



Contra  
Costa  
County

To: Board of Supervisors  
From: Brian M. Balbas, Public Works Director/Chief Engineer  
Date: November 9, 2021

Subject: Adoption of Central County Area of Benefit Fee Ordinance and Accompanying Resolution.

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## **RECOMMENDATION(S):**

ADOPT Ordinance No. 2021-37 to adjust transportation mitigation fees and update the project list for the Central County Area of Benefit (AOB), reestablish the boundaries of that area of benefit, abolish the South Walnut Creek Area of Benefit, and repeal prior area of benefit fee ordinances and resolutions.

ADOPT Resolution No. 2021/377, to adopt the April 2021 Development Program Report and March 2021 Nexus Study attached thereto.

DETERMINE that the adoption of Ordinance No. 2021-37 and Resolution No. 2021/377 are exempt from environmental review under the California Environmental Quality Act (CEQA), pursuant to Article 5, Section 15061(b)(3) of the CEQA Guidelines.

DIRECT the Conservation and Development Director to file a Notice of Exemption with the County Clerk-Recorder; and DIRECT the Public Works Director to arrange for payment of the \$25.00 handling fee to the County Clerk-Recorder for the filing of the Notice of Exemption.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **11/09/2021** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

### **VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: November 9, 2021

Monica Nino, County Administrator and Clerk of the Board of Supervisors

By: Stacey M. Boyd, Deputy

Contact: Jerry Fahy,  
925.313.2276

cc:

DIRECT the Clerk of the Board of Supervisors to record certified copies of Ordinance No. 2021-37 and Resolution No. 2021/377 in the Official Records of the Contra Costa County Clerk-Recorder.

RECOMMENDATION(S): (CONT'D)

DIRECT that, on January 1, 2023, and on each January 1 thereafter that the Ordinance No. 2021-37 remains in effect, the Public Works Director adjust the Central County AOB transportation mitigation fees for the effects of inflation or deflation, in accordance with Section 5(a)(3) of the ordinance.

REDESIGNATE Trust Fund No. 1242 as the fund into which all Central County AOB transportation mitigation fee revenue will be deposited; DIRECT all Central County AOB transportation mitigation fee revenue to be deposited into that fund; and DIRECT the County Treasurer-Tax Collector to invest all monies in that fund, with interest to accrue and remain in the fund.

DIRECT that all funds deposited in Trust Fund No. 1242 must be used solely to pay new development's proportional share of the actual or estimated costs of constructing the transportation improvements specified in the Development Program Report and Nexus Study attached hereto, and to reimburse the County for payment of any such costs with money advanced by the County from its general fund, or from other County revenues.

DIRECT the Public Works Director to transfer all assets and liabilities of the trust fund for South Walnut Creek Area of Benefit (Trust Fund No. 1243) to Trust Fund No. 1242 and close Trust Fund No. 1243.

DETERMINE that, pursuant to Government Code section 66001(f), the administrative costs of refunding approximately \$133,000 in unexpended Trust Fund No. 1243 assets will exceed any amount to be refunded.

DETERMINE that all unexpended Trust Fund No. 1243 assets shall be used only on the Olympic Boulevard projects (Projects SWC2, SWC7, and SWC9), which will serve development projects that paid South Walnut Creek Area of Benefit fees.

AUTHORIZE the Public Works Department to collect an additional administrative fee equal to two percent (2%) of the applicable Central County AOB fee.

DIRECT the Conservation and Development Director to monitor future amendments to the currently adopted General Plan and their impact on traffic within the Central County AOB and to report those amendments to the Public Works Director as necessary to facilitate updating of the Central County AOB Fee.

FISCAL IMPACT:

Adoption of Ordinance No. 2021-37 will result in the collection of transportation mitigation fees from new development in amounts calculated to reflect new development's proportional share of the actual or estimated costs of transportation improvements that are necessary to mitigate transportation impacts within the Central County AOB, as specified in the Development Program Report and the Nexus Study. (100% Transportation Mitigation Fees)

#### BACKGROUND:

A. SUMMARY: This item will adopt Ordinance No. 2021-37 and Resolution No. 2021/377 to establish area of benefit fees to be imposed on new development within the reestablished Central County Area of Benefit. The Board of Supervisors held a noticed public hearing on October 12, 2021, and there was no majority protest. Staff recommends that the Board of Supervisors approve this item to ensure new development within the reestablished Central County Area of Benefit pays its proportional share of the cost of the transportation improvements necessary to serve that development.

