

SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY

AGENDA ITEM #: **12**

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY



Transportation Corridor Agencies™

## BOARDS OF DIRECTORS

OCTOBER 14, 2021

FILE NUMBER: 2021F-021

### 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 Dana Point, Irvine, Lake Forest, Mission Viejo, Orange, and Yorba Linda for the period of January 1, 2020 through December 31, 2020.
2. Direct staff to include the County of Orange and the Cities Irvine, San Clemente, San Juan Capistrano, Santa Ana, Tustin, and Rancho Santa Margarita in the next audit cycle covering the period of January 1, 2021 through December 31, 2021.
3. Receive and file the Mitigation Fee Act information regarding development impact fees during Fiscal Year 2021 (July 1, 2020 – June 30, 2021).
4. Adopt Resolution No. F2021-05, Resolution of the Board of Directors of the Foothill/Eastern Transportation Corridor Agency Making Certain Findings Relating to the Major Thoroughfare and Bridge Fee Program.

#### 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 a 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, three exceptions were noted in the 1,800 permits that were reviewed. These include three underpayments totaling \$3,384 due to not charging fees for an Accessory Dwelling Unit and/or not forwarding fees collected. The F/ETCA has worked with the member agencies to collect the outstanding amounts due for the underpayments.

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 REVIEW

This item was presented to the Joint Finance and Investment Committee on September 22, 2021. Staff provided an overview of the Agency's DIF 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 reporting as required by the Mitigation Fee Act, California Government Code, Section 66006(b) and draft Board resolutions required every five years by the Mitigation Fee Act. The Committee unanimously voted to recommend approval of this item at the October 14, 2021 Joint Boards of Directors Meeting.

## BUDGET

N/A

## 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 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 member agencies through the Joint Exercise of Powers Agreement. F/ETCA was able to construct the SR 133, 241 and 261 Toll Roads in advance of collecting DIFs by issuing toll revenue bonds that will be repaid with tolls and DIFs. Therefore, the fees are used to repay the indebtedness incurred for construction of the SR 133, 241 and 261 Toll Roads 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 one-time 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 previously 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 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 a 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. 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.

Seven member agencies (County of Orange and the cities of Dana Point, Irvine, Lake Forest, Mission Viejo, Orange, and Yorba Linda) were selected for audit for the period of January 1, 2020 through December 31, 2020.

## DISCUSSION

### I. MEMBER AGENCY AUDITS

As approved by the Board for calendar year 2020, the following information reflects the audits conducted for the applicable member agencies and recommendations as to the inclusion in the next audit period.

#### County of Orange

1. All permits issued for the audit period were tested. A total of 141 permits generating \$734,588 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 exception(s) noted.
3. It is recommended that the County of Orange be included 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 1132 permits generating \$10,466,734 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 Irvine be included in the next cycle of audits due to the anticipated volume of permits.

#### City of Dana Point

1. No permits applicable to the fee program were issued for the audit period.
2. No fees were due on any of the permits tested.
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 384 permits generating \$1,947,368 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 Lake Forest be excluded from the next cycle of audits.

#### City of Mission Viejo

1. All permits issued for the audit period were tested. A total of 30 permits generating \$131,795 in fees collected and remitted to the agency were reviewed. The audit revealed one underpayment totaling \$842 which was due to not charging fees for an Accessory Dwelling Unit.
2. All tested permits were traced to remittances to F/ETCA with one exception noted above.
3. It is recommended that the City of Mission Viejo be excluded from the next cycle of audits.

