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To: Tony Boren, Executive Director, Fresno COG
From: Don Hubbard
Subject: Sub-Committee Review of Procedures for Special Studies and Appeals for the RTMF
Date: June 25, 2010

Measure "C" Extension includes a provision for special studies to be undertaken to determine the appropriate fee for unique types of land uses. The Measure offers some broad guidance on when and how these studies should be performed, but it would be prudent for the JPA to establish clear procedures for staff in advance of any requests coming in.

Similarly, the Mitigation Fee Act offers some guidance on how appeals are to be handled but this guidance needs to be incorporated into JPA procedures. A well-structured appeals process benefits both developers and the JPA by allowing disputes regarding the fee to be resolved quickly and at far less expense than if the disputes had to be resolved in court.

The RTMF was originally envisioned as being implemented by individual jurisdictions with appeals being sent to the Fresno County Transportation Authority (FCTA). This is the arrangement codified in the current RTMF resolution. However, the creation of the JPA as the implementing agency means that there are now two appellant agencies and a choice needs to be made as to which will handle the appeals.

The purpose of this memo is to discuss the three issues described above and to give the recommendations of the sub-committee on each, based on their June 9th meeting.

Special Studies

Every system for computing a mitigation fee involves a tradeoff between accuracy on one hand and administrative cost and complexity on the other. The most accurate system would be one based on a detailed technical analysis of all of the special characteristics of each proposed development and using them to generate a unique fee taking all factors into account. However, such a system would be a costly and time-consuming burden on development, so agencies normally rely on simpler systems that aggregate developments into various types that are then charged a uniform rate.

Appendix D of the 2007 Measure "C" Extension Expenditure Plan mandates the use of a relatively simple land use classification system, *"The RTMF shall apply to all types of land uses and to the extent possible limit the number of categories of fees to agriculture, single family residential, multifamily residential, commercial-office, commercial-retail, light industrial, heavy industrial and certain traffic generating nonessential public facilities."* This classification system was duly incorporated in the RTMF Master Fee Schedule.

The danger with a simple system is that there may be projects whose actual traffic impacts are well below the typical impact for its category¹. If so, the developer of such a project could contend in court that, for his particular project, the legally-required nexus for imposition of the fee does not exist. Measure "C" Extension deals with this problem as follows, "*provision should be made for unique types of land uses to be evaluated on an individual basis. Such unique projects and specific evaluation shall be paid for by the project applicant and performed by Fresno COG or its designee.*" In essence this provision allows for one-off fee calculations for individual projects in cases where a developer feels the standard use category for the particular land use, as defined in the RTMF and included in the adopted Master Fee Schedule, does not accurately reflect the trip generation characteristics of their project.

Measure "C" Extension does not define "unique" and provides little guidance it provides on how the evaluation is to be performed². We believe that the bar should be set high in both cases because to do otherwise could result in large numbers of claims for special treatment that would undermine the clear intent of Measure "C" Extension (*to the extent possible limit the number of categories ...*) and would weaken the defensibility of the RTMF to legal challenge. We therefore recommend the following process for handling requests for special studies:

- 1) The developer initiates the process by making a written request to the JPA to be considered for a special study. The developer should include in the request the reason they believe that their project is unique.
- 2) JPA staff determines whether a project is sufficiently unique to warrant special consideration. A project will be considered sufficiently unique only if it is a type that has never or very rarely (fewer than ten times) been implemented in Fresno County prior to the election of November 2006. Any development of a type that was commonly known in Fresno County in 2006 was presumably taken into account by the electorate when they voted in favor of land use categories incorporated into Measure "C" extension. Examples of projects that would meet this standard for uniqueness are:
 - A major airport, since fewer than ten such airports have been developed in Fresno County prior to the election of 2006.
 - A high-speed rail station, since this type of development never occurred in Fresno County prior to the election of 2006.

The JPA staff sends a written response to the applicant stating their determination that the project does or does not meet this standard. Sample letters are attached to this memorandum as Appendices A and B.

¹ The opposite problem could also occur, namely that a project could generate substantially more traffic impacts than is typical for its category. Presumably in such a case the developer would not request a special study but instead accept a fee based on average traffic impacts.

² The measure language includes the sentence, "*Regional traffic impacts shall be determined based upon the COG Regional Transportation Model analysis.*" There is no other guidance on evaluation procedures.

