

SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY

AGENDA ITEM #: **06**

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY



## BOARDS OF DIRECTORS

SEPTEMBER 10, 2020

FILE NUMBER: 2020F-020

### DEVELOPMENT IMPACT FEES: MEMBER AGENCY AUDITS AND MITIGATION FEE ACT

#### RECOMMENDATION

##### **Foothill/Eastern Transportation Corridor Agency Recommendation:**

1. Receive and file the member agency audits for the County of Orange and the Cities of Anaheim, Irvine, and San Clemente for the period of January 1, 2019 through December 31, 2019.
2. Direct staff to include the County of Orange and the Cities of Dana Point, Irvine, Lake Forest, Mission Viejo, Orange, and Yorba Linda in the next audit cycle covering the period of January 1, 2020 through December 31, 2020.
3. Receive and file the Mitigation Fee Act information regarding collection, beginning and ending balances and expenditure of development impact fees during Fiscal Year 2020 (July 1, 2019 – June 30, 2020).

#### SUMMARY

Pursuant to the second Amended and Restated Joint Exercise of Powers Agreement creating the Foothill/Eastern Transportation Corridor Agency (F/ETCA), the Board may authorize an audit of a member agency to determine whether it has accurately collected and remitted development impact fees to the F/ETCA. The audits are performed by or at the direction of the F/ETCA's Internal Audit Department.

During this audit period, exceptions were noted in two of the four member agency audits performed. The audits identified seven underpayments totaling \$45,154 due to using the wrong rate and wrong property information in calculating fees due. The F/ETCA is working with the member agencies to collect the outstanding amounts due.

Pursuant to the Mitigation Fee Act, California Government Code section 66006(b), the F/ETCA is required to review certain information annually regarding development impact fees, including the type and amount of fee imposed, beginning and ending balance of fees on deposit, the amount of fees collected, interest earned and expenditures during the fiscal year. The information required by the Mitigation Fee Act is provided in this report.

#### BUDGET

N/A

## COMMITTEE DISCUSSION

This item was presented to the Joint Finance and Investment Committee on August 26, 2020. Staff provided an overview of the Agency's development impact fee program and the results of the member agency audits. The Committee unanimously voted to recommend approval of this item at the September 10, 2020 Joint Boards of Directors Meeting.

## BACKGROUND

Section 66484.3 of the California Government Code authorizes the F/ETCA, through its member agencies, to require by ordinance the payment of a development impact fee (DIF) as a condition of approval of a final map or as a condition of issuing a building permit, for the purpose of defraying the cost of constructing the Foothill/Eastern Transportation Corridors.

The F/ETCA Major Thoroughfare and Bridge Fee Program (Development Impact Fee Program) was established by the County of Orange in 1985 and adopted by the member agencies through the Joint Exercise of Powers Agreement. F/ETCA was able to construct the roads in advance of collection of the DIFs by issuing toll revenue bonds that will be repaid with the tolls and DIFs collected. Therefore, the fees are to be used to repay the indebtedness incurred to construct the Foothill/Eastern Transportation Corridors that have already been built, as well as to pay the cost of future anticipated improvements and ongoing planning and environmental requirements.

The program collects fees on new residential dwellings, or new non-residential square footage in areas identified as the area of benefit surrounding the corridors. If this is a replacement property for a property that had been assessed a fee, a credit is applied so that the fee is only paid once. Fees are collected by member agencies when a building permit is issued within the area of benefit. Fees are assessed on a per unit basis for single family and multi-family dwellings and on a per square foot basis for non-residential buildings. In 1997, the F/ETCA Board of Directors adopted a set rate of increase for the fees. Each July 1, rates for the F/ETCA increase by 2.206 percent.

Pursuant to the second Amended and Restated Joint Exercise of Powers Agreement creating the F/ETCA, the Board may authorize an audit of a member agency to determine whether it has accurately collected and remitted development impact fees to the F/ETCA. For agencies selected for audit, typically all building permits are reviewed for the period audited. The member agencies are selected for audit based on volume of fees, rotation of the audit cycle and results of the previous year's audits. Due to the volume of building permits processed, the County of Orange and the City of Irvine are audited each year, with the other member agencies audited on a rotational cycle. The audits are performed by or at the direction of the F/ETCA's Internal Audit Department.

Four member agencies (the County of Orange and the Cities of Anaheim, Irvine, and San Clemente) were selected for audit for the period of January 1, 2019 through December 31, 2019.

