

AN ORDINANCE OF THE COUNTY OF SANTA BARBARA REPEALING
CHAPTER 21, ARTICLE II, DIVISION 2 OF THE COUNTY CODE, AND
REPLACING IT WITH A NEW **CHAPTER 21, ARTICLE II, DIVISION 2**
REGARDING REGIONAL DRAINAGE FACILITY DEVELOPMENT IMPACT FEES
IN THE ORCUTT COMMUNITY PLANNING AREA

CASE NO. 98-OA-006

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA
ORDAINS AS FOLLOWS:

Section 1. Chapter 21, Article II, Division 2 of the Santa Barbara County Code is repealed and replaced with a new Article II, Division 2 to read as follows:

Article II. Flood Control
Division 2 - Orcutt Area Regional Drainage Fees

Section

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Section 21-78. Findings.

(a) In order to implement the goals and objectives of the Orcutt Community Plan and to mitigate impacts caused by new development projects within the Orcutt Planning Area, a Regional Drainage Facility Development Impact Fee is necessary. The fee is needed to

finance regional drainage facilities necessary to serve new development and to assure new development projects pay their fair share for these facilities.

(b) Title 7, Chapter 5, § 66000 et seq. of the California Government Code provides that Development Impact Fees may be enacted and imposed on development projects. The Board of Supervisors finds and determines that:

- (1) New development projects cause the need for construction, expansion and/or improvement of regional drainage facilities within the Orcutt Planning Area.
- (2) Funds for construction, expansion and/or improvement of regional drainage facilities are not available to accommodate the needs caused by new development projects, which will result in inadequate regional drainage facilities within the Orcutt Community Planning Area.

c) The Orcutt Community Planning Area has different regional drainage facility needs that are impacted differently by new development and subdivisions. Four (4) Regional Drainage Benefit Areas have been established to meet the different regional drainage needs created by new development. The four regional drainage benefit areas include, but are not limited to:

1. East Clark Benefit Area
2. Union Valley Benefit Area
3. Orcutt Creek Benefit Area
4. Pine Canyon Creek Benefit Area

Benefit areas may be further defined, added, deleted or consolidated by resolution of the Board of Supervisors.

(d) The Board of Supervisors finds that the public health, safety, and general welfare will be promoted by the adoption of a Regional Drainage Facility Development Impact Fee for the construction, expansion and/or improvement of regional drainage facilities, the need for which is caused by new development projects. In establishing a Regional Drainage Facility Development Impact Fee, the Board of Supervisors finds the fee consistent with the Santa Barbara County Comprehensive Plan/Land Use Element and the Orcutt Community Plan.

(e) Pursuant to Government Code section 65913.2, the Board of Supervisors has considered the effects of the fees with respect to the County's housing need as established in the housing element of the general plan.

(f) Pursuant to Title 14 California Code of Regulations, § 15061 and 15273(4), the Board of Supervisors finds that this ordinance is exempt from the California Environmental Quality Act.

Section 21-79. Definitions.

Words when used in this ordinance, and in resolutions adopted under the authority of this ordinance, shall have the following meanings:

- (a) "Orcutt Community Plan" is defined as the plan that updates the Santa Barbara County Comprehensive Plan for the unincorporated area of Orcutt.
- (b) "Orcutt Community Planning Area" is defined as that area of the County of Santa Barbara delineated by the Orcutt Community Plan adopted by the Board of Supervisors on July 22, 1997 and as amended from time to time.
- (c) "Development" or "Development Project" means any project that involves the issuance of a permit for new construction, and reconstruction or expansion of an existing structure, which would result in an increased impact on public services.
- (d) "Residential Unit" means a building used for the primary purpose of human habitation, such as a single family home, an individual condominium unit, or an individual apartment.
- (e) "Dwelling Unit" means a building or portion thereof designed for and occupied in whole or in part as a residence or sleeping place, either permanently or temporarily, by one family and its guests, with sanitary facilities and one kitchen provided within the unit.
- (f) "Fee" means a monetary exaction, other than a tax or special assessment, that is charged by the County of Santa Barbara in connection with approval of a development project or subdivision for the purpose of defraying all, or a portion of, the cost of Regional Drainage Facilities related to the development project or subdivision.
- (g) "Subdivision" means the division of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized County assessment roll as a unit or as contiguous units, for the purpose of sale or lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if separated by roads, streets, utility easement or railroad rights-of-way. "Subdivision" includes a condominium project, as defined in subdivision (f) of Section 1351 in the California Civil Code, a community apartment project as defined in subdivision (d) of Section 1351 of the California Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in subdivision (m) of Section 1351 of the California Civil Code, as the same presently exists or may hereafter be amended.
- (h) "Regional Drainage Facilities" includes public improvements, and community amenities including but not limited to drainage systems, retention basins, storm drains, related planning, engineering, construction and administrative activity, and/or any other