City of Orange

1. All permits issued for the audit period were tested. A total of 59 permits generating \$6,769 in fees collected and remitted to the agency were reviewed. The audit revealed one underpayment totaling \$1,235 which was due to not charging fees for an Accessory Dwelling Unit.
2. All tested permits were traced to remittances to F/ETCA with one exception 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 54 permits generating \$331,462 in fees collected and remitted to the agency were reviewed. The audit revealed one underpayment totaling \$1,307 which was due to not charging fees for an Accessory Dwelling Unit.
2. All tested permits were traced to remittances to F/ETCA with one exception noted above.
3. It is recommended that the City of Yorba Linda 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 14, 2021 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, 2021**

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 2021 were as follows:

Foothill/Eastern Transportation Corridor Agency

## Zone A:

Single Family	\$6,056/unit
Multi-Family	\$3,536/unit
Non-Residential	\$8.42/sq. ft.

## Zone B:

Single Family	\$4,310/unit
Multi-Family	\$2,513/unit
Non-Residential	\$4.88/sq. ft.

The following is an accounting of DIFs during Fiscal Year 2021:

Balance of fees on deposit as of 7/1/20:	\$43,975,587
Fees collected 7/1/20 – 6/30/21:	\$13,992,444
Interest earned on fees 7/1/20 – 6/30/21:	\$250,300
Amount of fees expended on Foothill and Eastern Corridors 7/1/20 – 6/30/21:	\$0
Percentage of 7/1/20 – 6/30/21 total corridor capital expenditures, including debt service, paid with fees:	0%
Balance of fees on deposit as of 6/30/21:	\$58,218,331

Consistent with the language in the statute, as of the end of Fiscal Year 2021 sufficient funds had not been collected to complete financing of the Foothill/Eastern Transportation Corridors (State Routes 133, 241 and 261).

During Fiscal Year 2021, 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). As reported above, no funds were expended from DIFs in Fiscal Year 2021 to retain flexibility for future funding of the Agency's capital program, paydown of debt, and potential contributions for the Los Patrones Parkway Extension or Ortega Highway projects, as the Board works through its strategic planning process.

### **Findings Regarding Unexpended Funds**

Because there is a balance of \$58,218,331 in DIFs that remained unexpended as of June 30, 2021, the Agency is required to make certain findings regarding the use to which the fees are to be put, the relationship between the fees and the purpose for which they are charged, all anticipated sources of funding for the improvement paid for by the fees, and the approximate dates on which that funding is anticipated to be deposited in the Agency account.

The fees are to be used to repay the indebtedness incurred to construct the Foothill/Eastern Transportation Corridors, the balance of which was \$2,703,983,000 as of June 30, 2021, and to pay the cost of all future anticipated improvements, as identified in the Capital Improvement Plan for the Foothill/Eastern Transportation Corridors, approved by the Agency on June 11, 2021.

Information regarding the reasonable relationship between the fees and the purpose for which they are charged is set forth in detail in the attached proposed Resolution F2016-08 and the exhibits to that Resolution.

With regard to anticipated sources of funding, construction of the Foothill/Eastern Transportation Corridors has been financed with the issuance of toll revenue bonds and pledged DIFs. Future improvements, as listed in the Capital Improvement Plan for the Foothill/Eastern Transportation Corridors, approved on June 11, 2021, may be funded by DIFs and unrestricted cash.

The anticipated funding described above is expected to be deposited into the appropriate account as scheduled in the Agency's bond indentures. Deposit of anticipated funding for future improvements is per the schedule of improvements as disclosed in the Agency's Capital Improvement Plan.

Report Written By: Greg Walker, Manager, Internal Audit

**REVIEWED BY:**

/s/ Valarie McFall

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Valarie McFall, Deputy Chief Executive Officer  
(949) 754-3475

**APPROVED BY:**

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Samuel Johnson, Chief Executive Officer

Attachment: Resolution No. F2021-05

## RESOLUTION F2021-05

### RESOLUTION OF THE FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY MAKING CERTAIN FINDINGS RELATING TO THE MAJOR THOROUGHFARE AND BRIDGE FEE PROGRAM