B. INTRODUCTION: One of the objectives of the County General Plan is to connect new development directly to the provision of community facilities necessary to serve that development. In other words, development cannot be allowed to occur unless a mechanism is in place to provide the funding for the infrastructure necessary to serve that development. Imposing transportation mitigation fees on new development is a means of raising revenue to construct road improvements to serve new developments. Requiring that all new development pay a transportation mitigation fee ensures that new development pays its proportional share of the transportation improvements that need to be constructed to alleviate traffic impacts attributable to that development.

C. HISTORY AND PURPOSE OF CENTRAL COUNTY AOB: On March 15, 1988, the Board adopted Resolution No. 88/122 and Ordinance 88-27, which created the Countywide Area of Benefit that consisted of seven regions, one being the Central County region. At the time the Central County Area of Benefit was divided into four subareas: Briones, Martinez, Central County, and South Walnut Creek. Over the next ten years after the initial resolution, Areas of Benefit were developed for each of these subregions forming separate AOBs, on December 6, 1994, and June 13, 1995, for the South Walnut Creek and Central County AOBs, respectively. As the South Walnut Creek AOB has limited development potential remaining, staff recommends that the South Walnut Creek AOB is merged into the Central County AOB to create a single AOB to maintain flexibility on how to respond to the transportation mitigation needs for new development and decrease administration costs. The Central County Nexus Study reflects a combination of boundary areas and combined list of projects to make Central County and South Walnut Creek one combined AOB funding program.

D. PROPOSED CHANGES TO FEE PROGRAM: In recent years, the development potential and traffic circulation needs have changed within the Central County AOB. These changes, along with population growth and new estimated potential growth, have prompted an update to the Central County AOB program, resulting in an amended project

list, and some administrative modifications, as discussed below.

1. New Project List: County staff and consultants have identified transportation projects that are needed to serve development within the Central County AOB through 2040. These projects have been included on a new project list, attached as Exhibit C to the April 2021 Development Program Report (“2021 Development Program Report”). This list contains 28 projects, of which 4 are carry-over projects from the 1994/1995 AOB Project List.

The total estimated cost of the updated list of projects is \$71,494,000, of which \$5,865,871 is attributable to new development within the Central County AOB. Detailed estimates of the cost of each of the projects on the project list are included in the March 2021 Nexus Study, Central County Area of Benefit (the “Nexus Study”), attached as Exhibit D to the 2021 Development Program Report. The cost of the projects attributable to new development will be paid with revenue from transportation mitigation fees imposed on new development within the Central County AOB. The remaining cost of the projects, attributable to existing development, will be paid from other revenue sources, including but not limited to State or Federal Highway Safety Improvement grant funds, Local Measure J funds, gas tax revenue, and various other grant programs that may become available in the future.

2. Revised Fee Rates: Based on the analysis in the Nexus Study, transportation mitigation fees were calculated to charge new development for its proportional share of the cost of the projects on the project list in the 2021 Development Program Report. The maximum transportation mitigation fee rates supported by the Nexus Study are set forth in Table 1, below, along with the recommended rates to be adopted by Ordinance 2021-37. The proposed fee rates are the maximum allowable rates supported by the Nexus Study. However, the recommended fee rates represent a decrease from the rates currently in effect. On January 1, 2023, and on each January 1<sup>st</sup> thereafter, each of the fees in Table 1 will automatically increase or decrease 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.

**Table 1: Central County AOB Fee Rates**

<b>Land Use Category</b>	<b>Fee Rates to be Adopted per Nexus Study</b>
Single-Family	\$5,335 / du
Multi-Family	\$3,275 / du
Commercial/Retail	\$7.57 / sf
Office	\$6.12 / sf
Industrial	\$4.86 / sf
Other	\$5,335 / du

**Note: du = dwelling unit; sf = square foot; due = dwelling unit equivalent**

The total fees required to be paid by a new development project applicant will be calculated based on the number of dwelling units (residential), square feet (commercial, office, industrial), or dwelling-unit-equivalents (other) attributable to that development multiplied by the applicable fee rate in Table 1. The fee for the expansion of an existing development will be calculated by determining the number of dwelling units, square feet, or dwelling-unit-equivalents attributable only to the expansion.

The fees to be paid by each new development will be collected at the time a building permit is issued for the development, in accordance with Ordinance Code Chapter 913-4. Fee revenue will be deposited in the fund for the Central County AOB – Trust Fund No. 1242 – and used only for the transportation improvements identified in the 2021 Development Program Report.