## DISCUSSION

### Member Agency Audits

#### County of Orange

1. All permits issued for the audit period were tested. A total of 226 permits generating \$3,345,513 in fees due to the F/ETCA, or paid in fee credits, were reviewed. The audit revealed one underpayment of \$701 due to using the incorrect rate and number of units in calculating fees due.
2. All tested permits were traced to remittances to F/ETCA with one exception noted above.

3. Staff recommends including the County of Orange in the next cycle of audits due to the anticipated volume of permits.

#### City of Irvine

1. All permits issued for the audit period were tested. A total of 1095 permits generating \$11,373,391 in fees due to the F/ETCA were reviewed. No discrepancies noted.
2. All tested permits were traced to remittances to F/ETCA with no exceptions noted.
3. Staff recommends including the City of Irvine in the next cycle of audits due to the anticipated volume of permits.

#### City of Anaheim

1. All permits issued for the audit period were tested. A total of 57 permits generating \$158,716 in fees due to the F/ETCA were reviewed. The audit revealed six underpayments totaling \$44,453, the majority of which was due to not using the final property information in calculating fees due.
2. All tested permits were traced to remittances to F/ETCA with six exceptions noted above.
3. Staff recommends excluding the City of Anaheim from the next cycle of audits, and we will follow up with City staff for additional training as needed.

#### City of San Clemente

1. All permits issued for the audit period were tested. A total of 9 permits generating \$30,342 in fees due to the F/ETCA were reviewed. No discrepancies noted.
2. All tested permits were traced to remittances to F/ETCA with no exceptions noted.
3. Staff recommends excluding the City of San Clemente from the next cycle of audits.

#### **Mitigation Fee Act Information**

Pursuant to the Mitigation Fee Act, California Government Code section 66006(b), the Agency is required to review the following information annually regarding development impact fees: a brief description of the type and amount of the fee imposed; the beginning and ending balance of fees on deposit with the Agency; the amount of fees collected and interest earned during the fiscal year; an identification of the public improvement(s) on which fees were expended, the amount of fees expended on such improvement(s), and the total percentage of the cost of the improvement(s) funded with such fees. As required by section 66006(b), that information, which is contained in this staff report, was made available to the public 15 days in advance of the September 10, 2020 Board meeting. The information was posted on the Agency's website and physically in front of the Agency premises.

#### Information Regarding Development Impact Fees for the Fiscal Year Ended June 30, 2020

Development impact fees are collected for the purpose of planning, designing, financing and constructing the Foothill/Eastern Transportation Corridors (State Routes 133, 241 and 261), including repayment of debt issued to finance construction of the roads, as authorized by section 66484.3 of the Government Code and the provisions of the Major Thoroughfare and Bridge Fee Program for San Joaquin Hills Transportation Corridor and Foothill/Eastern Transportation Corridors (the "Fee Program"). The development impact fee rates during Fiscal Year 2020 were as follows:

Foothill/Eastern Transportation Corridor Agency

## Zone A:

Single Family	\$5,925/unit
Multi-Family	\$3,460/unit
Non-Residential	\$8.24/sq. ft.

## Zone B:

Single Family	\$4,217/unit
Multi-Family	\$2,459/unit
Non-Residential	\$4.77/sq. ft.

The following is an accounting of development impact fees during Fiscal Year 2020:

Balance of fees on deposit as of 7/1/19:	\$127,778,515
Fees collected 7/1/19 – 6/30/20:	\$12,947,216
Interest earned on fees 7/1/19 – 6/30/20:	\$2,862,892
Amount of fees expended on Foothill and Eastern Corridors 7/1/19 – 6/30/20:	\$99,613,037*
Percentage of 7/1/19 – 6/30/20 total corridor capital expenditures, including debt service, paid with fees:	48.3%
Balance of fees on deposit as of 6/30/20:	\$43,975,587

\*Includes \$75 million that was applied to pay principal of and interest on the Agency's bonds in connection with its 2019 refunding.

Consistent with the language in the statute, as of the end of Fiscal Year 2020 sufficient funds had not been collected to complete financing of the Foothill/Eastern Transportation Corridors (State Routes 133, 241 and 261).

During Fiscal Year 2020, there were no loans or transfers made from the account in which development impact fees were deposited for any project other than the Foothill/Eastern Transportation Corridors, and no refunds made pursuant to Government Code section 66001(e).

Report Written By: Greg Walker, Manager, Internal Audit

**REVIEWED BY:**

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**APPROVED BY:**

/s/ Samuel Johnson  
Samuel Johnson, Interim Chief Executive Officer

Attachment: None