**WHEREAS**, the member public agencies (the “Members”) of the Foothill/Eastern Transportation Corridor Agency (the “Agency”) have been authorized, pursuant to section 66484.3 of the Government Code of the State of California (the “Act”) to require by ordinance the payment of a fee (the “Development Fee”) as a condition of approval of a final map or as a condition of issuing a building permit, for the purpose of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways and canyons or constructing major thoroughfares; and

**WHEREAS**, pursuant to the Major Thoroughfare and Bridge Fee Program for San Joaquin Hills Transportation Corridor and Foothill/Eastern Transportation Corridors (the “Fee Program”), attached as Exhibit A to the Second Amended and Restated Joint Exercise of Powers Agreement Creating the Foothill/Eastern Transportation Corridor Agency, dated March 27, 2003 (the “JPA”), and the ordinances and resolutions necessary to implement the Fee Program by Members, the Development Fees have been collected by the Agency; and

**WHEREAS**, as of June 30, 2021, there was a total of \$58,218,331 consisting of Development Fees that had been collected by the Agency and interest earned thereon, which remained unexpended, and section 66001(d) of the Government Code provides that certain findings are to be made with respect to unexpended Development Fees and interest;

**NOW, THEREFORE**, be it resolved, determined and ordered by the Board of Directors of the Foothill/Eastern Transportation Corridor Agency as follows:

Section 1. The Development Fees are collected for the purpose of funding the construction of the Foothill/Eastern Transportation Corridors, as authorized by section 66484.3 of the Government Code and the provisions of the Fee Program.

Section 2. The Agency hereby determines that there is a fair and reasonable relationship between the use of the Development Fees and the type of development projects on which the Development Fees are imposed. This determination is based on the findings and determinations in the Fee Program and the findings and determinations in Resolution No. F91-01 adopted by the Board of Directors on January 10, 1991. The findings and determinations in Resolution No. F91-01, a copy of which is attached hereto as Exhibit 1, are incorporated herein by reference.

Section 3. The Agency hereby determines that there is a fair and reasonable relationship between the need for the public facilities to be constructed with the proceeds of the Development Fees and the type of development project on which the Development Fees are imposed. This determination is based on the findings and determinations contained in the Fee Program and the findings and determinations in Resolution No. F91-01, which findings and determinations are incorporated herein by reference.

**RESOLUTION F2021-05**

**RESOLUTION OF THE  
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY  
MAKING CERTAIN FINDINGS RELATING TO  
THE MAJOR THOROUGHFARE AND BRIDGE FEE PROGRAM**

Section 4. The Agency hereby determines that there is a fair and reasonable relationship between the amount of Development Fees and the total estimated cost of the Foothill/Eastern Transportation Corridors. This determination is based upon the findings and determinations of the Fee Program and the findings and determinations in Resolution No. F91-01, which findings and determinations are incorporated herein by reference.

Section 5. The facts supporting the findings set forth above are set forth in attached Exhibit 2.

Section 6. The sources and amounts of funding anticipated to complete financing of the Foothill/Eastern Transportation Corridors are as follows:

- (a) Construction of the Foothill/Eastern Transportation Corridors has been financed with the issuance of non-recourse toll revenue bonds and pledged Development Fees.
- (b) Future improvements, as listed in the Capital Improvement Plan for the Foothill/Eastern Transportation Corridors, approved on June 10, 2021 (“Capital Improvement Plan”), will be funded by Development Fees and unrestricted cash, as required.

Section 7. The anticipated funding described in Section 6, above, is expected to be deposited into the appropriate account as scheduled in the Agency’s bond indentures. Deposit of anticipated funding for future improvements is per the schedule of improvements as disclosed in the Agency’s Capital Improvement Plan.

Section 8. This Resolution shall become effective immediately upon adoption.

Adopted this 14<sup>th</sup> day of October 2021, by the Board of Directors of the Foothill/Eastern Transportation Corridor Agency.