3) If JPA staff finds that a special study is warranted then, in consultation with the applicant, the JPA selects one of three permissible study types:

- An existing study that, in the opinion of the JPA staff, is sufficiently relevant and of a sufficiently high technical quality to serve as the basis for determining the traffic impacts of the project. The study could be a traffic impact study done for the project as part of its environmental clearance or could be a traffic analysis of actual traffic generated by similar projects that have already been completed. The JPA staff could then use the data from the study to compute the fee. The intent is to avoid imposing burdensome costs and delays for new studies if existing studies are already adequate.
- The JPA staff may perform a traffic study in-house using the COG travel demand model or other analytical tools available to the COG.
- The JPA may contract with another entity, public or private, to perform a traffic study. In such a case the JPA must ensure that the analysis is sufficiently relevant and of a sufficiently high technical quality to serve as the basis for determining the traffic impacts of the project. This allows for the use of studies by the public works staff of local jurisdictions or by private consultants.

No matter which of the study options is selected the study must use the COG traffic model in some capacity. We have run some tests on the model⁴ and find that it performs well for large projects (more than 500 employees) but will require supplemental techniques if small projects are to be analyzed.

- 4) Having selected the study type, the JPA makes arrangements for the applicant to cover the cost of the study. The arrangement could be, for example, a contract with a consulting company to carry out the work using funds provided by the applicant. Or the arrangement could be a contract for JPA staff to conduct the study for an agreed-upon price.
- 5) The staff then submits the results of the study to the Executive Director of the JPA for approval. Upon receiving approval of the project-specific fee, the staff then carries out the same procedures to implement the fee as it would with any other project, excepting only that the amount to be collected is different. Note that because special studies are already authorized in the Measure “C” they can be treated as a technical matter without the need for further authorization.

The key to making this procedure work is to reserve the special study option for truly unique land uses as directed by Measure “C” Extension. Fees based on the overall impacts of broad categories of new development, such as those used in the RTMF, are well established under California law and are easily defended in court; it is ad hoc fees computed for individual projects that cause trouble for agencies⁵. Moreover, frequent use of special studies runs the risk of creating a de facto new RTMF

⁴ See *Technical Memorandum - Computing Fees Using the COG Model*, Parsons Brinckerhoff, May 2010

⁵ The use of broad classes to set fees applicable to new development was established in *Garrick Development Co. v. Hayward Unified School District* (1992) 3 Cal.App.4th 320 and has been re-affirmed many times since by California courts. For example, “Neither the Government Code nor the United States Constitution requires a

rate that would make it difficult to defend the original rate. You can easily imagine the argument, “The last three (somewhat similar) projects were all given reduced rates. You are unfairly charging me a higher rate when my project will generate no more impacts than theirs ...” For this reason applicants cannot be granted permission for a special study simply because their proposed development is likely to have a below-average trip generation rate. The JPA will be safest if it is very sparing in granting permission for special studies.

Sub-Committee Recommendation: The sub-committee recommended adoption of the procedures described above. They also recommended that projects not be considered unique if they could be easily adapted to a non-unique use by a later tenant.

Choice of Appellant Agency

The special studies mechanism described in the previous section is for cases where the basis for requesting special treatment lies on the traffic impacts of the project. There are other possible bases for appealing a fee, such as disputes over vesting rights, computation of the fee, exemption status, and application of credits. These disputes are handled through appeals to the Board of the appellant agency.

The RTMF was originally envisioned as being implemented by individual jurisdictions with appeals being sent to the Fresno County Transportation Authority (FCTA). This is the arrangement codified in the current RTMF resolution. However, the creation of the JPA as the implementing agency means that there are now two appellant agencies and a choice needs to be made as to which will handle the appeals. The key factors in this choice are:

Agency Mission: The JPA was created specifically to administer the RTMF program, while FCTA was created to perform other tasks. The task of handling appeals arising from the RTMF program therefore seems more consistent with the JPA’s mission than the FCTA’s. This can be seen from the fact that if a dispute arises over how an agency conducts its business, for example a dispute between a developer and city staff, the appeal would almost always go to the city council, not to some other agency. So it would be very unusual for appeals regarding JPA operations to be sent to the FCTA.

