

Delta Diablo

(a California Special District)

Board of Directors Finance Committee Meeting

4:30 PM, Wednesday, October 25, 2023

Plant Operations Center Conference Room
2500 Pittsburg-Antioch Highway, Antioch, CA 94509

AGENDA

A. PUBLIC COMMENTS

B. REVIEW PROPOSED CAPITAL FACILITIES CAPACITY CHARGE REFUNDS FOR ACCESSORY DWELLING UNITS (Brian Thomas)

C. ADJOURNMENT

The District will provide reasonable accommodations for persons with disabilities who plan to participate in Board (or committee) meetings by contacting the Secretary to the Board 24 hours prior to the scheduled meeting at (925) 756-1927. Disclosable public records related to an open session item on a regular meeting agenda and distributed by the District to a majority of members of the Board of Directors less than 72 hours prior to that meeting are available for public inspection on the District website at www.deltadiablo.org and also at the District Administration Building located at 2500 Pittsburg-Antioch Highway, Antioch, CA 94509 during normal business hours.



MEMORANDUM

DATE: October 25, 2023

TO: Juan Banales, Chair, Finance Committee

FROM: Brian Thomas, Deputy General Manager/District Engineer *BAT*

SUBJECT: REVIEW PROPOSED CAPITAL FACILITIES CAPACITY CHARGE REFUNDS FOR ACCESSORY DWELLING UNITS

Recommendation

Review and comment on proposed Capital Facilities Capacity Charge (CFCC) refunds on monies levied and paid for accessory dwelling units (ADU) since January 1, 2020.

Background Information

On July 25, 2023 the District received a Government Claim Form seeking a refund of CFCCs paid (\$4,358) by the property owner (Claimant) for construction of a new ADU in the District's service area. The claim basis stems from a discrepancy between District Code and California Government Code (GC) regulations. Imposition of capacity charges by a local agency is governed by state law, which requires "proportionality" for assessment of capacity fees on ADUs. Assembly Bill 68 (AB 68), effective January 1, 2020, changed proportionality requirements to use either a square footage or drainage fixture unit comparison in determining capacity fees for ADUs. However, under District Code, CFCCs are imposed based on equivalent residential units (ERUs) with each ADU assessed CFCCs as one ERU.

Development of new fees, including proportionate CFCCs for ADUs, requires a nexus study to "support that the fee or capacity charge does not exceed the estimated reasonable cost of providing service" (GC Section 66016.6[a]). The District has completed two key documents—the 2021 Wastewater Rate Study and the 2022 Resource Recovery Facility Master Plan (RRFMP), which provide critical information (e.g., future flow and loading conditions, associated capital improvements) and key assumptions for the upcoming CFCC Study. Staff expects to initiate the CFCC Study this month with recommended findings for Board consideration in April 2024. Completing the CFCC Study will allow better align District Code with the proportionality requirement under AB 68.

Analysis

Because District Code does not align with the statutory proportionality requirement for assessment of CFCCs on ADUs under AB 68, staff is recommending that the Board consider refunding CFCCs paid by the individual Claimant, as well as CFCCs paid by a total of 34 other property owners who paid a combined total of \$143,509 in CFCCs for ADUs dating back to January 1, 2020 (i.e., AB 68 effective date). Pending completion of the CFCC Study, staff recommends suspending collection of CFCCs for ADUs until the District Code has been revised to comply with AB 68 requirements.

In developing this recommendation, staff identified the following available alternatives for resolving this issue:

- Option 1: Issue CFCC refund to Claimant only and defer refunds to other property owners until the District completes the CFCC Study and updates District Code to include a proportionate rate structure for assessing CFCCs for ADUs. This may allow assessment and collection of proportionate CFCCs from the 34 property owners, which may result in partial refunds of CFCCs paid to date.
- Option 2 (Recommended): Issue CFCC refund to Claimant and other responsive property owners who paid CFCCs for ADUs after January 1, 2020. Staff would notify the other 34 property owners and require a claim to be submitted in order to receive a CFCC refund.

In consideration of Option 2, staff noted that neither District Code nor GC provide a process for District-initiated refunds; however, California Health and Safety Code (HSC) Section 5474 provides a process for refunding owner-initiated claims. Pursuant to this section, only the person who paid the fees is entitled to a refund, which presents a challenge as, in some cases, a contractor, architect, or developer may pay CFCCs on behalf of the property owner as a pass through entity. If Option 2 is implemented, staff recommends that the refund process be administered under HSC Section 5474, including: 1) notifying property owners, and 2) requiring claim forms to be submitted. In addition, the District could require the property owner to affirm that receipt of the CFCC refund settles any claim the owner may have related to the CFCC assessment.

If recommended by the Finance Committee, staff would submit this item for consideration at the November 8, 2023 Board Meeting.

Fiscal Impact

If CFCC refund claim forms are received from all applicable property owners dating back to January 1, 2020, the lost CFCC revenue is estimated at \$147,867 over the nearly four-year period. Sufficient funding is available in the Wastewater Capital Asset Expansion Fund, which has a balance of \$10.6 million as of June 30, 2023, to support the recommended CFCC process.