

PUBLIC NOTICE FOR
MITIGATION FEE ACT RESOLUTION

File 160.45

BOARD MEETING: December 12, 2018
AGENDA ITEM NO.: To be determined

FROM: Paul L. Merrill
Finance Manager

**SUBJECT: Adoption of Resolution Making Findings In Compliance with
the Mitigation Fee Act, Five-Year Report**

Summary

The Subdivision Map Act (Government Code §§ 66410, *et seq.*) and the Mitigation Fee Act (Government Code §§ 66000, *et seq.*) each contain certain requirements relative to the imposition of fees by local governmental agencies. The Subdivision Map Act allows a local government entity to adopt an ordinance, subject to certain conditions, to require the payment of fees for the purposes of defraying the actual or estimated cost of constructing drainage facilities for the removal of surface and storm waters from local drainage areas. (Gov. Code § 66483.) The Mitigation Fee Act sets forth certain requirements that must be followed by a local agency in establishing or imposing fees. In addition to requiring the District to establish the purpose of the fee, identify the use to which the fee is to be put, and determine the reasonable relationship between the fee's use and the type of development project on which the fee is imposed, the Mitigation Fee Act requires that any fee collected for the purpose of defraying the cost of public facilities or planned drainage facilities shall be segregated and deposited in separate funds or accounts to avoid commingling of the fees with other revenues or funds. Both Acts require the fees to be expended solely for the construction of facilities, or to reimburse an Agency, or Developer for construction of facilities, for which the fees are collected and for the benefit of the lands paying such fees. Also, the Acts require that any interest earned on fees while on deposit in the funds be credited to the drainage area or fund from which the fees were collected.

After the District receives the fee, the Mitigation Fee Act imposes some additional reporting requirements. First, the District shall deposit, invest, account for, and expend the fees pursuant to Government Code Section 66006. As previously mentioned, these funds are kept in a separate capital facilities account to avoid commingling of the fees with other revenues and funds of the District. Furthermore, this Act requires on an annual basis, and once every five years, certain information be made available to the public. In addition, at least once every five years, the Board, by resolution, must make certain findings and declare the unexpended funds held in the Pre-Paid Drainage Assessment (PPDA) Trust Fund are needed for future construction or reimbursement.

BOARD MEETING: December 12, 2018
AGENDA ITEM NO.: To be determined

Government Code Section 66001(d) requires that certain findings be made every five years with regard to unexpended funds held in the PPDA Trust Fund. The following is an excerpt from Government Code Section 66001:

- (d) For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:*
- 1) Identify the purpose to which the fee is to be put.*
 - 2) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.*
 - 3) Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in paragraph (2) of subdivision (a).*
 - 4) Designate the approximate dates on which the funding referred to in subparagraph (3) is expected to be deposited into the appropriate account or fund.*

Additionally, on an annual basis and within 180 days after the last day of each fiscal year, the District must make the information identified in Government Code Section 66006(b) available to the public.

In order to comply with both the findings required annually and a five-year basis, staff prepared a report and made it available to the public on the District's website on November 26, 2018. The District's report has been available to the public for more than fifteen (15) days (as required by the Government Code) and the Board, after review of the report, should adopt the attached Resolution confirming the above findings pursuant to Government Code Section 66001(d).

Recommendation

It is recommended the Board of Directors:

- 1) Review the information presented in this memorandum, and
- 2) Make the following findings related to that information:
 - a. That the purpose for which the fee is to be put has been identified.
 - b. That a reasonable relationship has been demonstrated between the fee and the purpose for which it was charged,
 - c. That all sources and amounts of funding anticipated to complete financing in incomplete improvements have been identified,
 - d. That the approximate dates on which the funding referred to above is expected to be deposited into the appropriate fund has been designated.
- 3) Adopt the attached Resolution confirming these findings.

Discussion

The Mitigation Fee Act specifies certain requirements for establishing, increasing, or imposing a fee as a condition of approval of a development project. These requirements are

BOARD MEETING: December 12, 2018
AGENDA ITEM NO.: To be determined

fulfilled each year through adoption of a Resolution establishing the schedule of drainage fees and costs for local drainage areas. Following receipt of a fee, the Act has additional requirements.

