

# Staff Report

## Agenda Item #8

October 10, 2024 | 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 Irvine, Anaheim, Dana Point, Lake Forest, Orange, and Yorba Linda for the period of January 1, 2023 through December 31, 2023.
2. Direct staff to include the County of Orange and the Cities of Irvine, Anaheim, Mission Viejo, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa Ana, and Tustin in the next audit cycle covering the period of January 1, 2024 through December 31, 2024.
3. Receive and file the Mitigation Fee Act information regarding development impact fees during Fiscal Year 2024 (July 1, 2023 – June 30, 2024).

### Summary

Pursuant to the Second Amended and Restated Joint Exercise of Powers Agreement creating the Foothill/Eastern Transportation Corridor Agency (F/ETCA), the Board of Directors (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, 11 exceptions were noted in the permits that were reviewed. These include five underpayments totaling \$5,918 using the wrong rate to calculate fees, four underpayments of \$4,399 due to not charging fees that were due, one overpayment of \$702 due to collecting fees when fees were not due, and one overpayment of \$5,082 due to using the wrong rate to calculate fees. The F/ETCA is coordinating with the agencies to collect the outstanding amounts due for the underpayments and has refunded the overpayments to the owners.

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

On September 25, 2024, staff presented the Joint Finance and Investment Committee (Committee) with 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). Staff also discussed the additional audits completed at the request of the Committee, with the result not showing any material discrepancies and as such staff recommended continuing to conduct cyclical audits.

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The Committee discussed audit candidate selection, the frequency and nature of discrepancies noted in the audits, and the scope of the development impact fee audits.

The Committee unanimously recommended approval of the 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 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 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, including the County of Orange and the Cities of Anaheim, Dana Point, Irvine, Lake Forest, Orange, and Yorba Linda were selected for audit for the period of January 1, 2023 through December 31, 2023.

### **Discussion**

#### **I. Agency Audits**

As approved by the Board for calendar year 2023, the following information reflects the audits conducted for the applicable agencies and recommendations as to inclusion in the next audit period.

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### County of Orange

1. All permits issued for the audit period were tested. A total of 336 permits generating \$2,560,190 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 510 permits which generated \$4,552,863 in fees collected and remitted to the Agency were reviewed. The audit revealed one overpayment totaling \$5,082, which was due to using an incorrect rate for calculating fees for an accessory dwelling unit (ADU).
2. All tested permits were traced to remittances to F/ETCA with the one exception 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 Anaheim

1. All permits issued for the audit period were tested. A total of 52 permits which generated \$695,504 in fees collected and remitted to the Agency were reviewed. The audit revealed five underpayments totaling \$8,862 which were due to using the wrong rate for two permits and not collecting fees for three permits. The audit also revealed one overpayment of \$702 for charging fees when fees were not due.
2. All tested permits were traced to remittances to F/ETCA with the six exceptions noted above.
3. It is recommended that the City of Anaheim be included in the next cycle of audits.

### City of Dana Point

1. All permits issued for the audit period were tested. A total of 2 permits which generated \$1,104 in fees remitted to the Agency were reviewed. The audit revealed one underpayment of \$347 which was due to using an incorrect rate for calculating fees for an accessory dwelling unit (ADU).
2. All tested permits were traced to remittances to F/ETCA with the one exception noted above.
3. It is recommended that the City of Dana Point be excluded from the next cycle of audits.

### City of Lake Forest

1. All permits issued for the audit period were tested. A total of 209 permits which generated \$1,493,450 in fees remitted to the Agency were reviewed. No discrepancies were noted.
2. All tested permits were traced to remittances to F/ETCA with no exceptions noted.

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3. It is recommended that the City of Lake Forest be excluded from the next cycle of audits.

### City of Orange

1. All permits issued for the audit period were tested. A total of 16 permits, which generated \$28,277 in fees collected and remitted to the Agency, were reviewed. The audit revealed three underpayments totaling \$1,108, one of which was due to not collecting fees on an accessory dwelling unit (ADU) and two that were due to using the wrong rate in calculating fees due.
2. All tested permits were traced to remittances to F/ETCA with the three exceptions noted above.
3. It is recommended that the City of Orange be excluded from the next cycle of audits.

### City of Yorba Linda

1. All permits issued for the audit period were tested. A total of 21 permits, which generated \$102,879 in fees collected and remitted to the Agency, 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 City of Yorba Linda be excluded for the next cycle of audits.

## II. **Additional Agency Audits**

At the request of the Joint Finance and Investment Committee in September 2023, additional audits were performed on a subset of agencies not included in the normal audit cycle for 2023. The Joint Finance and Investment Committee was interested in determining whether full audits of each agency should be completed annually by seeing if material discrepancies might be found in off-audit cycle years. For each off-audit cycle agency, selected months were sampled for audit for calendar year 2023. The audit results are presented below.

### City of San Clemente

1. One permit correctly identified as generating no fees was reviewed. No discrepancies were noted.

### City of San Juan Capistrano

1. A total of three permits generating \$886 in fees collected and remitted to the Agency were reviewed. No discrepancies were noted.
2. All tested permits were traced to remittances to F/ETCA with no exceptions noted.

### City of Santa Ana

1. A total of 39 permits which generated \$1,091,219 in fees collected and remitted to the Agency were reviewed. No discrepancies were noted in fee collection. One payment that was collected when permits were issued was not remitted timely but was ultimately remitted to the Agency.
2. All tested permits were traced to remittances to F/ETCA with one exception noted above.

### City of Tustin

1. A total of 57 permits which generated \$161,447 in fees remitted to the Agency were reviewed. No discrepancies were noted.

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2. All tested permits were traced to remittances to F/ETCA with no exceptions noted. Given there were no material discrepancies found through sample selections of these agencies not in the current year full audit cycle, it appears that continuing to audit agencies on a cycle is an appropriate approach going forward (unless DIF volume or errors noted dictate more frequent audits).

### III. 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 10, 2024 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, 2024**

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 2024 were as follows:

#### Foothill/Eastern Transportation Corridor Agency

##### Zone A:

Single Family	\$6,467/unit
Multi-Family	\$3,775/unit
Non-Residential	\$8.99/sq. ft.

##### Zone B:

Single Family	\$4,601/unit
Multi-Family	\$2,683/unit
Non-Residential	\$5.21/sq. ft.

The following is an accounting of DIFs during Fiscal Year 2024:

Balance of fees on deposit as of 7/1/23:	\$68,675,603
Fees collected 7/1/23 – 6/30/24:	\$9,943,990
Interest earned on fees 7/1/23 – 6/30/24:	\$3,834,436
Amount of fees expended on Foothill/Eastern Corridor 7/1/23 – 6/30/24:	\$4,341,629

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Percentage of 7/1/23 – 6/30/24 total corridor capital expenditures, including debt service, paid with fees:	4%
Balance of fees on deposit as of 6/30/24:	\$78,112,400

Consistent with the language in the statute, as of the end of Fiscal Year 2024 sufficient funds had not been collected to complete financing of the Foothill/Eastern Transportation Corridors (SR 133, 241 and 261).

During Fiscal Year 2024, 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

/s/ Howard Mallen

Howard Mallen, Chief Financial Officer  
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### Approved By

/s/ Ryan Chamberlain

Ryan Chamberlain, Chief Executive Officer

Attachment: None