

ORDINANCE NO. 2018-16**(Uncodified)****(Discovery Bay Area of Benefit Fees)**

The Board of Supervisors of Contra Costa County ordains as follows:

SECTION 1. Summary and Purpose. This ordinance provides for the repeal of Contra Costa County Ordinance No. 97-27, the reestablishment of the Discovery Bay Area of Benefit, and the adoption of revised transportation mitigation fees for transportation improvements needed to mitigate transportation impacts of new development in the area of benefit through 2040.

SECTION 2. Authority. This ordinance is enacted pursuant to Government Code sections 66001, *et seq.*, 66484, and 66484.7, and Division 913 of the Contra Costa County Ordinance Code, and other applicable laws and ordinances.

SECTION 3. Recitals and Findings of Fact.

- (a) Under the Mitigation Fee Act, California Government Code section 66000, *et seq.*, the County is authorized to charge a development-project applicant, as a condition of project approval, a fee that is proportional to the cost of public improvements necessary to serve the development project, or to alleviate impacts caused by the development project. Government Code sections 66484 and 66484.7 specifically authorize the County to impose those fees to defray the actual or estimated costs of new or reconstructed bridges over waterways, railways, freeways, major thoroughfares, and pedestrian, bicycle, transit, and traffic-calming facilities that serve new development within a specific area of benefit.
- (b) The Discovery Bay Area of Benefit was last reestablished by the Board of Supervisors' July 22, 1997 adoption of Ordinance No. 97-27. Ordinance No. 97-27 adjusted fees imposed on each new development within the Discovery Bay Area of Benefit, to fund specified new bridges and thoroughfares, or expansions of existing bridges and thoroughfares, necessary to serve the development project or alleviate traffic impacts or demands caused by the project. Those fees funded many significant projects. Because of changes in development and traffic patterns in the area, the Public Works Department reevaluated the transportation improvements needed to serve new development in the Discovery Bay Area of Benefit through 2040.
- (c) The County's April 2018 Development Program Report ("Report"), including the April 2018 "Nexus Study, Discovery Bay Area of Benefit" ("Nexus Study") attached as Exhibit D to the Report, have been prepared to determine the amount of the fees necessary to fund new development's share of the estimated costs of new or reconstructed bridges over waterways, railways, freeways, major thoroughfares, pedestrian, bicycle, transit, and traffic-calming facilities (the "Transportation Improvements") that are necessary to meet traffic demands generated by new development within the Discovery Bay Area of Benefit through 2040. The Transportation Improvements are more particularly described in the Report, the Nexus Study, and Sections 5.6 (Roadway and Transit Network Plans) and 5.8 (Pedestrian Facilities and

Bikeways) of Chapter 5 (Transportation and Circulation Element) of the County's 2005-2020 General Plan.

- (d) The Report and Nexus Study propose a fair and equitable method for allocating a portion of the costs of the Transportations Improvements to new development within the Discovery Bay Area of Benefit. The cost of each of the Transportation Improvements in the Report and Nexus Study is reasonable. The total amount of revenue expected to be generated from fees charged and collected under this ordinance will not exceed the estimated cost of the Transportation Improvements attributable to new development within the Discovery Bay Area of Benefit. The County will rely on sources other than transportation mitigation fee revenue to pay Transportation Improvement costs not allocated to new development. The Transportation Improvements are necessary and desirable within the Discovery Bay Area of Benefit.
- (e) Payment of the fees adopted by this ordinance shall not be required unless the major thoroughfares or planned bridge facilities are in addition to, or a reconstruction of, any existing major thoroughfares or planned bridge facilities serving the Discovery Bay Area of Benefit at the time that the boundaries of that area of benefit are established by this ordinance. Because all of the Transportation Improvements are in addition to, or a reconstruction or expansion of, existing thoroughfares and bridge facilities, the fees adopted by this ordinance may be imposed on new development projects within the Discovery Bay Area of Benefit.
- (f) Pursuant to Government Code section 66001, the Board of Supervisors further finds:
 - (1) As determined in the Nexus Study, the purpose of the fees adopted and collected pursuant to this ordinance is to fund new development's share of the estimated costs of the Transportation Improvements identified in the Nexus Study.
 - (2) As determined in the Nexus Study, there is a reasonable relationship between the use of revenue generated by the fees and the type of new development projects on which those fees shall be imposed.
 - (3) As determined in the Nexus Study, there is a reasonable relationship between the need for the Transportation Improvements that shall be funded by fee revenue, and the types of new development within the Discovery Bay Area of Benefit on which those fees shall be imposed.
 - (4) As determined in the Nexus Study, there is a reasonable relationship between the amount of the fee imposed on each type of new development within the Discovery Bay Area of Benefit, and the cost of the Transportation Improvements to be funded by fee revenue.
- (g) The Board of Supervisors further finds as follows:
 - (1) Pursuant to Government Code sections 54986, 65091, 66017, 66018, 66474.2, subdivision (b), 66484, and 66484.7, and Division 913 of the Contra Costa County Ordinance Code, notice of a public hearing on this ordinance was given and published,