capital regional drainage facility projects identified in the OCP Public Infrastructure Financing Program.

(i) "Regional Drainage Impact" means any development project within the identified benefit areas which generates increased storm water runoff.

(j) "Public Infrastructure Financing Program" means the AB 1600 Fee Justification Study, Fiscal Impact Report, and Financing Plan prepared for the Orcutt Community Planning Area dated October 17, 1997, in conjunction with the adoption of this ordinance, and may be amended from time to time.

(k) "Capital Improvement Plan" means the plan for regional drainage capital improvements as identified in the PIFP or its successor, as adopted or updated by the Board of Supervisors. The Capital Improvement Plan indicates the approximate location, size, time of availability and estimated cost of capital improvements to be financed with impact mitigation fees and appropriate money for capital improvement projects.

(l) "Board of Supervisors" means the Board of Supervisors of the County.

(m) "County" means the County of Santa Barbara, a political subdivision of the State of California.

Section 21-80. Adoption of Regional Drainage Facility Development Impact Fees.

Pursuant to this ordinance, Regional Drainage Facility Development Impact Fees shall be adopted from time to time by resolution of the Board of Supervisors after a noticed public hearing. Such fee, when adopted, shall be a condition of the issuance of permits for, or the approval of, new development projects within the Orcutt Community Planning Area.

In adopting the resolution, the Board of Supervisors shall:

- (1) Identify the purpose of the fee;
- (2) Identify the use to which the fee is to be put;
- (3) Determine a reasonable relationship between the fee's use and the type of development project on which the fee is imposed;
- (4) Determine a reasonable relationship between the need for the regional drainage facility and the impacts from the type of development project on which the fee is imposed;
- (5) Determine a reasonable relationship between the amount of the fee and the cost of the regional drainage facility, or portion of the regional drainage facility; and

- (6) Establish a schedule of fees for regional drainage facilities.

Section 21-81. Applicability of Fees.

(a) A Regional Drainage Facility Development Impact Fee shall be charged upon the approval for any of the following new development within the Orcutt Planning Area:

1. The construction or installation of new single family and multi-family (e.g., condos, mobile homes, apartments, duplexes, townhouses, 2nd units) residential units.
2. Additions to existing residential structures that add a new dwelling unit as defined by Section 21-79 (e).
3. The construction or installation of any new non-residential buildings, including any additions to such existing buildings which add more than 500 square feet of floor area; within Old Town Orcutt, as defined in July 22, 1997 OCP, only those additions to existing buildings which add more than 1,000 sf shall be subject to the fee.

Section 21-82. Exemptions.

The following will be exempted from payment of the Regional Drainage Development Impact fees referenced herein:

- (a) Any development project or subdivision that has no regional drainage impact, as defined by Section 21-79 (i) of this ordinance.
- (b) Any development project that does not require a building permit that allows for the erection, moving, alteration, or improvement within the County.

Section 21-83. Timing of Fee Payment.

- (a) Imposition of Fees
 - (i) The schedule of fees in effect on the date the vesting tentative map or vesting tract map for a development project is approved determines the applicable fee on the subject map. If there is no vesting map, the applicant pays according to the schedule of fees in place on the date the fees are paid.
 - (ii) When the applicant applies for a new permit following the expiration of a previously issued permit for a development project for which fees were paid, another fee payment is not required unless (1) the project has been changed in a way that alters its regional drainage impact, or (2) the schedule of fees has been amended during the interim. In this event, the applicant pays the appropriate increase or decrease in the fees.

