of severely penalizing the developer and thereby discouraging the developer from making delinquent tax payments or filing bankruptcy.

Section VI - Disclosure Requirements. This section, amongst other things, requires the developer to disclose all of their history with other CFDs, including tax delinquencies and bankruptcies. This has the effect of providing transparency to both the City and bond investors.

Section VII - Other Requirements for Land Developers. This section, amongst other things, provides that the City can require funding by developer cash or from bond proceeds of a \$100,000 reserve to fund the City costs in the event of developer tax delinquencies or a bankruptcy. This has the effect of providing cash to the City to fund pursuit of remedies in the event of tax delinquencies or bankruptcy by the developer.

Section XI - Privately Placed CFD Debt. This section provides that if debt for a CFD is privately placed with investors who absolve the City of any responsibility for disclosure, that the value to lien ratio may be as low as 2.5-to-1, and the letter of credit requirement can be waived. This has the effect of ensuring that the City has no liability to a bond investor and makes the issuance of bonds without risk to the City.

Resolution of Intent. The Resolution of Intent to form a CFD provides preliminary approval of the following documents or specifics of the CFD:

- Rate and Method of Apportionment ("RMA")
- Authorized Facilities

- Authorized Services
- Boundaries of the CFD
- Boundaries of the Improvement Areas
- Maximum Authorized Bond Amount

Rate and Method of Apportionment. The Resolution of Intent gives preliminary approval to the RMAs for three separate Improvement Areas within the proposed Point Molate project. Separate RMAs for each Improvement Area allows the special tax rates to be specifically set for the development likely to occur in each Improvement Area.

There are two types of special taxes described within the RMA: Special Tax A to fund *facilities* for Point Molate, including the police and fire station, and Special Tax B to fund *services*. Special Tax A can be increased annually at a rate not to exceed 2 percent per year. Special Tax B can be increased at a rate equal to the Consumer Price Index, but not less than 2 percent per year and not greater than 6 percent per year. Both of these special taxes can be levied for a period of 60 years after Fiscal Year 2021-2022.

Full mitigation of negative fiscal impact in the RMA. In response to comments and questions by the City Council at the study session of February 24, 2022, the following changes to the RMA were made with respect to fiscal impact on the General Fund. The RMA provides for a special tax on undeveloped property owned by SunCal or other developers to fully mitigate the potential for negative fiscal impact should that occur prior to the full build out of the project. As noted earlier, the maximum negative fiscal impact determined by the need to fully staff the police and fire facility for the first "move-ins" for the project is \$5.355 million per year; this cost is estimated to be \$5.655 million per year if the City leased rather than purchased rolling stock. The maximum special tax for *services* ("Special Tax B"), including police and fire, on undeveloped property is \$6.3 million. This total special tax potential will inflate at the Consumer Price Index at a rate not less than 2 percent but not greater than 6 percent for the life of the CFD.

The fiscal deficit will be determined annually by a consultant retained by the City, using actual sales prices for residential units and other developed property within the CFD, and using the overall fiscal impact model recommended by BAE, the City's own fiscal consultant. This tax levy on undeveloped property to mitigate fiscal impact can be repaid from future special taxes levied on developed property from any surplus special taxes for the Special Tax A (facilities tax) after payment of debt service. This means that reimbursement to the developers for any negative fiscal impact tax levies will come from the special taxes intended to pay debt service on bonds issued to fund infrastructure costs for the Point Molate project, not the Special Tax B used to fund services for both Point Molate and City residents.

Consequently, a slow build out period is not a fiscal impact risk to the City. It was originally presented at the February 24, 2022, workshop to utilize the \$22.5 million purchase revenue towards a "Security Fund" against negative fiscal impact. In

response to concerns expressed by members of the Council, the proposed undeveloped property tax in the RMA mitigates the need for the "Security Fund" against negative fiscal impact; it is not required. The City's finance team estimates that using the Strategic Economics valuation estimates and a 30-year build-out, the total Special Tax B levy on SunCal or other developers is over \$60 million. If so, only \$15 million would be reimbursed from surplus special taxes after debt service from Special Tax A.

This provision gives the City the maximum authority allowed under the State statute to mitigate adverse fiscal impact from the Point Molate project on the City's General Fund. The only limit is the 6 percent annual cap on increases to Special Tax B for services in the State statute. If the City's operating expenses at a rate not only in excess of 6 percent for a multi-year period, and the City's revenues also increased at significantly lower rate over the same multi-year period, a negative fiscal impact is possible.

Downward Adjustment of Special Tax A. The RMA provides that Special Tax A, the facilities tax, can be adjusted downward to keep the combined tax burden on property within the 2 percent of assessed value limit stated under the DDA. This potential downward adjustment takes place at the time of issuance of each series of bonds are any of the three Improvement Areas. The adjustment is based on an estimate of the actual sales prices estimated for new construction within each Improvement Area securing such bond issues. Special Tax A cannot be adjusted upwards under this process, regardless of what the estimated sales prices are.

Note that Special Tax B, the services tax, cannot be adjusted downwards.

Authorized Facilities. All facilities required by the development are authorized.

Authorized Services. All services possible under State law are authorized.

Boundaries of the CFD and the Improvement Areas. The boundaries of the CFD and the Improvement Areas are consistent with the DDA, and do not include areas designated for open space.

Resolution of Intent to Incur Bonded Indebtedness. This resolution sets the maximum Authorized Bond Amount for the CFD. The authorized bond amount is capped at a maximum of \$292 million. This figure is considerably larger than the \$100 million estimated allocation for facilities in the DDA. *This resolution does not obligate the City to issue bonds for the Point Molate CFD.* To do so, the City Council would be asked to adopt another resolution in the future: a Resolution of Necessity to Incur Bonded Indebtedness.

The authorized bond amount is capped at a maximum of \$292 million for the following reasons:

- Regardless of what the authorized bond amount is, the maximum amount of debt that can be borrowed is controlled by the maximum special taxes that can be levied through Special Tax A (facilities), as capped in the RMA. Once adopted, Special Tax A may only be increased by a maximum of 2 percent per year, regardless of any increases in the future costs of the construction of Authorized Facilities.
- Authorized bond amounts need to provide for funding of debt service reserve funds, capitalized interest, and costs of issuance, in addition to facilities costs.
- In the event that there are extra facilities costs that cannot be supported by Special Tax A revenue, those costs must be funded by the developer. Note that the Authorized Facilities would allow this extra authorization to be used to fund any improvements required for adaptation to sea level rise.
- The extra bond authorization amount in no way reduces the availability of Special Tax B (services) revenues to mitigate any negative fiscal impact.

DOCUMENTS ATTACHED:

- Attachment 1 - Written Request to Establish City of Richmond Community Facilities District No. 2022-1 (Point Molate)
- Attachment 2 - Resolution of the City Council of the City of Richmond, California, Adopting Local Goals and Policies Relating to Community Facilities Districts
- Attachment 3 - Resolution of Intention of the City Council of the City of Richmond, California, to Establish the City of Richmond Community Facilities District No. 2022-1 (Point Molate), and to Designate Three Improvement Areas therein, to Authorize the Levy of a Special Tax to Pay the Cost of Acquiring or Constructing Certain Facilities, Provide Certain Services and Pay for Certain Incidental Expenses and to Pay Debt Service on Bonded Indebtedness
- Attachment 4 - Resolution of the City Council of the City of Richmond, California, of Intention to Incur Bonded Indebtedness Within the City of Richmond Community Facilities District No. 2022-1 (Point Molate), and Each of the Three Improvement Areas Therein
- Attachment 5 - Revised Fiscal Impact Estimates for Point Molate using the Point Molate Alliance's Strategic Economics study
- Attachment 6 - Strategic Economics study provided to the Point Molate Alliance in 2020