



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: September 15, 2020

Title: Proposed Revision to Title 21 of the Pima County Code regarding Public Lands and Facilities

Introduction/Background:

The proposed revision to Title 21 of the Pima County Code regarding Public Lands and Facilities (Public Lands and Facilities Ordinance) allows for the Flood Control District (District) to implement a U.S. Army Corps of Engineers' In-Lieu Fee Program on District-owned land.

Discussion:

Pursuant to Section 404 of the Clean Water Act (CWA), when Waters of the United States (WUS) are disturbed, mitigation is required so that the quality and extent of these WUS is not diminished over time. While mitigation can occur within the project area, numerous circumstances exist where onsite mitigation is not practical. In these cases, offsite mitigation is required. The District is proposing to implement an In-Lieu Fee Program (ILF) to restore degraded District lands and receive mitigation credits that can be sold to individuals who are required to provide offsite mitigation. This mutually beneficial arrangement provides a straightforward process for projects that require mitigation to meet their mitigation obligation, while also allowing for the restoration of District lands with little cost to the District.

Conclusion:

This proposed revision provides opportunities to achieve restoration goals by improving the biological value of certain District-owned lands. The proposed revision also provides an efficient mechanism for various capital projects to efficiently achieve compliance with Section 404 of the CWA.

Recommendation:

The District recommends that the Board adopt the proposed revisions to the Public Lands and Facilities Ordinance

Fiscal Impact:

This revision will have a positive impact as it will allow the District to sell mitigation credits to fund restoration activities that are already planned or underway.

Board of Supervisor District:

☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ All

Department: Regional Flood Control District

Telephone: 724-4600

Contact: Suzanne Shields

Telephone: 724-4680

Department Director Signature/Date:

S. Shields

8/25/20

Deputy County Administrator Signature/Date:

C. Duchateau

8/28/2020

County Administrator Signature/Date:

C. Duchateau

8/28/2020

ORDINANCE NO. 2020-FC_____

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE PIMA COUNTY
FLOOD CONTROL DISTRICT RELATING TO DISTRICT LANDS AND
FACILITIES; REVISING THE PUBLIC LANDS AND FACILITIES ORDINANCE,
TITLE 21 OF THE PIMA COUNTY CODE.**

The Pima County Flood Control District Board of Directors finds it to be in the best interests of the residents of Pima County to revise the provisions for managing District lands and facilities to allow for the implementation of a United States Army Corps of Engineers In-Lieu Fee program on District owned lands.

**BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE FLOOD CONTROL
DISTRICT OF PIMA COUNTY, ARIZONA:**

SECTION 1. Title 21 of the Pima County Code is modified as follows:

TITLE 21. PUBLIC LANDS AND FACILITIES

CHAPTER 21.01 COUNTY LANDS AND FACILITIES REGULATIONS - Reserved

**CHAPTER 21.02 FLOOD CONTROL DISTRICT LANDS AND FACILITIES
REGULATIONS**

21.02.020 - Definitions.

For purposes of this Chapter, the following definitions shall apply:

- A. "Applicant" means any person, firm, partnership, association, corporation, or any agent of any such person or group, or the State of Arizona or a political subdivision of the State, proposing an activity that will impact a District Facility. When permit applications are for public capital improvement projects, the applicant is the jurisdiction, agency or public utility responsible for the capital improvement. The responsible party shall be considered the applicant even if a contractor is hired to perform the actual work.

- B. "cfs" means cubic feet per second.
- C. "Chief Engineer" means the Pima County Regional Flood Control District Chief Engineer appointed by the Pima County Flood Control District Board of Directors.
- D. "District" means the Pima County Regional Flood Control District.
- E. "District Facility" means any of the following (i) any land owned by the District, or in which the District has a real property interest, (ii) District Structures, and (iii) any and all lands, drainage ways and structures for which the District has maintenance responsibility. A map identifying District Facilities shall be kept by the Chief Engineer and shall be made available to all interested parties.
- F. "District Structures" – District Structures means conveyances constructed or maintained by the District, such as (i) channels or storm drains, (ii) structures for flood control such as soil cement bank protection, levees, grade controls, detention and recharge basins, and (iii) associated improvements such as river parks, access roads, etc.
- G. "District Lands" means property owned by the District or in which the District has a Real Property Interest, but for which District Structures are not present, including restoration areas and properties that have been dedicated to the District, purchased by the District, or in which the District has a Real Property Interest.
- H. "Drainage Way" means a designated area to convey and manage flood waters whether on property owned in fee title by the District, property in which the District has a Real Property Interest, or property maintained by the District. Drainage ways may be either natural or constructed.
- I. "Facility Impact Permit" means a permit issued by the District which authorizes an impact, either temporary or permanent, to a District Facility for a proposed third party use.
- J. "In Lieu Fee Program" means a program approved by the Board of Directors of the Flood Control District and by the United States Army Corps of Engineers to install mitigation projects on District Lands in order to provide mitigation credits for sale to public and private parties under the Clean Water Act Section 404 permit program.

