

ORDINANCE NO. 1600

**An Ordinance Amending Title XIII, Chapter 13 of the Yuba County Ordinance
Code by Adding Section 13.77 Relating to Levee Fees**

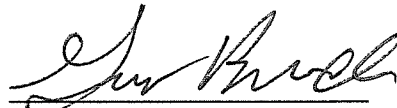
The following ordinance consisting of three (3) sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Yuba, State of California. at a regular meeting of the Board of Supervisors held on 8 day of June, 2021, by the following vote:

AYES: Supervisors Vasquez, Blaser, Fuhrer, Bradford, Fletcher

NOES: None

ABSENT: None

ABSTAIN: None



Chairman of the Board of Supervisor
of the County of Yuba, State of California

ATTEST:

Clerk of the Board of Supervisors

By: Rachael Jordan

APPROVED AS TO FORM
MICHAEL J. CICCOTZI
COUNTY COUNSEL



By: Sims Ely
Sims Ely, Deputy County Counsel

The Board of Supervisors of the County of Yuba, State of California does ordain as follows:

Section 1. This ordinance shall take effect Sixty (60) days after its passage, and before the expiration of Thirty (30) days after its passage a summary shall be published, with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Chapter 13 of the Yuba County Ordinance Code is hereby amended by repealing Sections 13.75 and Section 13.76 in their entireties and adding Section 13.77 in its entirety as follows:

CHAPTER 13.77

LEEVE FEES

(THREE RIVERS LEEVE FEE NEXUS STUDY UPDATE)

13.77.010. - General provisions.

- (a) *Authority.* This Chapter is adopted under and pursuant to the provisions of, but not necessarily limited to, Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the California Government Code.
- (b) *Findings.* The Board of Supervisors of Yuba County, after review of the record and consideration of testimony and evidence presented at a public hearing, hereby finds and declares:
 - (1) The County has previously established the East Linda Specific Plan (ELSP) Area, the Plumas Lake Specific Plan (PLSP) Area, and the North Arboga Study Area (NASA). Collectively, the property within and around these areas is referred to herein as "flood zone".
 - (2) Property located within the flood zone lies within the Yuba River Flood Plain/Inundation Area, the Feather River Flood Plain/Inundation Area, or both flood plain/inundation areas.
 - (3) Development has occurred, is occurring, and is anticipated to continue to occur within the flood zone. In order to protect the health, safety and welfare of current and future residents within the flood zone, a series of levee improvements to the Yuba River, Feather River, Bear River, Western Pacific Interceptor Canal and Yuba Goldfields are needed to provide flood protection within the flood zone.
 - (4) The required levee improvements could not be constructed unless funds were generated to pay for such improvements. The County established a development impact fee to fund levee improvements in 2006, Yuba County Ordinance 1372, ("levee fees") to generate the necessary revenue for the levee improvements and repay debt incurred to provide funding for levee improvements. The establishment of the levee fees, pursuant to a nexus study, ensured that new development within the flood zone pays its proportionate share of the levee improvement costs. The county revised the nexus study in 2008 with adoption of Yuba County Ordinance No. 1465.
 - (5) The Three Rivers Levee Improvement Authority (TRLIA), a Joint Powers Agency established by Yuba County and Reclamation District No. 784, with funding from the County's collection of levee fees as well as funding from the issuance of debt by the Yuba Levee Finance Authority, has constructed many of the needed levee improvements and is expected to complete the improvements in 2021 or 2022.
 - (6) Because the financing plan for the levee improvements includes the use of debt which is expected to be repaid from the future collection of levee impact fees, the levee impact fee program must remain in place.
 - (7) The total amount of debt expected to be repaid from future levee fees, the timing of revenue from levee fee collection, the total cost of the improvements funded by the fee and the total amount of

revenue received through grants from the State of California by TRLIA have all changed since the adoption of Yuba County Ordinance No. 1465. As a result, the Three Rivers Levee Fee Nexus Study Update dated XX, 2021 (Nexus Study Update) has been prepared.