Staff Resources: The JPA has a larger staff than the FCTA, and in particular have technical staff capable of running the county-wide traffic model. This would enable the JPA to process appeals faster and at lower cost to the developer than FCTA, which would have to contract out technical work.

Familiarity: The JPA staff is more familiar with the day-to-day operations of the RTMF than anyone else, and so is in the best position to understand how an appeal fits into the overall context of the program. For example, they would have better knowledge of how the applicant’s development compares with other developments that have paid the fee. If appeals were handled by the FCTA, then they would need to be brought up to speed on these issues, probably by JPA staff, thus adding to the cost delay involved in processing the appeal.

parcel-by-parcel determination of the amount of a developer fee applying to all developments within the city.” (*NorCal Investment Partners v. City of Redding, Cal.App.3rd at p. 11*).

Liability: The FCTA has indemnified the other agencies with respect to challenges to the RTMF and therefore will bear the financial consequences of any problems that arise. A case could be made that they should handle appeals so that they are in a position to decide whether denying the appeal is worth the potential risk of litigation.

Representation: JPA Board has representatives from every jurisdiction while the FCTA Board has only two representatives from the 13 smaller cities.

Sub-Committee Recommendation: The sub-committee unanimously supported having appeals heard by the JPA rather than the FCTA.

Proposed Appeals Process

The Mitigation Fee Act offers some guidance (Gov. Code § 66020) on how protests or appeals are to be handled. Based on this guidance the proposed procedure for filing an appeal is:

- 1) The applicant pays the fee and writes "Paid Under Protest" near the signature line of the Record of Payment.
- 2) The Applicant then submits a letter to the appellant agency (JPA or FCTA) stating the reasons they believe that the fee as calculated by JPA staff is not justified, and the amount of fee the applicant believes to be correct. This letter must be accompanied by a copy of the Record of Payment. The appeal must be filed within 90 days after the imposition of the fee. Failure to file a timely appeal will preclude a subsequent lawsuit.

The Mitigation Fee Act requires that the applicant be given written notice that the 90-day period for protest has begun; failure to provide such notice would have the effect that the 90-day clock never starts and the protest period would be open ended. A draft notice is attached as Appendix C that could be printed on the back of the Record of Payment that would fulfill this requirement. The draft uses the JPA as the appellant agency and should be revised if the FCTA is instead chosen to handle appeals.

- 3) If the appeal is based on some document other than the Record of Payment, such as a document issued by a local jurisdiction indicating the starting date of vesting rights or a document showing earlier payments for which the applicant wants credit, then copies of this document must be included in the additional documentation mentioned in the previous bullet point. The Applicant also the option to submit additional documentation to support their appeal.

If the applicant chooses to submit the optional documentation then they must submit at their own expense twenty-two⁶ copies of each supporting document they want considered. These copies are for the use of the appellant agency and will not be returned to the applicant.

- 4) If the appeal is based on a technical issue related to traffic or trip generation then the applicant must submit a technical analysis for consideration by the appellant agency. The project applicant is responsible for the cost of this analysis. Appeals based on technical issues should

⁶ This number is based on the need for a copy for each JPA Board member, staff and file copies, copies for outside consultants (if any) etc.

rarely be approved since a unique project would be eligible for a special study while a common project would be ineligible for special consideration. Nevertheless, it is possible that a technical issue would be grounds for a successful appeal (perhaps a development of a common type but with no vehicular access to the public road system or something similarly odd).

- 5) The appellant agency will act on appeals within three regular meetings of its Board. The Applicant will have a chance to speak on behalf of their request and to answer questions. However, the Applicant cannot introduce new arguments in support of the appeal or introduce new factual evidence not already covered in the appeal and its supporting documentation. This is to avoid situations where the applicant expects the Board to act on evidence that staff has not had an opportunity to corroborate or analyze.

Based on its consideration of the appeal, the Board may choose to set the RTMF for the Applicant's project at the amount stated in the appeal, the amount recommended by Staff based on the RTMF as generally applied, or some other amount deemed appropriate based on the information presented in the appeal.

The appeals process is purposefully broad since it is difficult to predict what sort of situations may arise over the twenty year period of the RTMF. Its two key characteristics are that the appeals process places the burden of proof on the applicant to show cause why their project should not be subject to the RTMF or subject to a lower fee than that computed by the JPA staff, and that the appellant agency must act on the appeal within a reasonable timeframe.

Sub-Committee Recommendation: The sub-committee approved the procedure for handling appeals as described above. This procedure incorporates several suggestions from the sub-committee, such as providing developers a written explanation of the appeals process, a mechanism for indicating payment under protest, and language in the notice that limits arguments that can be raised in court to those considered in the appeal to the board.

There was a lot of discussion among the sub-committee regarding the extent to which the Board can set the RTMF in cases that have been appealed. The consensus was that the Board is limited to selecting the category of land use that the development is classified under (perhaps choosing one with a lower fee rate) and perhaps has some discretion with regard to the floor space that is charged a fee if there is some question as to whether something is an ancillary use. However, some sub-committee members felt that the Board has wide discretion to set the fee as it sees fit. This issue was referred to legal counsel for an opinion.

A draft resolution adopting the procedures as recommended by the sub-committee is attached as Appendix D.

APPENDIX A: SAMPLE LETTER DECLINING A REQUEST FOR A SPECIAL STUDY

**Re: Request for a Special Study for the Regional Transportation Mitigation Fee for
[NAME OF PROJECT]**

Dear [NAME OF APPLICANT]:

Based on the information that you provided in your request dated [date], the RTMF-JPA has determined that your project is not eligible for a special study to determine a project-specific RTMF fee. The reason(s) for this determination is(are):

_____ Insufficient information was provided to justify the request. Please provide the following further information _____

_____ The proposed development is of a type commonly known to voters when they approved the RTMF as part of Measure "C" Extension, and was not approved in the measure for consideration as a separate category of development. It is therefore assumed that, in the view of the voters, it was adequately covered by one of the categories listed in the ballot measure.

_____ Other _____

You have the right to appeal the application of the RTMF to the Board of the RTMF Joint Powers Agency if you feel that the RTMF is being applied incorrectly. If you wish to appeal, please submit a letter to the JPA stating the reasons they believe that the fee as calculated by JPA staff is not justified, and the amount of fee you feel to be correct. This letter must be accompanied by a copy of the Record of Payment. You have the option to submit additional documentation to support their appeal. If you choose to submit the optional documentation then you must submit twenty-two copies of each document you want considered. These copies are for the use of the JPA and will not be returned to you.

If your appeal is based on some document other than the Record of Payment, such as a document issued by a local jurisdiction indicating the starting date of vesting rights or a document showing earlier payments for which the applicant wants credit, then copies of this document must be included in the additional documentation.

[PRINTED NAME OF EXECUTIVE DIRECTOR]

Executive Director

Fresno County Regional Mitigation Fee Agency

APPENDIX B: SAMPLE LETTER APPROVING A REQUEST FOR A SPECIAL STUDY

**Re: Request for a Special Study for the Regional Transportation Mitigation Fee for
[NAME OF PROJECT]**

Dear [NAME OF APPLICANT]:

Based on the information that you provided in your request dated [date], the RTMF-JPA has determined that your project is eligible for a special study to determine a project-specific RTMF fee. Please contact [NAME OF STAFF PERSON] to make arrangements for the study. The study will take one of three forms:

- The JPA may accept an existing study that, in the opinion of the JPA staff, is sufficiently relevant and of a sufficiently high technical quality to serve as the basis for determining the traffic impacts of the project. The study could be a traffic impact study done for the project as part of its environmental clearance or could be a traffic analysis of actual traffic generated by similar projects that have already been completed.
- The JPA staff may perform a traffic study in-house using the COG travel demand model or other analytical tools available to the COG.
- The JPA may contract with another entity, public or private, to perform a traffic study. In such a case the JPA must ensure that the analysis is sufficiently relevant and of a sufficiently high technical quality to serve as the basis for determining the traffic impacts of the project.

The JPA will decide which of the three forms is most appropriate for this project, but will take the preferences of the applicant into consideration in making its determination. Please note that the applicant is solely responsible for any costs incurred in the course of the special study.