21.02.120 In Lieu Fee Program- Standards

For all In-Lieu Fee (ILF) Program mitigation projects the following standard shall apply:

- A. A Development Plan, which details the mitigation elements of a project, shall be prepared by the District approved by the Board and the U.S Army Corps of the Engineers (USACE);
- B. Assign a compensatory mitigation credit fee for each Development Plan, pursuant to 21.02.130.
- C. Detailed accounting records will be maintained by the District in the USACE's electronic database of each and every ILF transaction identifying the credits sold and monies accepted for each specific permit issued by the USACE.
- D. In accordance with the Compensatory Mitigation Rule, 2008, §332.8(i)(1), the District will submit to the USACE District Engineer the following information:
 - 1. All income received, disbursements, and interest earned by the ILF Program account;
 - 2. A listing of all USACE's permits for which ILF Program funds were accepted including the permit numbers, the service area in which the authorized impacts are located, the amount of authorized impact, the amount of required compensatory mitigation, the amount paid to the ILF Program, and the date the funds were received from the permittee;

3. A description of the ILF Program expenditures from the account including any costs associated with land acquisition, planning, construction, monitoring, maintenance, adaptive management and program administration; and
4. The balance of any advance credits and release credits at the end of the report period for each designated service area.

21.02.1320 - Fees.

~~Pertinent charges for the above required permit and for meeting the conditions of the permit~~

- A. For Facility Impact Permits, the charges will include the permit fee, any additional fees for meeting the conditions of the permit such as inspection and material testing, as well as any fines applied to the applicant due to violations of the permit requirements.
- B. For compensatory mitigation projects, the District will develop a credit fee based on costs to plan, design, construct and maintain the compensatory mitigation as approved in the Development Plan.
- C. Permit fees, fines, and mitigation credit fees shall be set forth by a fee schedule approved by the Board of Directors for the Flood Control District and amended from time to time. A copy of the fee schedule is on file at the District's office and website.

21.02.1430 - Violation—Penalty.

- A. Any person, contractor, utility company or corporation violating any of the provisions of this chapter are subject to civil penalties or other legal action as provided by pertinent state statutes, including but not limited to ARS Sections 48-3615.01. The procedures set forth in Sections 16.64.020 and 16.64.070 of the Pima County Code also apply to notice and abatement of violations of this chapter.
- B. In addition to any penalties that occur during the compliance enforcement process, any impact that has occurred prior to issuance of a Facility Impact Permit, except as provided for emergency work in 21.02.110.C, shall require payment of double the permit fee.

SECTION 2. The fee schedule referenced in Pima County Code Section 21.02.130 is approved as shown in Exhibit A.

SECTION 3. The various Pima County and Pima County Flood Control District officers and employees are hereby authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

PASSED AND ADOPTED this _____ day of _____, 2020 by the Pima County
Flood Control District Board of Directors, Pima County, Arizona.

ATTEST:

BOARD OF DIRECTORS OF THE PIMA COUNTY
FLOOD CONTROL DISTRICT

Julie Castañeda
Clerk of the Board

Ramón Valadez, Chairman

Recommended to the Board:

Suzanne Shields, Director
Pima County Flood Control District

Approved as to form:



Deputy County Attorney for the District

EXHIBIT A

PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT FACILITY IMPACT PERMIT FEE SCHEDULE

Application Fee:

**Tier 1 and Tier 2 Impacts: No Fee
Tier 3 and Tier 4 Impacts: \$150**

Inspection Fee:

**Tier 1 and Tier 2 Impacts: No Fee
Tier 3 and Tier 4 Impacts: \$150/per inspection**

Materials Testing:

Cost of County materials testing laboratory (can be completed by independent testing laboratory with no fee applied)

Property Rights:

Determined separately by Real Property

UNITED STATES ARMY CORPS OF ENGINEERS IN LIEU FEE PROGRAM COMPENSATORY MITIGATION FEES

Canoa Ranch Development Plan; \$125,000 per acre