- (8) Based upon current flood plain/inundation maps, property within the flood zone is divided between the Linda Zone (in the North) and the Plumas Zone (in the South).
- (9) The boundaries of the Linda Zone and the Plumas Zone are depicted in Exhibit A [Map 1 of the Nexus Study Update] attached hereto and is incorporated herein by reference.
- (10) The preliminary total cost estimate for levee improvements for each flood plain and the remaining local share of those costs is set forth in Exhibit "B" [Appendix B of the Nexus Study Update] hereto and is incorporated herein by reference.
- (11) As described in the Nexus Study Update, there is a reasonable relationship between the use of the levee fees and the development projects subject to their respective fees because such development projects contribute to the need for the levee improvements identified herein.
- (12) As described in the Nexus Study Update, there is a reasonable relationship between the amount of the levee fees and the potential cost of the levee improvements attributable to development projects within the flood zone and subject to the fees.
- (13) As described in the Nexus Study Update, the method of allocation of the respective levee fees to a particular development project bears a fair relationship, and is roughly proportional to, the development project's burden on, and benefits from, levee improvements to be funded by the levee fees. The adoption of the ordinance from which this Chapter is derived is statutorily exempt from the California Environmental Quality Act under Sections 15262 and 15269 of the California Environmental Quality Act Guidelines.
- (14) The levee fees will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which a proposed construction schedule or plan has been adopted, as well as to reimburse and service debt incurred to provide the public improvements or facilities.

(Prior Code, § 13.76.010; Ord. No. 1465)

13.77.020. - Establishment of fees.

Fee. Levee fees are hereby established as more particularly set forth below:

- (1) The levee fee shall be charged to all new development within the Linda Zone and the Plumas Zone in accordance with the Nexus Study Update and as set forth in Exhibit "C," attached hereto and incorporated herein by reference.
- (2) The levee fees shall be paid at building permit final.

(Prior Code, § 13.77.020; Ord. No. 1465)

13.77.030. - Adoption of studies.

After review and public hearing, the Board of Supervisors of Yuba County hereby adopts the Three Rivers Levee Fee Nexus Study Update and the analyses, calculations and conclusions provided therein.

(Prior Code, § 13.77.030; Ord. No. 1465)

State Law reference— Adoption by reference, Government Code § 50022.1 et seq.

13.77.040. - Deposit of fees in trust fund.

Each component of the levee fees received by the County shall be deposited into a separate trust fund in a manner to avoid any co-mingling of the fees with other revenues and funds of the County, except for temporary investments, and expended solely for the purposes for which the fees were collected. Any interest income earned by monies in any such trust fund shall also be deposited into such trust fund and shall be expended only for the purpose for which the fee was originally collected.

(Prior Code, § 13.77.040; Ord. No. 1465)

13.77.050. - Protests and appeals.

- (a) Any party may protest the imposition of any fees hereunder by the County by meeting both of the following requirements:
 - (1) Tendering any required payment in full or providing satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.
 - (2) Serving written notice of the Clerk of the Board of Supervisors, which notice shall contain all the following information:
 - a. A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest.
 - b. A statement informing the Board of Supervisors of the factual elements of dispute and the legal theory or theories forming the basis for the protest.
- (b) A protest filed in accordance with this Section shall be filed within 90 days after the date of the imposition of the fee to be imposed on the development project. The County shall provide to the project applicant a notice in writing at the time of the imposition of the fees a statement of the amount of the fees and notification that the 90 day appeal period in which the applicant may protest has begun. The hearing before the Board of Supervisors shall be set by the Clerk of the Board of Supervisors within 30 days after submission of the notice of appeal or protest and the hearing shall occur within 90 days of such submission. At the hearing, oral and written evidence may be presented. The Board of Supervisors shall issue a written decision on the appeal or protest no later than 30 days after it is submitted to the Board for decision. The written decision shall be a final administrative decision.

(Prior Code, § 13.77.050; Ord. No. 1465)

13.77.060. - Administration.

- (a) *Fee.* The County Auditor/Controller shall determine the estimated costs of administration of this Chapter and shall recommend to the Board of Supervisors the amount of fees which must be charged to recover those costs. Initially, costs shall be estimated and the Board may establish fees separately, by resolution, to reimburse those costs, which shall include any additional costs resulting from implementing a County review process to identify development impacts and carry out this Chapter, or from analysis by the County, not otherwise required, of matter related to implementation and/or updating of information relating to this Chapter.
- (b) *Additional rules and regulations.* The Board of Supervisors may adopt by ordinance or resolution rules, regulations, guidelines and procedures for the administration of this Chapter.

(Prior Code, § 13.77.060; Ord. No. 1465)

13.77.070. - Enforcement.