and the public hearing was held. The Nexus Study and Report were made available to the public at least ten (10) days before the hearing.

- (2) If, within the time when protests may be filed under the provisions of this ordinance, there is a written protest, filed with the Clerk of the Board of Supervisors, by owners of more than one-half of the area of the property within the Discovery Bay Area of Benefit, and sufficient protests are not withdrawn so as to reduce that area to less than one-half of the area of the property within the Discovery Bay Area of Benefit, these proceedings shall be abandoned and this ordinance shall not be adopted. However, the Board of Supervisors has considered all written protests, and all written and oral testimony offered at the hearing, and finds that no majority protest exists.
- (3) At the public hearing on this ordinance, the boundaries of the Discovery Bay Area of Benefit, the estimated costs of the Transportation Improvements, and a fair method of allocation of those costs to new development projects within the Discovery Bay Area of Benefit were established.

SECTION 4. Definitions. For the purpose of this ordinance, the following terms have the following meanings:

- (a) "Development project" or "new development project," means either of the following located within the Discovery Bay Area of Benefit:
 - (1) Any new construction, or any addition, extension, or enlargement of an existing structure or unit, which includes a dwelling unit for residential use or the floor area of commercial, office or industrial use, requiring a building permit from the County; or
 - (2) Any conversion or change in use of an existing structure requiring a building permit from the County that would result in a change in the land use type.
- (b) "Square foot" means a square foot of gross floor area within the interior walls of a building or portions thereof.
- (c) "Dwelling-unit-equivalent" means the same level of traffic impacts attributable to one dwelling unit, as determined in the Report and Nexus Study.

SECTION 5. Fee Adoption and Collection. Fees that apply to new development within the Discovery Bay Area of Benefit are hereby adopted, and shall be charged and collected, as specified in this section.

- (a) Amount of the Fees.
 - (1) Discovery Bay Area of Benefit Fees. The following schedule of fees shall be effective on the effective date of this ordinance:

<u>Land Use Type</u>	<u>Fee</u>	<u>Per Unit</u>
Single-Family Residential	\$ 9,244.00	per dwelling unit
Multi-Family Residential	\$ 5,675.00	per dwelling unit
Commercial/Retail	\$ 9.11	per square foot
Office	\$ 7.37	per square foot
Industrial	\$ 5.85	per square foot
Other	\$ 9,244.00	per dwelling unit equivalent

- (2) Adjustment of Fees Beginning January 1, 2019. On January 1, 2019, and on each January 1 thereafter, the amounts of the fees set forth in Section 5(a)(1), above, shall be increased or decreased by a percentage equal to the percentage change, if any, in the Engineering News-Record Construction Cost Index for the San Francisco Bay Area for the 12-month period ending September 30 of the prior year.
- (b) Calculation of the Discovery Bay Area of Benefit Fee. Unless otherwise specified in this ordinance, each new development project shall pay a fee calculated as described in this Section 5(b).
- (1) Calculation of the Discovery Bay Area of Benefit Fee for New Development that Expands, Extends, or Replaces an Existing Development. If any new development project will replace an existing development, or if any new development project will expand or extend an existing development, by increasing the number of dwelling units or square feet of floor area of, or the number of dwelling-unit-equivalents attributable to, the existing development, the fee imposed on the new development project shall be calculated as follows:
- (A) For residential land uses: The applicable transportation mitigation fee in Section 5(a) of this ordinance is multiplied by the difference of: (i) either the number of dwelling units attributable to the new development that replaces an existing development, or the number of dwelling units attributable to the development after the expansion or extension of the existing development; minus (ii) the number of dwelling units attributable to the existing development. That calculation is expressed as follows:
- $$[\text{Applicable fee per-dwelling unit}] \times [(\text{number of dwelling units after replacement or expansion/extension}) - (\text{number of dwelling units before replacement or expansion/extension})]$$
- (B) For office, industrial, and commercial/retail land uses: The applicable fee in Section 5(a) of this ordinance is multiplied by the difference of: (i) either the number of square feet of the new development that will replace an existing development, or the number of square feet of the development after expansion or extension of the existing development; minus (ii) the number of square feet of the existing development. That calculation is expressed as follows:

