

SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY

AGENDA ITEM #:



BOARDS OF DIRECTORS

October 13, 2022

FOOTHILL/EASTERN DEVELOPMENT IMPACT FEES: AGENCY AUDITS AND MITIGATION FEE ACT INFORMATION

RECOMMENDATION

Foothill/Eastern Transportation Corridor Agency Recommendation:

1. Receive and file the Foothill/Eastern Transportation Corridor Agency audits for the County of Orange and the Cities of Irvine, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa Ana, and Tustin for the period of January 1, 2021 through December 31, 2021.
2. Direct staff to include the County of Orange and the Cities of Anaheim, Irvine, and Mission Viejo in the next audit cycle covering the period of January 1, 2022 through December 31, 2022.
3. Receive and file the Mitigation Fee Act information regarding development impact fees during Fiscal Year 2022 (July 1, 2021 – June 30, 2022).

SUMMARY

Pursuant to the second Amended and Restated Joint Exercise of Powers Agreement creating the Foothill/Eastern Transportation Corridor Agency (F/ETCA or Agency), the Board may authorize an audit of an existing or former member agency to determine whether it has accurately collected and remitted development impact fees (DIFs) 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, seven exceptions were noted in the permits that were reviewed. These include three underpayments totaling \$4,100 due to not charging fees for added enclosed non-residential square footage, one underpayment of \$159 due to not remitting the correct amount due to F/ETCA, and three overpayments totaling \$8,649 due to using the wrong rate in calculating fees due.

Pursuant to the Mitigation Fee Act, California Government Code section 66006(b), the Agency is required to review certain information annually regarding DIFs, including the 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.

COMMITTEE DISCUSSION

This item was presented to the Joint Finance and Investment Committee on September 28, 2022. Staff provided an overview of the Agency's development fee program, updated the Committee on the results of this year's development fee audits, and discussed audit candidates for next year's audits. Staff also presented annual reporting as required by the Mitigation Fee Act, California Government Code, Section

66006(b). The Committee unanimously voted to recommend approval of this item at a future Joint Boards of Directors Meeting as a consent calendar item.

BUDGET

N/A

BACKGROUND

Section 66484.3 of the California Government Code authorizes the F/ETCA, through its existing and former member agencies, to require by ordinance the payment of a 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 (State Routes (SR) 133, 241 and 261).

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 existing and former member agencies through the Joint Exercise of Powers Agreement. F/ETCA was able to construct the SR 133, 241 and 261 Toll Roads by issuing toll revenue bonds that are being repaid with tolls and DIFs. The DIFs are used to repay the toll revenue bonds for the roads already built, as well as to pay the cost of future anticipated improvements and ongoing planning and environmental requirements.

The program collects one-time fees on new residential dwellings, or new non-residential square footage in areas identified as the area of benefit surrounding the corridors. Fees are collected by existing or former 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 annual fee rate increase of 2.206%. This set rate provides financial certainties to developers versus utilizing other metrics such as the cost of inflation that could result in substantial changes year over year.

Pursuant to the second Amended and Restated Joint Exercise of Powers Agreement creating the F/ETCA, the Board may authorize an audit of an existing or former member agency to determine whether it has accurately collected and remitted DIFs to the F/ETCA. For agencies selected for audit, typically all building permits are reviewed for the period audited. 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 agencies audited on a rotational cycle. The audits are performed by or at the direction of the F/ETCA's Internal Audit department.

Seven agencies (County of Orange and the Cities of Irvine, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa Ana, and Tustin) were selected for audit for the period of January 1, 2021 through December 31, 2021.

DISCUSSION

I. AGENCY AUDITS

As approved by the Board for calendar year 2021, the following information reflects the audits conducted for the applicable agencies and recommendations as to inclusion in the next audit period.

County of Orange

1. All permits issued for the audit period were tested. A total of 89 permits generating \$700,453 in fees collected and remitted to the Agency, or paid in fee credits, were reviewed. No discrepancies noted.
2. All tested permits were traced to remittances to F/ETCA with no exceptions noted.
3. It is recommended that the County of Orange be included in the next cycle of audits due to the anticipated volume.