- (a) *Misdemeanor.* Violation of this Chapter shall be a misdemeanor. The District attorney may institute criminal proceedings hereunder. A violator, upon conviction, shall be fined not more than \$1,000.00, imprisoned for a period not exceeding six months, or both fined and imprisoned.
- (b) *Civil proceedings.* The County Counsel may institute civil proceedings to enforce this Chapter, including without limitation, actions for injunction and civil penalties. Construction without the authorization required by this Chapter may be suspended by a court of competent jurisdiction. Violation of this Chapter interferes with the provision of public services and, as such, shall be a public nuisance.
- (c) *Civil penalties.* Any violator of this Chapter shall be liable, in addition to payment of the amount of any fees dues, for civil penalties not to exceed: \$500.00 for each day during which construction proceeds in violation of this Chapter plus 15 percent of the amount of any fee not paid when due.
- (d) *Lien.* In the event of failure of the owner of a development project to pay in full any fee or fees payable under this Chapter, the County may place and record a lien upon the property on which development is constructed in the amount of the unpaid fee. The Board of Supervisors shall adopt rules concerning imposition of such liens, including notice of the imposition of such liens and an opportunity for hearing.
- (e) *Cost of securing compliance.* Any person or entity not in compliance with this Chapter shall be liable, in addition to other amounts provided herein, for attorney's fees and all other reasonable costs of securing compliance, including the cost of collection.
- (f) *Interest.* Interest shall accrue on all fees not paid when due pursuant to this Chapter at the rate prescribed by law for interest on judgments, from the date when payment was due until the date payment is received in full.
- (g) *Board modification, termination and review of fees.* The Board of Supervisors may, by ordinance, modify or terminate any fees under this Chapter and may establish additional fees or charges related to administration of this Chapter.

Exhibit A

[Insert Map 1 in Nexus Study Update]

Exhibit B

[Insert Appendix B to Nexus Study Update]

Exhibit C

[Insert Nexus Study Update Report]

(Prior Code, § 13.77.070; Ord. No. 1465)

State Law reference— Penalties for ordinance violations, Government Code § 25132, Penal Code § 19.

13.77.080. - Severability.

If any Section, subsection, sentence, clause, phrase, provision or portion of this Chapter, or the application thereof to any person or circumstances, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or provisions of this Chapter or their applicability to distinguishable situations or circumstances. In enacting this Chapter, it is the desire of the Board of Supervisors to validly regulate to the full measure of its legal authority in the public interest, and to that end, the Board of Supervisors declares that it would have adopted this Chapter and each Section, subsection, sentence, clause, phrase, provision, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions thereof might be declared invalid or unconstitutional in whole or in part, as applied to any particular situation or circumstances, and to this end the provisions of this Chapter are intended to be severable.

State Law reference— Similar provisions, Government Code § 23.

The foregoing is a true and correct
copy of the document on file
in this office

ATTEST: RACHEL FERRIS
Clerk of the Board of Supervisors of
the County of Yuba, State of California

By: Rachel Ferris

Date: June 9, 2021

**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA**

A RESOLUTION AMENDING)
THE THREE RIVERS LEVEE FEE)
CREDIT AND REIMBURSEMENT)
POLICIES AND AUTHORIZING THE)
COUNTY ADMINISTRATOR OR HIS)
DESIGNEE TO NEGOTIATE)
AMENDMENTS TO DEVELOPMENT)
AGREEMENTS WITH AFFECTED)
LANDOWNERS)
_____)

RESOLUTION NO. 2021-078

WHEREAS, certain landowners provided advanced funding of Three Rivers Levee Impact Fees for which they are due a credit and a reimbursement of the sums in excess of the benefits received by landowners' project; and

WHEREAS, in response to this fact, in November 2008, the County adopted Resolution No. 2008-153 establishing a credit and reimbursement program related to the advance funding of the Three Rivers Levee Fee.

WHEREAS, in July 2020 the County entered into the Plumas Lake CFD Workout Plan Agreement with the Yuba Water Agency and Three Rivers Levee Improvement Authority in which, among other things, the County agreed to advance a reduction of the Three Rivers Levee Impact Fee.

WHEREAS, the County has taken the necessary actions to approve a revised Three Rivers Levee Impact Ordinance which provides a reduction in the fee and changes the basis of the fee charge from Gross Developable Acres to Units.

WHEREAS, as a result of Fee Reduction and its change in basis, as well as the County's stated objectives within the Plumas Lake CFD Workout Plan Agreement, the County desires to modify certain fee credit provisions previously approved as part of Resolution No. 2008-153.