The District established PPDA Trust Funds to comply with the Act's requirements to segregate fees. The Funds were first subdivided into three (3) Zones. Zone 1 consists of drainage areas around the core area of the Cities. These drainage areas are all independent watersheds each with their own drainage system and drainage fee schedule. Each drainage area has a separate fund to account for fees individually. Zone 2 is comprised of the drainage areas within the original core area of the City of Fresno and has been aggregated into a combined drainage system with one drainage fee schedule. Zone 3 is comprised of the drainage areas within the original core area of the City of Clovis and has been aggregated into a combined drainage system with one drainage fee schedule.

In accordance with the yearly public reporting requirements, the following eight items were made available to the public within 180 days of the end of the fiscal year. The following information was made available on the District's website on November 26, 2018. The information is also provided herein for the Board to review and make the necessary findings related to adoption of the attached Resolution.

- 1) **A brief description of the type of fee in the account or fund.**
The funds within the PPDA trust Funds are drainage fees paid by development at the time of construction on property within the District.
- 2) **The amount of the fee.**
The current amount of the drainage fee is that fee rate adopted by Resolutions of the Board that are attached as Exhibit Nos. 1a through 1f.
- 3) **The beginning and ending balance of the account or fund.**
This information is identified on Exhibit No. 2 and Exhibit No. 3.
- 4) **The amount of the fees collected and the interest earned.**
This information is identified on Exhibit No. 2 and Exhibit No. 3.
- 5) **Identification of each public improvement on which fees were expended from the fund.**
This information is identified in the list on Exhibit No. 4.
- 6) **Identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public project.**

BOARD MEETING: December 12, 2018
AGENDA ITEM NO.: To be determined

Drainage fees within the account will be expended on future drainage improvements, or as a reimbursement to the District for prior construction, at times when development requires assistance with funding or there is debt to the District's General Fund for prior construction of drainage improvements by the District. As the District desires to utilize these funds to assist the development community, the timing of the use of the funds is dependent upon development activity within a drainage area and the need for the funding. The total current and future obligations of each account are identified in Exhibit No. 2 and Exhibit No. 5.

7) **A description of each inter-fund loan or transfer made from the account or fund.**

Inter-fund loans are made between accounts or funds on an infrequent basis to assist in the funding of improvements. See Exhibit No. 2 and Exhibit No. 3 for payment of loans between drainage areas in this reporting period. Inter-fund loans or transfers during the past fiscal year are as follows:

1) Zone 1 cash activity included a payment by Drainage Area "BU" to a Zone 2 Drainage Area "T" for \$3,677.45. This is a final payment. The obligation arose as part of Agreement 495-T-7, executed March 1, 1995 with the City of Fresno.

8) **The amount of any refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001.**

This information is provided in Exhibit No. 2, Exhibit No. 3 and Exhibit No. 4.

Paul L. Merrill
Finance Manager

Attachments

RESOLUTION NO. _____

**BEFORE THE BOARD OF DIRECTORS OF THE
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT**

**RESOLUTION OF FINDINGS PURSUANT TO
THE MITIGATION FEE ACT FIVE -YEAR REPORT**

WHEREAS, the Fresno Metropolitan Flood Control District (District) has established Pre-Paid Drainage Assessment (PPDA) Trust Funds to comply with the Mitigation Fee Act's requirements to segregate funds or accounts to avoid commingling of the fees to be expended solely for the construction of facilities or the reimbursement of an agency for the construction of facilities with other revenues or funds; and

WHEREAS, the District is required to make certain findings once every five years with respect to unexpended funds in the PPDA Trust Funds pursuant to Government Code Section 66001(d); and

WHEREAS, the information to make such findings was made available to the public on November 26, 2018, which is within 180 days of the end of fiscal year 2017-2018.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Fresno Metropolitan Flood Control District hereby makes the following findings with regards to funds remaining in the PPDA Trust Fund as of June 30, 2018:

1. The above recitals are true and correct and this Board so finds and determines.
2. That the findings made below were based upon information made available to the public within 180 days of the end of fiscal year 2017-2018, on November 26, 2018, on the District's website.
3. Findings:
 - a. That the purpose for which the fee is to be put has been identified.

- b. That a reasonable relationship has been demonstrated between the fee and the purpose for which it was charged.
- c. That all sources and amounts of funding anticipated to complete financing in incomplete improvements have been identified.
- d. That the approximate dates on which the funding referred to above is expected to be deposited into the appropriate fund has been designated.

PASSED AND ADOPTED this 12th day of December, 2018, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN: