



Legislation Text

File #: 21-1211, **Version:** 1

Planning and Building Department, Economic Development Division, recommending the Board consider the following:

- 1) Direct staff to prepare rules and procedures to provide reimbursement for Developers who construct improvements that were proposed to be financed by the Missouri Flat Master Circulation and Financing Plan (MC&FP) using tax increment funds set aside by the MC&FP development agreements;
- 2) Consistent with the Economic Development objectives of the County's Strategic Plan and Board Policies J-2 and J-7, provide conceptual approval of the use of Transient Occupancy Tax (TOT) funds for the Department of Transportation's (DOT) applicable portion of the County's cost to reimburse the Developer for eligible costs incurred in the proposed construction of MC&FP improvements as described in a later reimbursement agreement, which will be backfilled by future Master Circulation and Financing Plan (MC&FP) funds when they are not dedicated towards other projects; and
- 3) Once final costs are known, direct staff to return to the Board with an item to approve the necessary road improvement agreement and/or developer reimbursement agreement, including the addition of this funding obligation to the Fiscal Year (FY) 2021-22 Budget.

FUNDING: General Fund / Transient Occupancy Tax.

DISCUSSION / BACKGROUND

The County's adopted Strategic Plan contains five main strategic goals, one of which is Economic Development with a focus on enabling a prosperous and vibrant community. The Economic Development component further identifies goals and priorities to retain, develop, and attract businesses that provide economic sustainability and quality job creation, invest in infrastructure needs to maintain competitiveness, and nurture the County and Community's business-friendly environment.

Consistent with the County's Strategic Plan and the Planning and Building Department, Economic Development Division's (Economic Development) mission statement, Economic Development staff have been working with various stakeholders and developers to seek and attract new businesses to the County, and to expand existing businesses already operating successfully within the County. As staff continue to speak with developers and promote locating to the County or other significant development projects, staff have learned that in addition to the developer's site selection, there are other aspects and significant costs and/or obligations that play a role in developer's decision and must be addressed prior to finalizing a project, including road improvement agreements and related reimbursement agreements. Consultants and developers often seek proactive and inventive incentives when making these critical project decisions. As the County seeks to build a well-balanced and linked ecosystem, it is imperative to implement "outside the box" strategies that increase our competitiveness in the business attraction, expansion, and retention process.

The County has previously recognized the importance of incentives and has adopted several economic development-related Board policies to develop incentive programs and strategies. On April 17, 1990 (File No. 7212, Item No. 33), the Board adopted Policy J-2, which developed an Economic

Development Policy and provided priority to industrial and commercial projects. Additionally, on April 19, 2016 (File No. 14-0171 V4, Item No.31), the Board reinstated Policy J-7, which identifies targeted business sectors and incentive options. Lastly, on October 9, 2018 (File No. 18-1552, Item No. 35), the Board adopted Policy J-8, which provides for the offset of Special District Impact Fees for targeted non-residential business developments. The purpose of these Policies is to provide incentives that attract, retain, and expand businesses in the County. All of these policies rely on Transient Occupancy Tax funds (TOT) to provide the incentive funding source. The TOT Reserve, which is funded by setting aside unused TOT fund balance at the end of each fiscal year, is the source for these incentive funds.

The Crossings at El Dorado Project

After over twenty years of work, staff are almost ready to issue building permits and the Developer, Leonard Grado, to begin construction on the Crossings at El Dorado Project (the Crossings), formerly called Sundance Plaza, located on Missouri Flat Road, north of Prospector's Plaza. The Crossings was originally approved by the Board of Supervisors on December 8, 1998, and included a now-expired development agreement, a rezone (Z97-22), a Planned Development (PD 97-0011), and a tentative map (P 97-0017). The Crossings was included as part of the Missouri Flat Master Circulation and Funding Plan (MC&FP) and the related Environmental Impact Report. One of the goals of the MC&FP was to create a financing mechanism to fund necessary infrastructure improvements in the Missouri Flat Area. The Crossings is required by Condition of Approval 15 of its tentative map, and by a parcel map executed in April of 2021, to either construct, or enter into a road improvement agreement (RIA) with the County to guarantee the construction of, intersection improvements, including widening and signalization, at the intersection of Headington Road and Missouri Flat Drive before the County may issue any building permits. This project is included in our CIP as Missouri Flat Road Widening from Plaza Drive to Headington Road (CIP # 36105066) but is proposed to be funded by the MC&FP, and not the Traffic Impact Fee.

After years of market speculation and varying business climates, the Developer is ready to begin construction. A critical component to securing contracts with tenants is obtaining building permits for new construction. As required by the project Conditions of Approval, in order for building permits to be issued, the developer must enter into an RIA with the County in order to fulfill obligations for on- and off-site improvements required as part of the approval of the Planned Development project. The County cannot issue the building permits until the Developer enters into an RIA with the County to guarantee the construction of the Missouri Flat Road Widening from Plaza Drive to Headington Road (CIP # 36105066) and related improvements included as part of Phase One of the Crossings. An RIA is required by Section 12.08.155(A)(3) of the El Dorado County Ordinance Code because the Developer will be constructing an improvement in the County right-of-way that exceeds \$100,000. The RIA guarantees that the Developer will construct the necessary improvements. The County has completed the RIA and provided it to the Developer for signature and execution of the necessary surety bonds.

In order to execute the RIA, the developer is required by ordinance to provide a performance bond and a laborers and materialsmen bond for the work in the RIA. During the process of negotiating the RIA, the Developer advised staff that they cannot obtain financing for the costs related to the improvements in the RIA without knowing when they will receive reimbursement from the County for the road improvements. It was originally intended that the revenue source to reimburse the developer for these costs would be MC&FP funds. In order to complete the Crossings Project, the Developer is

required to construct improvements that are currently proposed to be financed using MC&FP funds in the amount of approximately \$2.2 million and a small portion that are proposed to be financed using our traditional TIF program in the amount of \$380,000. The County has not previously reimbursed a Developer for constructing MC&FP improvements using MC&FP funds. Reimbursement amounts will be predicated on the developer providing appropriate documentation to the County that the project is constructed in accordance with County requirements, the Public Contract Code, and the Labor Code.

Proposal for a MC&FP reimbursement program

As part of the MC&FP, the County agreed to construct certain MC&FP Improvements within the Missouri Flat Area that are identified as Phase One improvements in the MC&FP EIR. The County is also required by development agreements to annually contribute sums equal to 85% of new (incremental) sales and property tax revenue, resulting from development in the Missouri Flat Area, that would otherwise accrue to the General Fund, to pay for the County's proportional share of MC&FP Improvements in the area. The ultimate goal of the MC&FP was to encourage economic development and it has effectively enabled the development of approximately 500,000 square feet of retail business, which generates nearly \$1 million annually toward the improvements to the existing traffic deficiencies. The County must use the tax increment set aside to fund improvements that were identified as MC&FP Improvements in the MC&FP EIR. It would be too costly for the County to proceed with all of these improvement projects at once, so instead, the County identifies the annual revenue and prioritizes specific projects as the needs to make improvements arise, are directed by the Board, or if the County designates future revenue to fund improvements once those project costs have been incurred. DOT is responsible for proposing the prioritization of MC&FP funded projects, which the Board approves and authorizes the use of funds. DOT is then responsible for planning, designing, and implementing those roadway projects. The County has constructed the majority of the MC&FP Improvements included within Phase One of the MC&FP using a combination of the tax increment set aside and grant funds.

The Crossings is the first instance where a Developer has proposed to bear the initial costs to construct an MC&FP Improvement to be reimbursed using MC&FP funds. The MC&FP EIR had recognized that developer-constructed improvements could be reimbursed via MC&FP Funds. In addition, on July 23, 2020, (Item 50, Legistar 20-0530) the Board adopted an addendum to the MC&FP EIR that addressed the impacts of Phase II of the MC&FP. That addendum included a Public Facilities Financing Plan that recognized that Developers who provide capital to assist in upfront infrastructure funding may be eligible for reimbursement from the County from MC&FP funds. Additionally, the developer estimates that the development would generate approximately \$1 million in sales and property tax revenue each year at full build-out, with approximately \$800,000 being directed into the MC&FP fund. For those reasons, staff recommends the development of an MC&FP reimbursement program to ensure that developers who propose to construct MC&FP Improvements can be reimbursed for those costs that exceed the developer's fair share of the improvement. The sole source of reimbursement would be the funds that are available in the MC&FP account. Similar to our TIF reimbursement program, to obtain reimbursement a developer would have to provide appropriate documentation to the County that the project is constructed in accordance with County requirements, the Public Contract Code, and the Labor Code.

In addition, the Developer is aware that the sole source of reimbursement would be those funds that are available in the MC&FP account. Due to the need for several other projects to utilize MC&FP funding, funding for this project in the amount of \$2.07 million is not scheduled to be expended until

FY 2026-27.

This depleted fund balance is problematic to the Developer because the fund balance in the MC&FP Account does not show that they would obtain the necessary reimbursement in the timelines that the Developer's lender is requiring. In order to keep the Crossings Project moving forward and consistent with County economic development goals and objectives, it is recommended that funds from the TOT Designated Reserve, which is generally used for incentives related to economic development, be used to cover the reimbursement of road improvements made for this project. The FY 2021-22 Recommended Budget anticipated a balance of \$734,873 in the TOT designated reserve fund, following the use of this funding source for several expenses offsetting the effects of tourism and for promotional activities. Due to higher than expected TOT revenues throughout FY 2020-21, the budget for this Reserve is expected to increase by approximately \$2.8 million in the 2021-22 Final Adopted Budget. As such, funding is likely to be available to fund these reimbursements, which total \$2.2 million, in the short term. Although exact timing of the improvements is unknown, and therefore the timing for the reimbursement funding is also unknown, the fund balance for this reserve is available in an amount necessary to cover the total anticipated costs. As funding accumulates in the MC&FP special revenue fund and is available for use, the MC&FP funds will be used to reimburse the TOT Designated Reserve.

ALTERNATIVES

The Board could choose to not approve this option and approve another funding source, or the developer would have to wait to be reimbursed when MC&FP funds are available.

PRIOR BOARD ACTION

N/A

OTHER DEPARTMENT / AGENCY INVOLVEMENT

Chief Administrative Office
Department of Transportation

FINANCIAL IMPACT

This item would allow the expenditure of up to approximately \$2.2 million in funding from the TOT Designated Reserve, which would reduce the amount of funds available in that fund for other projects in the short term. However, this item also proposes to reimburse the TOT designated reserve as MC&FP tax increment funds become available. It is anticipated that not all work will be completed or fees will be due in Fiscal Year 2021-22. As reimbursement funds are needed, remaining amounts would be included in subsequent budgets.

Additionally, this reimbursement will catalyze significant economic and employment benefits to the County. Economic growth will be realized by increased property and sales tax revenue as well as increased employment opportunities in the County.

CAO RECOMMENDATION/COMMENTS

The Board should provide conceptual approval of the use of MC&FP funds for the purposes described above.

In regards to TOT funds, the Board should keep in mind that recently TOT funds have been used as the matching funds for Broadband grants, many of which require up to a 20% match. As a result,

while using TOT funds for purposes described above is consistent with County policy, any expenditure of TOT funds for this purpose will impact the availability of funds to match grant opportunities for Broadband purposes. As such, this is strictly a policy issue for consideration by the Board.

CLERK OF THE BOARD FOLLOW UP ACTIONS

N/A

STRATEGIC PLAN COMPONENT

Economic Development - This project furthers the Strategic Plan goals of retaining, developing, and attracting businesses that provide economic sustainability and quality job creation.

CONTACT

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