

Staff Report

Agenda Item

October 12, 2023 | 9:30 a.m.

San Joaquin Hills Transportation Corridor Agency

Foothill/Eastern Transportation Corridor Agency

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 Anaheim, Irvine, and Mission Viejo for the period of January 1, 2022 through December 31, 2022.
2. Direct staff to include the County of Orange and the Cities of Anaheim, Dana Point, Irvine, Lake Forest, Orange, and Yorba Linda in the next audit cycle covering the period of January 1, 2023 through December 31, 2023.
3. Receive and file the Mitigation Fee Act information regarding development impact fees during Fiscal Year 2023 (July 1, 2022 – June 30, 2023).

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, five exceptions were noted in the permits that were reviewed. These include two underpayments totaling \$814,394 due to not charging fees for added enclosed non-residential square footage, one underpayment of \$132 due to using the wrong rate to calculate fees due, one underpayment of \$4,000 that was due to a calculation error, and one underpayment of \$1,093 due to not collecting for an additional residential unit. The F/ETCA coordinated with the agencies to collect four of the five outstanding amounts due. Staff is continuing to coordinate with one agency to collect the remaining \$132 underpayment.

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

Staff conducts annual audits to assess the collection of development impact fees by existing and former member agencies on behalf of TCA. Staff updated the Committee on the results of this year's development fee audits, discussed audit candidates for next year's audits, and presented reporting required by the Mitigation Fee Act, California Government Code, Section 66006(b). Items discussed

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included audit candidate selection, the audit process, audit frequency, development fees for accessory development units and affordable housing, and projecting development fee revenue.

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 the F/ETCA's Internal Audit department.

Four agencies, including the County of Orange and the Cities of Anaheim, Irvine, and Mission Viejo were selected for audit for the period of January 1, 2022 through December 31, 2022.

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Discussion

I. Agency Audits

As approved by the Board for calendar year 2022, 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 310 permits generating \$2,451,816 in fees collected and remitted to the Agency, or paid in fee credits, were reviewed. No discrepancies were 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 737 permits generating \$6,342,662 in fees collected and remitted to the Agency were reviewed. The audit revealed two underpayments totaling \$5,093, which were due to a calculation error and not collecting for an additional residential unit.
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 Mission Viejo

1. All permits issued for the audit period were tested. A total of 17 permits which should have generated \$205,659 in fees collected and remitted to the Agency, or paid through demolition credits, were reviewed. The audit revealed one underpayment of \$2,515 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 the exception noted above.
3. It is recommended that the City of Mission Viejo be excluded from the next cycle of audits.

City of Anaheim

1. All permits issued for the audit period were tested. A total of 9 permits, which should have generated \$830,155 in fees collected and remitted to the Agency, were reviewed. The audit revealed two underpayments totaling \$812,011 which were due to using the incorrect rate and not collecting for additional non-residential square footage. The F/ETCA coordinated with the city to

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collect the \$811,879 underpayment, and continues to work with them to collect the remaining \$132 underpayment.

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 Anaheim be included for 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 September 14, 2023 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, 2023

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 2023 were as follows:

Foothill/Eastern Transportation Corridor Agency

Zone A:

Single Family	\$6,327/unit
Multi-Family	\$3,694/unit
Non-Residential	\$8.80/sq. ft.

Zone B:

Single Family	\$4,502/unit
Multi-Family	\$2,625/unit
Non-Residential	\$5.10/sq. ft.

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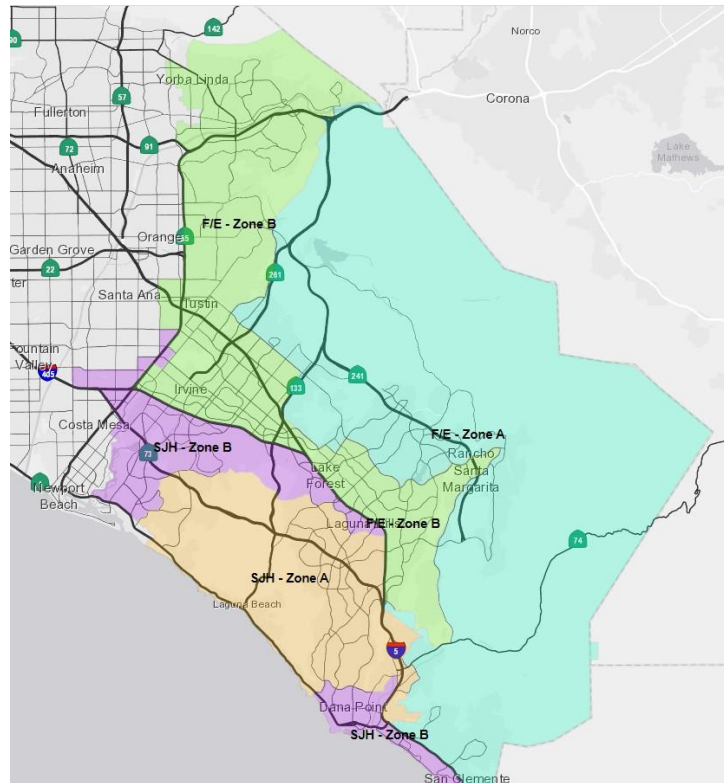
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The following is an accounting of DIFs during Fiscal Year 2023:

Balance of fees on deposit as of 7/1/22:	\$65,492,356
Fees collected 7/1/22 – 6/30/23:	\$9,285,075
Interest earned on fees 7/1/22 – 6/30/23:	\$1,895,026
Amount of fees expended on Foothill/Eastern Corridor 7/1/22 – 6/30/23:	\$7,996,854
Percentage of 7/1/22 – 6/30/23 total corridor capital expenditures, including debt service, paid with fees:	8%
Balance of fees on deposit as of 6/30/23:	\$68,675,603

Consistent with the language in the statute, as of the end of Fiscal Year 2023 sufficient funds had not been collected to complete financing of the Foothill/Eastern Transportation Corridors (SR 133, 241 and 261).

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During Fiscal Year 2023, 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).

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