[Applicable fee per square foot] x [(number of square feet after replacement or expansion/extension) – (number of square feet before replacement or expansion/extension)]

- (C) For “other” land uses: The applicable fee in Section 5(a) of this ordinance is multiplied by the difference of: (i) either the number of dwelling-unit-equivalents attributable to the new development that will replace an existing development, or the number of dwelling-unit-equivalents attributable to the development after expansion or extension of the existing development; minus (ii) the number of dwelling-unit-equivalents attributable to the existing development. That calculation is expressed as follows:

[(Applicable fee per dwelling-unit-equivalent)] x [(number of dwelling-unit-equivalents after replacement or expansion/extension) – (number of dwelling-unit-equivalents before replacement or expansion/extension)]

The County will determine the number of dwelling unit equivalents that will be generated by the new development project based on: information generated by project-specific traffic studies prepared by a professional engineer; the standards set forth in the then-current edition of the Institute of Transportation Engineers Trip Generation Manual (“ITE Manual”); and other information provided by the new development project applicant that the County deems relevant.

- (D) Notwithstanding any other provision of this ordinance, if the result of the calculation required by this Section 5(b)(1) is zero or a negative number, then no fee shall be imposed on the new development project.

- (2) Calculation of the Discovery Bay Area of Benefit Fee for New Development that Does Not Expand, Extend, or Replace an Existing Development. For any new development project that does not expand, extend, or replace an existing development, the fee imposed on the new development project shall be calculated as follows:

- (A) For residential land uses: The applicable fee in Section 5(a) of this ordinance is multiplied by the number of dwelling units attributable to the new development. That calculation is expressed as follows:

(Applicable fee per dwelling unit) x (number of dwelling units)

- (B) For office, industrial, and commercial/retail land uses: The applicable fee in Section 5(a) of this ordinance is multiplied by the number of square feet of the new development. That calculation is expressed as follows:

(Applicable fee per square foot) x (number of square feet of floor area)

- (C) For “other” land uses: The applicable fee in Section 5(a) of this ordinance is multiplied by the number of dwelling unit equivalents attributable to the new development. That calculation is expressed as follows:

(Applicable fee per dwelling-unit-equivalent) x (number of dwelling-unit-equivalents attributable to new development)

The County will determine the number of dwelling unit equivalents attributable to the new development project based on: information generated by project-specific traffic studies prepared by a professional engineer; the standards set forth in the then-current edition of the ITE Manual; and other information provided by the new development project applicant that the County deems relevant.

- (c) Applicability and Establishment of Discovery Bay Area of Benefit Boundaries. The transportation mitigation fees specified in this ordinance shall apply to all new development within the Discovery Bay Area of Benefit, unless otherwise specified in this ordinance. The boundaries of the Discovery Bay Area of Benefit are more particularly described in the legal description, and are depicted on the map, attached hereto together as Exhibit A and incorporated herein by reference. The boundaries of the Discovery Bay Area of Benefit are hereby readopted and reestablished in accordance with Government Code sections 66484 and 66484.7.
- (d) Time of Collection. The fee attributable to each new development project shall be paid before the County issues a building permit for the new development project. Payment of the fee shall be a condition of building permit issuance, as specified in Chapter 913-4 of the County Ordinance Code.
- (e) Exemptions. No new development project is exempt from payment of a fee under this ordinance, unless, as of the date of the notice published pursuant to Government Code Section 66474.2, subdivision (b), either of the following apply:
- (1) The new development project has perfected an exemption from the fee under the vesting tentative map law; or
 - (2) The new development project has entered into a development agreement with the County that expressly excludes assessment of additional fees on that project.
- (f) Fee Reductions and Credits.
- (1) A project applicant may request a reduction in fees from the County if it is determined that the project will generate a lower number of trips than data provided by the ITE Manual that was used as the basis for the Report. A requested fee reduction must be based on a traffic study that determines that the traffic impacts of the proposed development would generate fees that are less than the fees set forth in Section 5, above. The methodology for conducting the study shall be developed and approved by the County. The County shall determine the appropriate fee reduction based upon the proportionate reduction in traffic impacts demonstrated in the traffic study.

- (2) A project applicant may receive a credit against fees for the dedication of land for right-of-way and/or construction of any portion of the Transportation Improvements to be funded with the fees collected pursuant to this ordinance, where the right-of-way or construction is beyond that which would otherwise be required for approval of the proposed development. The calculation of the amount of credit against fees for these dedications or improvements shall be based on a determination by the County that the credits are exclusive of the dedications, setbacks, improvements, and/or traffic mitigation measures that are required by ordinance or local standards. In addition, the credit shall be calculated based upon the actual cost of construction of improvements or, in the case of land dedication, on an independent appraisal approved by the County. All fee credits and reimbursements for dedications in lieu of payment of any transportation mitigation fee, or portion thereof, required to be paid by this ordinance shall be subject to an agreement executed in accordance with the Traffic Fee Credit and Reimbursement Policy, approved by the Board of Supervisors on June 5, 2007, which is made a part hereof and incorporated herein by reference.

(g) Fee Waivers.

- (1) Upon written request of the project applicant, the Public Works Director may waive the fees collected under this ordinance for dwelling units that the Public Works Director determines, in a written finding, fit into one of the following categories: (1) rental units affordable to households earning less than 80% of the area median income; or (2) ownership units affordable to households earning less than 120% of the area median income.
- (2) As a condition of such waiver, the project applicant shall enter into a regulatory agreement with the County, guaranteeing the use, occupancy, affordability, and term of affordability of such dwelling units. Rental units for which a waiver is granted under this section shall be restricted to that use for a minimum of 55 years. Ownership units for which a waiver is granted under this section shall be restricted to that use for a minimum of 30 years.

(h) Fee Waiver for Inclusionary Housing Units. In lieu of the fee waiver for affordable housing units as set forth in Section 5(g), development projects that are subject to Chapter 822-4 of the County Ordinance Code shall be eligible for a waiver of the fees collected under this ordinance as follows:

- (1) Fees shall be waived for each rental unit to be developed and rented as an inclusionary unit under the terms and conditions of Section 822-4.410(a) of the County Ordinance Code.
- (2) Fees shall be waived for each for-sale unit to be developed and sold as an inclusionary unit under the terms and conditions of Section 822-4.410(b) of the County Ordinance Code.

- (3) If a fee is paid in lieu of constructing some or all inclusionary units in a development project, pursuant to Section 822-4.404 of the County Ordinance Code, the fees collected under this ordinance shall be waived for the number of inclusionary units for which the in-lieu fee is paid.
- (i) Senior Housing and Congregate Care. Nothing in this ordinance shall be construed to abridge or modify the Board's discretion, upon proper application for a senior housing or congregate care facility, to adjust or to waive the fees required to be paid under this ordinance, pursuant to Government Code Section 65915.
- (j) Deposit of Fee Revenue. Revenue from fees paid pursuant to this ordinance shall be deposited into a fund covering the Transportation Improvements identified in the Report and Nexus Study, and shall be separately accounted for. The funds shall not be commingled with other funds, except where the funds are temporarily invested pursuant to Government Code section 66006. Fee revenues deposited in the fund shall be expended solely for the purposes described in this ordinance. Any interest earned on deposits in the fund also shall be deposited in that fund and used for those purposes.
- (k) Limitations. No fees collected pursuant to this ordinance may be used to reimburse the construction costs of bridge or thoroughfare facilities serving the Discovery Bay Area of Benefit on the effective date of this ordinance. However, fee revenues may be used to reimburse any general fund monies, or other County revenues, advanced to pay for any planned bridge or thoroughfare improvements.

SECTION 6. Reporting and Accounting Requirements.