- (iii) When fees are paid for a development project and the development project is abandoned without any further action beyond the obtaining of a permit or an approval, the payor shall be entitled to a refund of the fees paid, less a portion of the fees sufficient to cover costs of collection, accounting for and administration of the fees paid.

(b) Payment of Fee

- (i) Except as set forth in section (ii) and (iii) below, Regional Drainage Facility Development Impact Fees shall be paid on the date the final inspection is approved.
- (ii) For residential development containing more than one dwelling unit, the developer may request that the fees be paid in installments based on the phasing of their development project. The decision whether to allow installment payments shall be determined by the Public Works Director. Any fee installment shall be paid at the time when the first dwelling unit within each phase of development has received its final inspection.
- (iii) The county shall require the payment of fees at an earlier time if the fees will be collected for public improvements of facilities for which an account has been established and funds appropriated and for which the county has adopted a proposed construction schedule or plan prior to final inspection, or the fees are to reimburse the local agency for expenditures previously made.
- (iv) No building permit for any development project shall be issued unless a contract has been executed to pay the fees, and no final inspection for any development project shall be approved unless fees have been paid.

Section 21-84. Fee Adjustments.

(a) A developer of any project, or a subdivider of any land, subject to the payment of fees pursuant to this ordinance may appeal to the Board of Supervisors for a reduction, adjustment, or waiver of any Regional Drainage Facility Development Impact Fee based upon the absence of any reasonable relationship or nexus between the regional drainage impacts of the project or subdivision and either the amount of the fee(s) charged or the type of regional drainage facilities to be financed. The appeal shall be made in writing, shall state the factual basis for the claim of reduction, adjustment or waiver, and shall be submitted to the Director of Public Works within 15 calendar days following the determination of the fee amount.

(b) The Director of Public Works shall review the appeal, develop recommended actions to be taken by the Board of Supervisors, and submit both the appeal and recommended actions to the Board of Supervisors for their consideration at a public

hearing to be conducted within 60 days after the filing of the appeal. The decision to the Board of Supervisors shall be final. If a reduction adjustment or waiver is granted, any change in use from the project as approved shall invalidate the waiver, adjustment or reduction of the fee.

Section 21-85. Fee Reduction for Beneficial Projects.

- (a) The following types of projects may apply for fee reductions, adjustments or waivers of Regional Drainage Facility Development Impact Fees.
1. Residential projects in which 50 percent of the units developed are affordable as defined by the County's affordable housing guidelines, or
 2. Residential projects in which 25 percent of the units developed are available to low income buyer/renters per the County's affordable housing guidelines, or
 3. Projects proposed by non-profit entities or governmental agencies which will provide public access to sites of significant historical, cultural, or natural resource value, and/or provide essential health, safety, welfare or other community service needs. The applicability of this provision to individual projects shall be subject to a determination by the Planning Commission and/or Board of Supervisors.
- (b) Any reduction, adjustment or waiver of Regional Drainage Facility Development Impact Fees must be accompanied by a finding of availability of substitute funds to assure that the regional drainage facilities can be constructed.
- (c) Any Regional Drainage Facility Development Impact Fee reduction or waiver granted as a result of a fee reduction policy shall apply only to the original specified land use. Any change in land use shall be subject to re-evaluation by the County and may result in the imposition of fees previously reduced or waived.

Section 21-86. Fee Account.

- (a) Upon receipt of a fee subject to this ordinance, the County shall deposit, invest, account for and expend the Regional Drainage Facility Development Impact Fees pursuant to California Government Code 66006.
- (b) Regional Drainage Facility Development Impact Fees paid shall be held by the Public Works Department in a separate Regional Drainage Facility Development Impact Fee account to be expended for the purpose for which they were collected. The Public Works Department shall retain all interest earned on the fees in such accounts and shall allocate the interest to the accounts for which the original fee was imposed.