NOW, THEREFORE, BE IT RESOLVED AND ESTABLISHED, by the Yuba County Board of Supervisors, the Three Rivers Levee Impact Fee Credit and Reimbursement Policy Update, which is affixed hereto and marked as **Attachment "A"**, and by this reference incorporated herein as though set forth in full, after first having received input from county staff and members of the public and having read and considered the staff reports, recommendations and proposed policy changes for crediting.

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NOW, THEREFORE, BE IT FURTHER RESOLVED AND ORDERED that the Yuba County Administrator or his designee is hereby authorized to negotiate any needed amendments to previously approved Development Agreements with the landowners that incorporate the original fee crediting and reimbursement policies adopted pursuant to Yuba County Resolution 2008-153 to address the Three Rivers Levee Impact Fee Credit and Reimbursement Policy Update, such negotiations being subject to final approval by the Board of Supervisors.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Yuba, State of California, held on June 8, 2021, by the following vote:

AYES: Supervisors Vasquez, Blaser, Fuhrer, Bradford, Fletcher

NOES: None

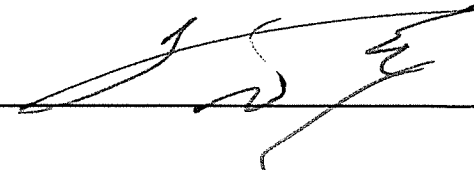
ABSENT: None


Chair

ATTEST: RACHEL FERRIS
Clerk of the Board of Supervisors

APPROVED AS TO FORM:
Mike Ciccozzi, County Counsel


Rachel Ferris

By: 
Mike Ciccozzi

ATTACHMENT A

THREE RIVERS LEVEE IMPACT FEE CREDIT & REIMBURSEMENT POLICY UPDATE

UNDERLYING ASSUMPTIONS

The following are the underlying assumptions that predicate the establishment of two updates to the credit and reimbursement policies previously approved by Yuba County Board of Supervisors Resolution No. 2008-153:

- Unless specifically addressed here, all previously approved policies remain in effect and unchanged.
- The effective date for the application of these updated policies will be the effective date of the revised ordinance adopted by the Yuba County Board of Supervisors (assumed to be 60 days after the adoption of the Ordinance which would be August 7, 2021).

CREDITING POLICY UPDATES FOR PRIOR ADVANCE FUNDING

FULL CREDIT APPLICATION

Whereas the prior Crediting Policy allowed for the use of the accumulated credit on a proportionate basis as the remainder of a project is developed, this update refines this policy as follows:

Any and all accumulated credit and future credit generated from existing advance funding mechanisms (including special tax revenues from the TRLIA CFD's) will be applied to the full amount of any levee impact fee due by a project afforded the credit as the fee is due.

As homes¹ are constructed and permits are finalized, the landowner will be allowed to apply accumulated credit, to the extent available to the full amount of any fee due prior to building permit final.

ACREAGE CREDIT CONVERSION

Whereas pursuant to policy original adopted stated, "...credit for prior advance funding will be expressed in terms of GDAs and will be determined by taking the amount of prior advance funding and dividing it by the Initial Fee Rate of \$60,159 per GDA. The amount

¹ While it is possible for credit to be utilized for non-residential development, all credit that has been accumulated is related to Single Family residential development projects, thus this policy document is focused solely on Single Family Residential development.

of GDA credit will be set by this methodology and will not be recalculated in the future by the escalating fee rate." This policy is hereby modified. On the effective date of the new Three Rivers Levee Impact Fee Ordinance, all credit that has been tracked and expressed in terms of GDA's will be converted to a per unit credit.

Each GDA of credit accounted for within the Plumas Zone of the Fee, the credit accrued as a result of landowner advance funding for a Single-Family Residential Development Project, from any source - (i.e. provided as a cash contribution or revenues from a TRLIA CFD), as of the effective date of a revised Levee Impact Fee Ordinance, will be converted to 4.29 units of credit under the new revised Levee Fee program. The number of GDA credits for each project that has accumulated credit will be multiplied by 4.29 to express the number of units (and fraction thereof) of credits that have been accumulated.


NO OTHER CHANGES AND COUNTY INTERPRETATION

There are no other changes to the Credit and Reimbursement Policies other than those that have been stated above. The County will be sole interpreter of these updated policies and will determine how their application applies and modifies the previously approved policies.

The foregoing is a true and correct
copy of the document on file
in this office

ATTEST: RACHEL FERRIS
Clerk of the Board of Supervisors of
the County of Yuba, State of California

By:



Date:

June 9, 2021