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**Peggy Huang, Chair**  
**Foothill/Eastern Transportation Corridor Agency**



**RESOLUTION F2021-05**

**RESOLUTION OF THE  
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY  
MAKING CERTAIN FINDINGS RELATING TO  
THE MAJOR THOROUGHFARE AND BRIDGE FEE PROGRAM**

ATTEST:

I, Kaylee Doolittle, Clerk of the Board of the Foothill/Eastern Transportation Corridor, hereby certify that the foregoing Resolution No. F2021-05 was duly adopted on October 14, 2021, by the Board of Directors of the Foothill/Eastern Transportation Corridor Agency by the following vote:

Motion:

Yes:

No:

Absent:

Abstain:

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Kaylee Doolittle, Clerk of the Board of Directors  
Foothill/Eastern Transportation Corridor Agency

Recording requested by )  
and when recorded mail to: )  
 )  
TRANSPORTATION CORRIDOR AGENCIES )  
345 Clinton Street )  
Costa Mesa, California 92626 )  
Attn: Ms. Kathy Besnard )  
 )

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Resolution No. F91-01

RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY  
APPROVING AN INCREASE IN DEVELOPMENT FEES FOR THE  
MAJOR THOROUGHFARE AND BRIDGE FEE PROGRAM

January 10, 1991

On motion of Board member Edgar, duly seconded and carried, the following Resolution was adopted:

WHEREAS, the Foothill/Eastern Transportation Corridor Agency ("TCA") is a joint powers agency formed by and among the County of Orange and the Cities of Anaheim, Irvine, Mission Viejo, Orange, San Clemente, San Juan Capistrano, Santa Ana, Tustin and Yorba Linda (collectively, the "Member Agencies") by entry into that certain First Amended and Restated Joint Exercise of Powers Agreement creating the Foothill/Eastern Transportation Corridor Agency, dated as of October 21, 1988 (the "JPA") for the purpose of implementing the Foothill/Eastern Transportation Corridor (the "Corridor") to help to relieve congestion on existing transportation systems within the County of Orange; and

WHEREAS, Section 4.1 of Article IV of the JPA requires each of the Member Agencies to require by ordinance the payment of a fee as a condition of issuance of a building permit within the Area of Benefit of the Corridor (as described on the map of the Area of Benefit attached hereto as Schedule I and by this reference incorporated herein), for the purpose of defraying the cost of construction of the Corridor in accordance with Section 66484.3 of the Government Code of the State of California, in the form and in those amounts set forth in the Major Thoroughfare and Bridge Fee Program for the San Joaquin Hills Transportation Corridor and the Foothill/Eastern Transportation Corridor, dated July, 1985, and revised by the TCA in September, 1988, attached as Exhibit A to the JPA (the "Fee Program"); and

WHEREAS, pursuant to the following Ordinances and Resolutions (the "Original Resolutions") the Member Agencies have each adopted a major thoroughfare and bridge fee program within their jurisdictions, and have established the areas of benefit, estimated costs, and development fees as those set forth in the Fee Program:

<u>Member Agency</u>	<u>Ordinance No.</u>	<u>Resolution No.</u>
County	§ 7-9-316	85-1477
Anaheim	4640	85R-423
Irvine	85-35	85-129
Mission Viejo	88-13	88-32
Orange	42-85	6446
San Clemente	914	82-85
San Juan Capistrano	552	85-10-15-2
Santa Ana	NS-1829	86-1
Tustin	948-965	85-103
Yorba Linda	85-523	85-1958; and

WHEREAS, the Fee Program is based on the general principle that future development within the Area of Benefit will benefit from the Corridor and should pay for Corridor construction in proportion to projected Corridor traffic demand attributable to the development, with the remaining funding being derived from a variety of transportation funding sources; and

WHEREAS, the Fee Program originally estimated the cost of constructing the Corridor and the Fee Program originally determined, based upon a study of Corridor trip ends originating or ending within the Area of Benefit which are attributable to new growth ("Trip Ends") based upon trip information derived from the South Orange County Circulation Study travel demand forecasting model developed by County's Environmental Management Agency/Transportation Planning Division ("EMA") (the "Trip End Study"), that the share of Corridor costs to be paid by Development Fees (the "Developer Share") is 48.48%; and

WHEREAS, in 1989 the TCA determined that it was necessary to adopt an interim increase in the Development Fees (the "Interim Increase") to reflect the increases in the Corridor construction cost estimate; and

WHEREAS, by the following resolutions (the "Interim Resolutions"), each of the Member Agencies respectively adopted the Interim Increase in Development Fees:

<u>Member Agency</u>	<u>Resolution No.</u>
County	89-1716
Anaheim	89R-440
Irvine	89-165
Mission Viejo	89-124
Orange	7445
San Clemente	89-133
San Juan Capistrano	89-12-5-3
Santa Ana	89-124
Tustin	90-50
Yorba Linda	89-2415; and

WHEREAS, in September, 1990, the California Legislature passed, and the Governor signed, legislation clarifying the TCA's authority to include financing costs related to the Corridors in the estimated construction costs from which the Development Fees are derived.

WHEREAS, Section XII of the Fee Program provides for periodic review and adjustment of the Fee Program established thereby to reflect updated Corridor construction cost estimates and other pertinent information, and the Interim Resolutions provide for a review of the Fee Program during the calendar year 1990 to determine an appropriate share of financing costs to be attributed to new development, and to confirm the adequacy of the Fee Program; and

WHEREAS, pursuant to the terms of the Fee Program and the Interim Resolutions, in January, 1989, the TCA engaged Deloitte & Touche ("D&T") to conduct a review of the Fee Program in light of the revised cost estimates as well as other new information; and

WHEREAS, D&T has prepared and submitted to the TCA a Draft Final Report/Update of the Major Thoroughfare and Bridge Fee Program for the San Joaquin Hills, Foothill and Eastern Transportation Corridors, dated December 5, 1990 (the "Fee Program Update"), a copy of which is on file at the TCA and which is incorporated herein by reference; and

WHEREAS, the Fee Program Update indicates that as a result of the revised Corridor cost estimates it is now necessary to adopt an increase in the Development Fees imposed by the Member Agencies on new development within their jurisdictions in the amounts described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, it is also appropriate at this time to revise the Fee Program's terms pursuant to which fee credits are calculated for Corridor grading; and

WHEREAS, pursuant to Section 66484.3(b)(3) of the Government Code of the State of California, the TCA is authorized to modify the Member Agencies' Resolutions and Interim Resolutions following public notice and a public hearing, if the TCA has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1; and

WHEREAS, notice of public hearing and the proposed increase of the Development Fees and other modifications to the Fee Program regarding valuation of grading fee credits was given pursuant to applicable law; and

WHEREAS, the property owners of a majority of the Area of Benefit did not file written protest to the increase of the Development Fees and the modifications to the Fee Program's valuation of grading fee credits; and

WHEREAS, the project is covered by Final EIRs 123, 187, 423 and 451, and Final Supplemental EIR 423, which have been certified and which otherwise meet the requirements of the California Environmental Quality Act ("CEQA"); and

WHEREAS, pursuant to Section 66001 of the Government Code of the State of California, it is necessary that the TCA make certain findings in connection with the increase of the Development Fees; and

WHEREAS, it is the position of the TCA's Board of Directors that the Foothill, Eastern and San Joaquin Hills Transportation Corridors will be major improvements in the regional transportation system. Each of these Corridors is, furthermore, designated as a principal highway in Orange County's CMP roadway system. Regional traffic impact fees such as the Development Fees shall be credited as a fair share contribution toward the base amount of any traffic impact mitigation fee required by the County-wide Traffic Improvement and Growth Management Program. The Board recommends that in the process of calculating credits for improvements to regional transportation systems, the Congestion Management Agency shall provide full consideration for Development Fees paid or any other contributions to Corridor construction which are ineligible for reimbursement from toll revenues or state or federal funds.