Section 21-87. Use of Funds.

- (a) Funds collected from Regional Drainage Facility Development Impact Fees shall be used to acquire, construct, and install regional drainage facilities or reimburse costs of previously constructed facilities.
- (b) No funds collected pursuant to this ordinance shall be used for periodic or routine maintenance.
- (c) Funds may also be used to pay debt service on bonds or similar debt instruments to finance the acquisition, construction and installation of related equipment to the Regional Drainage Facilities.
- (d) Funds may also be used to offset the cost of administration of the fund including audits, yearly accounting and reports, and other costs associated with maintaining the fund.

Section 21-88. Developer Construction of Facilities.

In lieu fee credit for the construction of regional drainage facilities and service improvements is allowable under the following conditions:

- (a) Only the costs of regional drainage facilities listed on, or exempted from, the applicable Regional Drainage Capital Improvement Plan shall be eligible for in-lieu credit.
- (b) With prior approval of the Director of Public Works or his/her designee, an in-lieu credit of fees may be granted for actual construction costs (or a portion thereof) of regional drainage facilities provided by the developer.
- (c) If the actual construction cost is greater than the required relevant fees, the County shall have no obligation to pay the excess amount.
- (d) An amount of in-lieu credit that is greater than the specific fee(s) required under this ordinance may be reserved and credited toward the fee of any subsequent phases of the same development or subdivision, if such credit is determined to be appropriate and timely, and approved in advance by the Director of Public Works.
- (e) If an applicant is required, as a condition of approval for a discretionary permit or a final subdivision map, to construct any off-site regional drainage facilities, and the cost of the facilities is determined to exceed the fee due under this ordinance, a reimbursement agreement may be offered in writing by the Director of Public Works. The reimbursement agreement shall contain terms and conditions approved by the Public Works Director, Auditor-Controller, County Counsel and the Board of Supervisors. This section shall not create any duty to offer a reimbursement agreement.

(f) Regional drainage facilities specifically required exclusively to serve a project or subdivision shall not be eligible for in-lieu fee credit.

(g) A developer or subdivider seeking credit and/or reimbursement for construction or improvements of facilities, or dedication of land or rights-of-way, shall submit documentation acceptable to the Public Works Director to support the request for credit or reimbursement. The Public Works Director shall determine whether the facilities or improvements are eligible for credit or reimbursement, and the amount of such credit or reimbursement due the developer or subdivider if so eligible.

(h) Any claim for credit must be made at or before the time of application for a building permit. Any claim not so made shall be deemed waived.

(i) Exemptions, credits, reductions, adjustments, or waiver of fees shall not be transferable from one project or subdivision to another without the Board of Supervisors' approval.

(j) Determination made by the Public Works Director pursuant to this section (21-88) may be appealed to the Board of Supervisors by filing a written request with the Clerk of the Board, together with a fee established by the Board of Supervisors, within ten (10) working days of the determination of the Public Works Director.

Section 21-89. Condition for Refunds.

(a) If a permit upon which a fee was based expires without commencement of construction, the taxpayer shall be entitled to a refund of the Regional Drainage Development Impact Fee(s) paid, with any interest accrued thereon, as a condition for the issuance of the permit. The fee payer shall submit a written request for a refund to the Public Works Director within two years after the expiration date of the permit. Failure to timely submit a request for a refund may constitute a waiver of any right to a refund.

(b) The Public Works Director shall report to the Board of Supervisors, once each fiscal year, any portion of Regional Drainage Facility Development Impact Fees remaining unexpended or uncommitted in an account five (5) or more years after deposit and identify the purpose for which the fee was collected. In accordance with Government Code § 66001, the Board of Supervisors shall make findings once each fiscal year on any portion of the fee remaining unexpended or uncommitted in its account five (5) or more years after deposit of the fee, to 1) identify the purpose to which the fee is 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 of the regional drainage facilities and; 4) designate the approximate dates on which the funding is deposited into the appropriate account.

(c) For all unexpended or uncommitted fees for which the findings set forth in (b) cannot be made, the County shall refund to the current record owner or owners of lots or

units of the development project(s) on a prorated basis the unexpended or uncommitted fees, and any interest accrued.