- (a) Annual Reporting. Within 180 days after the last day of each fiscal year, the Public Works Director, or designee, shall make available to the public a report regarding the fund established for receipt of deposits of the fees collected by the County pursuant to this ordinance. The report shall be reviewed by the Board of Supervisors at a regularly scheduled meeting that will be held, and notice of which will be provided, in accordance with Government Code Section 66006. The report shall contain the following information for the fiscal year:
 - (1) A brief description of the type of fee in the account or fund.
 - (2) The amount of the fees.
 - (3) The beginning and ending balance of the account or fund.
 - (4) The amount of the fees collected and the interest earned.
 - (5) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with those fees.

- (6) An identification of an approximate date by which the construction of the public improvement will commence if the Board determines that sufficient funds have been collected to complete financing on an incomplete public improvement, and the public improvement remains incomplete.
 - (7) A description of each interfund transfer or loan from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.
 - (8) The amount of refunds made pursuant to Government Code section 66001, subdivision (e), and any allocations pursuant to Government Code section 66001, subdivision (f).
- (b) Periodic Review by the Board. In the fifth fiscal year following the first deposit into the fund established for receipt of deposits of the fees collected pursuant to this ordinance, and at least once every five years thereafter, the Board of Supervisors shall make all of the following findings with respect to that portion of the Discovery Bay Area of Benefit fund remaining unexpended, whether committed or uncommitted, pursuant to Government Code Section 66001:
- (1) Identify the purpose to which the fees are to be put.
 - (2) Demonstrate a reasonable relationship between the fees and the purpose for which they are charged.
 - (3) Identify all sources and amounts of funding anticipated to complete financing of incomplete transportation improvements identified in the Report and Nexus Study.
 - (4) Designate the approximate dates on which the funding referred to in Section 6(b)(3), above, is expected to be deposited into the appropriate account or fund.

SECTION 7. Repeal of Existing Fees. Except as specified in this Section 7 and Section 9, below, Contra Costa County Ordinance No. 97-27 is hereby repealed and superseded by this ordinance, as of the effective date of this ordinance. However, this repeal shall not affect any fees that were imposed on any development project pursuant to Ordinance No. 97-27 prior to the effective date of this ordinance, which fees shall be paid and collected under the provisions of Ordinance No. 97-27.

SECTION 8. Judicial Review. Any judicial action or proceeding to attack, review, set aside, void, or annul the fees established by this ordinance shall be commenced within one hundred twenty (120) days after the effective date of this ordinance. Any action to attack any adjustment to the schedule of fees pursuant to Section 5(a)(2) of this ordinance shall be commenced within one hundred twenty (120) days after the effective date of that adjustment.

SECTION 9. Severability. Notwithstanding any other provision of this ordinance to the contrary, if a court of competent jurisdiction determines any fee set forth in Section 5 of this ordinance is invalid or unenforceable, the comparable fee adopted by Ordinance No. 97-27, shall be deemed not to have been repealed and shall remain in effect and subject to the remaining provisions of this ordinance.

Notwithstanding any other provision of this ordinance to the contrary, if a court of competent jurisdiction determines this ordinance is invalid or unenforceable, Ordinance No. 97-27 shall be deemed not to have been repealed and shall remain in full force and effect.

SECTION 10. Effective Date. This ordinance shall become effective 60 days after passage, and, within 15 days of passage, this ordinance shall be published once, with the names of the Supervisors voting for and against it, in the East Bay Times, a newspaper of general circulation published in this County. Pursuant to section 913-6.026 of the Contra Costa County Ordinance Code, the Clerk of the Board shall promptly file a certified copy of this ordinance with the County Recorder.

PASSED and ADOPTED on May 22 2018 by the following vote:

AYES: Gioia, Andersen, Burgis, Mitchoff, Glover

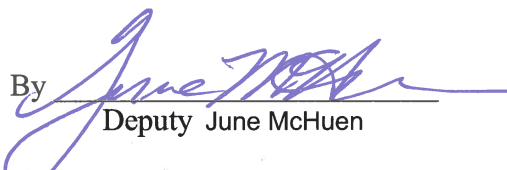
NOES: None

ABSENT: None

ABSTAIN: None


Board Chair Karen Mitchoff

ATTEST:
DAVID J. TWA, Clerk of the Board
of Supervisors and County Administrator

By 
Deputy June McHuen

Attachments: Exhibit A (Map and Legal Description of Discovery Bay Area of Benefit Boundaries)

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