WHEREAS, TCA intends to receive written approval of conceptual and preliminary design from Caltrans prior to submitting 35% reference documents to Design/Build firms for bid and to identify issues that will be resolved during the final design process (if any).

NOW, THEREFORE, be it resolved that:

1. This Board hereby finds that Final EIRs 123, 187, 423 and 451, and Final Supplemental EIR 423, satisfy the requirements of CEQA for this project approval and the findings previously adopted in conjunction with the certification of such Final EIRs and Final Supplemental EIR are hereby readopted.

2. The estimated total cost of the Corridor to be constructed pursuant to the Fee Program and the JPA, including a portion of the financing costs associated with such construction, is \$1,699.24 million dollars. The Fee Program is designed to collect 48.48% of the estimated total cost of the Corridor. The Board hereby determines that 48.48% of the total estimated cost of the Corridor is a fair and reasonable percentage of Corridor costs to be allocated to new development within the Area of Benefit and collected through Development Fees. This determination is based upon the Fee Program, including the Trip End Study and the Fee Program Update.

3. The increase of Development Fees in accordance with the Schedule attached hereto as Exhibit A is hereby approved and ordered and the Original Resolutions and Interim Resolutions are hereby modified accordingly. The increased Development Fees will be implemented in two stages. As set forth in the Schedule, the first increase will be implemented March 11, 1991, and the second increase will be implemented July 1, 1994.

4. The original Development Fees for new development within the Area of Benefit were based on the Trip Ends generated by the development as determined from the trip generation tables included in the Fee Program, and are assessed upon new development based upon the numbers of dwelling units included in the development (for residential projects) or the gross square footage of the development (for non-residential projects).

5. The increased Development Fees are derived as described in the Fee Program Update for the purpose of reflecting certain estimated cost increases in connection with the construction of the Corridor, as more fully described in the Fee Program, the Fee Program Update and in the reports of the TCA.

6. The Development Fees are to be used pursuant to the provisions of the Fee Program, as modified hereby with respect to valuation of fee credits.

7. The Board hereby determines that there is a fair and reasonable relationship between the use of the Development Fees and the type of development projects on which the

Development Fees are imposed. This determination is based on the findings and determinations contained in the Fee Program, the Fee Program Update, the reports of the staff and consultants to the TCA, including, but not limited to, those related to user Trip Ends that originate, and/or pass through the Area of Benefit described herein and that are attributable to new development.

8. The Board hereby determines that there is a fair and reasonable relationship between the need for the public facilities to be constructed with the proceeds of the Development Fees and the type of development projects on which the Development Fees are imposed. This determination is based on the findings and determinations contained in the Fee Program, the Fee Program Update and the staff reports of the TCA on this matter, including, without limitation, the analysis relating to Trip Ends within the described Areas of Benefit as adjusted for the various land-use categories which are attributable to new development.

9. The Board hereby determines that there is a fair and reasonable relationship between the amount of the Development Fees and the total estimated cost of the Corridor. This determination is based on the findings and determinations contained within the Fee Program, the Fee Program Update and the reports of the staff and consultants to the TCA, including, but not limited to, the findings regarding Trip Ends within the Area of Benefit attributable to new development.

10. Section XI of the Fee Program is hereby modified to delete the established per acre grading fee credit amounts set forth in paragraph 3 on page 26 of the Fee Program. The following paragraph 3 is inserted in its place to read as follows:

"3. Grading.

Credit will be given for earthwork, road and slope drainage, buttressing, stabilization, hydroseeding and erosion control within the right-of-way (hinge point to hinge point) excluding slope and drainage easements in an amount to be determined on a case by case basis according to current design and grading plans."

This amendment is hereby approved and ordered so that the Fee Program's provisions regarding determination of grading fee credits will be consistent with current industry and market practices.

11. Section XI of the Fee Program is hereby modified to delete paragraph 2 appearing on page 26. The following paragraph is inserted in its place:

"2. Right-of-Way.

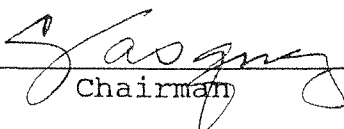
Credit will be given for right-of-way dedication at the rate of \$50,000 per acre, adjusted in accordance with the California Construction Cost Index, or comparable index selected by the Board, currently \$55,774 per acre, except for slope easements and a 120-foot-wide strip along centerline of the transportation corridor which would normally be required for arterial highway dedication (the "Creditable Acreage"). Additional credit will be given for the Creditable Acreage in the amount of the difference from time to time existing between \$75,000 and \$50,000 adjusted by the Construction Cost Index ("Supplemental Credit"). Notwithstanding the foregoing, Supplemental Credits may not be used by developers to offset Development Fees until such time as the completed Corridor is opened to traffic, and all rights to reimbursement arising out of Supplemental Credits shall be subordinate to the liens of any holders of bonds issued by the TCA. Beginning on the date the entire Corridor is opened to traffic, interest on the value of the Supplemental Credits shall be calculated at the co-mingled rate earned by the Orange County Treasurer on general funds."

BE IT FURTHER RESOLVED that, pursuant to Government Code Section 66484.3, the Secretary of the Board is directed to record a certified copy of this Resolution and the attachments hereto with the Recorder of the County of Orange.




BE IT FURTHER RESOLVED that, this Resolution is approved, adopted and signed this 10th day of January, 1991 and shall take effect immediately.

FOOTHILL/EASTERN TRANSPORTATION  
CORRIDOR AGENCY

By:   
Chairman

ATTEST:

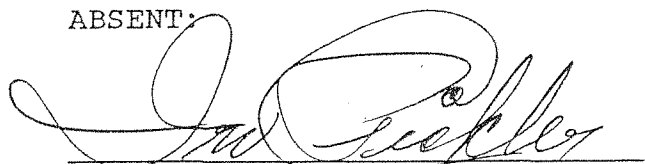
  
Secretary of the Foothill/Eastern  
Transportation Corridor Agency

I hereby certify that the foregoing Resolution was duly adopted by the Board of Directors of the Foothill/Eastern Transportation Corridor Agency at a regularly scheduled meeting thereof on the 10th day of January, 1991, by the following vote of the Board:

AYES:

NOES:

ABSENT:

  
Secretary of the Foothill/Eastern  
Transportation Corridor Agency

ACKNOWLEDGEMENT

STATE OF CALIFORNIA        )  
  )    ss  
COUNTY OF ORANGE        )

On this 10th day of January, 1991, before me, Kathleen Elaine Bernard personally appeared G. Vasquez and Iru Pickler, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument as the Chairman of the Board of Directors and Secretary of the Foothill/Eastern Transportation Corridor Agency, and acknowledged to me that they executed such instrument on behalf of such Agency and that such Agency executed it.

WITNESS my hand and official seal.

Kathleen Elaine Bernard  
Signature

(Seal)

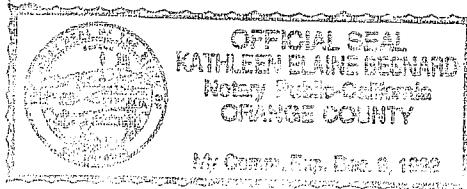


EXHIBIT A

SCHEDULE OF FEES - FOOTHILL/EASTERN TRANSPORTATION CORRIDOR

Implementation Date

March 11, 1991

July 1, 1994

Zone A:

Single Family Dwelling Units	\$2,399 per unit	\$3,516 per unit
Multiple Dwelling Units	\$1,401 per unit	\$2,053 per unit
Non-Residential	\$3.33 per sq. ft.	\$4.88 per sq. ft.

Zone B:

Single Family Dwelling Units	\$1,706 per unit	\$2,501 per unit
Multiple Dwelling Units	\$ 993 per unit	\$1,455 per unit
Non-Residential	\$1.94 per sq. ft.	\$2.84 per sq. ft.

## EXHIBIT 2

### Resolution F2021-05

#### Statement of Facts in Support of Findings of the Foothill/Eastern Transportation Corridor Agency Regarding “Resolution of The Foothill/Eastern Transportation Corridor Agency Making Certain Findings Relating To The Major Thoroughfare and Bridge Fee Program”

1. This Statement of Facts in Support of Findings (collectively “Findings”) is hereby adopted by the Board of Directors of the Foothill/Eastern Transportation Corridor Agency (“Agency”) with regard to the “Resolution of the Foothill/Eastern Transportation Corridor Agency Making Certain Findings Relating to the Major Thoroughfare and Bridge Fee Program” (F2021-05).
2. The facts in support of the Findings include, but are not limited to, the following:
  - (i) The “Update of the Major Thoroughfare and Bridge Fee Program for the San Joaquin Hills, Foothill and Eastern Transportation Corridors,” dated December 5, 1990, and prepared by Deloitte & Touche (the “Deloitte Study”). The Deloitte Study calculated that new development within the Area of Benefit of the Foothill/Eastern Transportation Corridors would generate 54.71% of the trips on the Corridor, and developed an authorized fee base that included cost assumptions of \$2.245 billion and a modified fee base that included a reduced cost assumption of \$1.699 billion. Resolution No. F91-01, adopted by the Boards of Directors on January 10, 1991 used the modified fee base of \$1.699 billion, and the Developer Share percentage of 48.48% calculated in the original Fee Program resulting in a lower fee calculation than if the authorized fee based and/or the 54.71% developer share had been used. The actual cost of the Foothill/Eastern Corridor (not including the cost of post-construction debt service costs) is \$3.029 billion. This value includes construction costs, construction financing, and the cost of future improvements, as listed in the Capital Improvement Plan approved on June 10, 2021 (“Capital Improvement Plan”);
  - (ii) The share of the cost of the Corridor to be recovered from development impact fees collected under the Fee Program is 27.2% of the actual cost (\$3.029 billion) of the Foothill/Eastern Corridor (not including the cost of post-construction debt service), which is significantly below the share reflected in the Deloitte Study;
  - (iii) If post-construction debt service costs are included in the total cost, then the share of the cost of the Corridor to be recovered from development impact fees collected under the Fee Program would be significantly lower than 27.2%;
  - (iv) Because the cost figures for the Corridor used to calculate the development impact fees are substantially below the actual costs of the Corridor, development impact fees are paying a much lower share of total construction cost than the 48.48% found to be reasonable by the Deloitte Study; and
  - (v) In the event that the Agency elected to include within the development impact fee calculations (a) the actual construction costs for the Foothill/Eastern Transportation Corridors, and/or (b) the Developer Share of traffic on the Corridors generated from new development

## **EXHIBIT 2**

### **Resolution F2021-05**

#### **Statement of Facts in Support of Findings of the Foothill/Eastern Transportation Corridor Agency Regarding “Resolution of The Foothill/Eastern Transportation Corridor Agency Making Certain Findings Relating To The Major Thoroughfare and Bridge Fee Program”**

and determined in the Deloitte Study, the Fees imposed pursuant to the Fee Program would have been substantially higher.

(vi) The fair and reasonable relationship between use of the Development Fees and the type of development projects on which the Development Fees are imposed is supported by continued development within the corridor area of benefit, on which fees are collected.

(vii) The fair and reasonable relationship between the need for public facilities to be constructed with the proceeds of the Development Fees and the type of development project on which the Development Fees are imposed is supported by the actual traffic observed and projected traffic within the corridor area of benefit.