(d) If the administrative costs of refunding unexpected and uncommitted revenues collected pursuant to this ordinance exceeds the amount to be refunded, the Board of Supervisors, after a public hearing, for which notice has been published pursuant to Government Code Section 66001 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which the fees are collected pursuant to Government Code § 66001 et seq. and that serves the project on which the fee was originally imposed.

Section 21-89.1. Annual report.

(a) At least once every year a proposed Capital Improvement Plan detailing the specific regional drainage facilities to be funded by Regional Drainage Facility Development Impact Fees shall be presented to the Board of Supervisors for adoption by resolution. Notice of the Plan shall be given pursuant to Government Code § 65090 and § 66002, as they now exist or may be amended.

(b) Except for the first year that this ordinance is in effect, no later than sixty (60) days following the end of each fiscal year, the Public Works Director shall submit a report to the Board of Supervisors identifying the balance of fees in the Regional Drainage Facility Impact Fee Program Fund established pursuant to this ordinance, and the facilities proposed for construction during the next fiscal year. In preparing the report, the Public Works Director shall adjust the estimated costs of the public improvements in accordance with the appropriate Engineering Construction Cost Index as published by Engineering News Record, or its successor publication, for the elapsed time period from the previous July 1 or the date that the cost estimate was developed.

(c) At a public hearing the Board of Supervisors shall review estimated costs of the regional drainage facilities described in the Capital Improvement Plan, the continued need for these facilities, and the reasonable relationship between the need and the impacts of development for which the fees are charged. The Board of Supervisors may revise the Regional Drainage Facility Development Impact Fees to include additional projects not previously foreseen as being needed.

Section 21-89.2. Automatic Annual Adjustment.

Regional Drainage fees imposed by this ordinance shall be adjusted automatically on July 1st of each fiscal year, beginning on July 1, 1999, by a percentage equal to the appropriate Engineering Cost Index as published by Engineering News Record, or its successor publication, for the preceding twelve (12) months.

Section 21-89.3. Fee Revision By Resolution.

The amount of the regional drainage fee established pursuant to this ordinance may be set and revised periodically by resolution of the Board of Supervisors. This ordinance shall be considered enabling and directive in this regard.

Section 21-89.4. Superseding Provisions.

This ordinance and any resolution adopted pursuant hereto supersedes County Ordinance No. 1205 (Orcutt Master Drainage Fund).

Section 21-89.5. Severability.

If any section, phrase, sentence, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision; and such holding shall not affect the remaining portions of this ordinance.

Section 21-89.6. Effective Date.

Pursuant to California Code Section 66017 (a), this ordinance shall be in full force and effect sixty (60) days after the date of its adoption by the Board of Supervisors.

Section 21-89.7. Publication.

The Clerk of the Board is hereby authorized and directed to publish this ordinance by one insertion in the Santa Barbara News-Press, the Lompoc Record, the Santa Ynez Valley News, and the Santa Maria Times, and all other newspapers of general circulation within Santa Barbara County, within 15 days of its adoption by the Board of Supervisors.

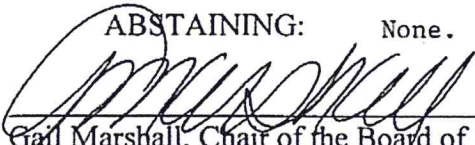
PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara,
State of California, this 16th day of June, 1998, by the following votes:

AYES: Supervisors Schwartz, Graffy, Marshall, Staffel, Urbanske.

NOES: None.

ABSENT: None.

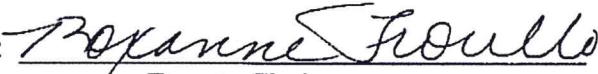
ABSTAINING: None.



Gail Marshall, Chair of the Board of Supervisors,
County of Santa Barbara

ATTEST:

Michael F. Brown
Clerk of the Board of Supervisors

By: 

Deputy Clerk

Approved as to form:

Stephen Shane Stark
County Counsel

By: 

Deputy County Counsel