City of Irvine

1. All permits issued for the audit period were tested. A total of 1,322 permits generating \$12,984,896 in fees collected and remitted to the Agency were reviewed. The audit revealed one underpayment totaling \$2,533, which was due to not charging fees for added enclosed non-residential square footage. The audit also revealed one overpayment totaling \$1,448 which was due to using the incorrect rates in calculating fees due.
2. All tested permits were traced to remittances to F/ETCA with the two exceptions noted above.
3. It is recommended that the City of Irvine be included in the next cycle of audits due to the anticipated volume.

City of Rancho Santa Margarita

1. All permits issued for the audit period were tested. A total of seven permits generating \$30,043 in fees collected and remitted to the Agency were reviewed. The audit revealed one underpayment of \$913 which was due to not charging fees for added enclosed non-residential square footage. Also, there were two overpayments totaling \$7,201 which was due to using the incorrect rates in calculating fees due.
2. All tested permits were traced to remittances to F/ETCA with three exceptions noted above.
3. It is recommended that the City of Rancho Santa Margarita be excluded from the next cycle of audits.

City of San Clemente

1. All permits issued for the audit period were tested. A total of 29 permits generating \$18,984 in fees collected and remitted to the Agency were reviewed. The audit revealed one underpayment totaling \$159 which was due to remitting the incorrect amount due to F/ETCA.
2. All tested permits were traced to remittances to F/ETCA with one exception noted above.
3. It is recommended that the City of San Clemente be excluded from the next cycle of audits.

City of San Juan Capistrano

1. All permits issued for the audit period were tested. A total of three permits generating no fees collected and remitted to the Agency were reviewed.
2. All tested permits were traced to remittances to F/ETCA with no exceptions noted.

3. It is recommended that the City of San Juan Capistrano be excluded from the next cycle of audits.

City of Santa Ana

1. All permits issued for the audit period were tested. A total of five permits generating no fees collected and remitted to the Agency were reviewed. The audit revealed one underpayment totaling \$654 which was due to not charging fees for added enclosed non-residential square footage.
2. All tested permits were traced to remittances to F/ETCA with one exception noted above.
3. It is recommended that the City of Santa Ana be excluded from the next cycle of audits.

City of Tustin

1. All permits issued for the audit period were tested. A total of 56 permits generating \$745,974 in fees collected and remitted to the Agency were reviewed. No discrepancies noted.
2. All tested permits were traced to remittances to F/ETCA with no exceptions noted.
3. It is recommended that the City of Tustin be excluded from the next cycle of audits.

II. 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 DIFs: 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 October 13, 2022 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, 2022

DIFs are collected for the purpose of planning, designing, financing, and constructing the SR 133, 241 and 261 Toll Roads, and their improvements, 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 DIF rates during Fiscal Year 2022 were as follows:

Foothill/Eastern Transportation Corridor Agency

Zone A:

Single Family	\$6,190/unit
Multi-Family	\$3,614/unit
Non-Residential	\$8.61/sq. ft.

Zone B:

Single Family	\$4,405/unit
Multi-Family	\$2,568/unit
Non-Residential	\$4.99/sq. ft.

The following is an accounting of DIFs during Fiscal Year 2022:

Balance of fees on deposit as of 7/1/21:	\$58,218,332
Fees collected 7/1/21 – 6/30/22:	\$17,004,252
Interest earned on fees 7/1/21 – 6/30/22:	\$265,631
Amount of fees expended on Foothill and Eastern Corridors 7/1/21 – 6/30/22:	\$9,995,860
Percentage of 7/1/21 – 6/30/22 total corridor capital expenditures, including debt service, paid with fees:	9%
Balance of fees on deposit as of 6/30/22:	\$65,492,355

Consistent with the language in the statute, as of the end of Fiscal Year 2022 sufficient funds had not been collected to complete financing of the Foothill/Eastern Transportation Corridors (SR 133, 241 and 261).

During Fiscal Year 2022, there were no loans or transfers made from the account in which DIFs 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:

Amy Potter, Chief Financial Officer
(949) 754-3498

APPROVED BY:

Valarie McFall, Acting Chief Executive Officer