3. Use of Existing Fee Revenues: The existing Central County AOB fund includes a fund balance of approximately \$5.8 million. There are four carryover projects from the existing Central County AOB project list that have not been completed and that remain on the new Central County AOB project list. Those carryover projects are: Rudgear Road (SM1), Walnut Boulevard (SM2), Mountain View Boulevard (SM3), and San Miguel Drive (SM4) (See Nexus Study, p. 32.) Existing Central County AOB funds will remain on deposit and used for the SM1, SM2, SM3, and SM4 projects when sufficient funding is available to deliver those projects. The County has not collected sufficient funds from other sources to pay for the portion of the project costs attributable to existing development.

There are no carryover projects from the South Walnut Creek AOB project list. All projects in that AOB were completed when the Olympic Boulevard Widening was completed. The ordinance will abolish the South Walnut Creek AOB and include the area previously covered by that AOB within the Central County AOB. The South Walnut Creek AOB fund has a fund balance of approximately \$133,000.

South Walnut Creek AOB fees have been paid by thousands of parties over nearly twenty years. The administrative cost of trying to identify parties entitled to a refund, calculate pro-rata refunds, and refund the existing funds would be administratively burdensome, and the staff time to undertake that effort is expected to exceed the amount that would be refunded. Therefore, in accordance with the requirements of Government Code section 66001(f), staff recommends that funds remaining in the South Walnut Creek AOB be transferred to the Central County AOB fund and used for the Olympic Boulevard projects, Projects SWC2, SWC7, and SWC9. Those projects will serve the development projects that paid South Walnut Creek AOB fees.

E. RESOLUTION NO. 2021/377 Pursuant to Government Code sections 66484 subdivision (a)(3), and 66484.7, subdivision (a)(3), a resolution must be adopted by the

Board that incorporates a description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing.

The 2021 Development Program Report sets forth the boundaries of the Central County AOB, the list of projects and their estimated costs, the method of fee apportionment, and nexus findings. Approval of Resolution No. 2021/377 is required to comply with the above legal requirements by adopting and incorporating the facts and findings contained in the 2021 Development Program Report, and the Nexus Study attached to the report.

F. ORDINANCE NO. 2021-37:

To adjust the Central County AOB fees to generate revenue to fund the transportation improvements described herein, an ordinance must be adopted that includes the “nexus” findings required by Government Code section 66001. The ordinance also must include the specific information required by Government Code section 66484. Ordinance No. 2021-37 includes the information and findings required by those statutes.

Adoption of Ordinance No. 2021-37 will repeal prior Central County and South Walnut Creek AOB fee ordinances and impose new transportation mitigation fees on new development within the Central County AOB. The ordinance includes provisions for fee reductions for affordable and inclusionary housing, senior housing, and congregate care facilities. Revenue from the fees will fund the transportation projects necessary to serve transportation demands within the Central County AOB through 2040. Staff recommends that the Board adopt Ordinance No. 2021-37.

Notice of the October 12, 2021 hearing on the approval of the Central County AOB fee ordinance was given in accordance with Government Code sections 6061, 65091, 54986, 66484, and Ordinance Code Section 913-6.014. The hearing was held and there was no majority protest regarding the proposed fees or the proposed fee ordinance.

G. ADMINISTRATIVE FEE: In addition to the transportation mitigation fee imposed on a new development project, the County will assess an administrative fee equal to 2% of that transportation mitigation fee. This additional fee will be used to cover staff time for fee collection, accounting, technical support to the community groups, traffic advisory committees and other administrative tasks.

H. CEQA FINDINGS: These actions are covered by the general rule that the California Environmental Quality Act (CEQA) applies only to activities that have the potential to cause a significant effect on the environment. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The implementation and imposition of fees has no associated environmental impacts. Therefore, this activity is exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines. The future implementation of the transportation improvement projects to be funded with transportation mitigation fee revenue, however, may have associated project-specific impacts, and such impacts will be evaluated under

CEQA as each project is planned and implemented.

For the reasons specified above, Public Works Department staff recommends that the Board take each of the recommended actions listed in this board order, to adjust the transportation mitigation fees that are imposed on new development within the Central County AOB.

CONSEQUENCE OF NEGATIVE ACTION:

Failure to adopt Ordinance No. 2021-37 to adjust fees in the Central County Area of Benefit, reestablish the boundaries, and update the proposed project list of the area of benefit will result in new development within the Central County AOB not paying its proportional share of the transportation improvements needed to serve development within the AOB through 2040, and projects needed to satisfy transportation demands within the AOB cannot be funded under the existing AOB program.

ATTACHMENTS

Resolution No. 2021/377

Development Program Report

Nexus Study

Ordinance 2021-37