[PRINTED NAME OF EXECUTIVE DIRECTOR]

Executive Director

Fresno County Regional Mitigation Fee Agency

APPENDIX C

NOTICE OF THE RIGHT TO APPEAL

You have the right to appeal the application of the RTMF to the Board of the RTMF Joint Powers Agency if you feel that the RTMF is being applied incorrectly. The procedure for filing an appeal is:

- 1) The Applicant must first pay the fee as calculated by the JPA staff, adding the words "Paid Under Protest" near the signature line.
- 2) The Applicant then submits a letter to the JPA stating the reasons they believe that the fee as calculated by JPA staff is not justified, and the amount of fee the applicant believes to be correct (Gov. Code § 66020(a).). This letter must be accompanied by a copy of the Record of Payment. The appeal must be filed within 90 days after the imposition of the fee (Gov. Code § 66020(d)(1).). Failure to file a timely appeal will preclude a subsequent lawsuit.
- 3) If the appeal is based on some document other than the Record of Payment, such as a document issued by a local jurisdiction indicating the starting date of vesting rights or a document showing earlier payments for which the applicant wants credit, then copies of this document must be included in the additional documentation mentioned in the previous bullet point. The Applicant the option to submit additional documentation to support their appeal.

The Applicant must submit at their own expense twenty-two copies of each supporting document they want considered. These copies are for the use of the JPA and will not be returned to the applicant.

- 4) If the appeal is based on a technical issue related to traffic or trip generation then the Applicant must submit a technical analysis for consideration by the JPA. The Applicant is responsible for the cost of this analysis.
- 5) The RTMF-JPA will act on appeals within three regular meetings of its Board. The Applicant will have a chance to speak on behalf of their request and to answer questions. However, the Applicant cannot introduce new arguments in support of the appeal or introduce new factual evidence not already covered in the appeal and its supporting documentation. This is to avoid situations where the applicant expects the Board to act on evidence that JPA staff has not had an opportunity to corroborate or analyze. Based on its consideration of the appeal, the Board may choose to set the RTMF for the Applicant's project at the amount stated in the appeal, the amount recommended by Staff based on the RTMF as generally applied, or some other amount deemed appropriate based on the information presented in the Appeal.

If you challenge the applicability or amount of the RTMF in court, you may be limited to raising only those issues you or someone else raised at the public hearing described above or in written correspondence delivered to the JPA at, or prior to, the public hearing.

APPENDIX D

RESOLUTION NO. 2010-01

A RESOLUTION OF
THE FRESNO COUNTY REGIONAL TRANSPORTATION MITIGATION FEE AGENCY
ESTABLISHING PROCEDURES FOR SPECIAL STUDIES AND APPEALS FOR THE REGIONAL
TRANSPORTATION MITIGATION FEE PROGRAM

The Board of Directors of the Fresno County Regional Transportation Mitigation Fee Agency (the “Board”) ordain as follows:

Section 1: Title

This Resolution shall be known as the “Fresno County Regional Transportation Mitigation Fee Special Studies and Appeals Resolution of 2010” (the “Resolution”).

Section 2: Findings

A. This Resolution establishes procedures for special studies as directed by the “Fresno County Transportation, Safety, Road Repair Measure” approved by the voters of Fresno County on November 7, 2006 (the “Measure „C” Extension”).

B. The Board finds the intent of the voters of Fresno County to be that the applicability of special studies under the Measure “C” Extension are limited to developments of a type so uncommon that the land use categories named in Measure “C” Extension cannot reasonably be applied.

C. The Board finds that from time to time there may be cases where the Regional Transportation Mitigation Fee (the “RTMF”) as generally applied would produce a result contrary to state law or the intent of the voters of Fresno County in their approval of Measure “C” Extension, and there is therefore a need to establish a procedure for appealing the applicability or amount of the RTMF for specific developments.

D. The Board finds that Resolution No. 2009-01, enacted by the Board to establish the RTMF as directed by the Measure “C” Extension (the “RTMF Resolution”), did not specifically address procedures for special studies.

E. The Board finds that Resolution No. 2009-01, enacted by the Board to establish the RTMF as directed by the Measure “C” Extension (the “RTMF Resolution”), directed appeals of the RTMF to the Fresno County Transportation Authority. The Authority has since indicated that it would prefer the Agency to handle appeals instead.

F. By notice duly given and published, the Board set the time and place for a public hearing on the proposed Procedures for Special Studies and Appeals, and at least ten days prior to the hearing, the Agency made the proposed Procedures for Special Studies and Appeals available to the public.

G. At the time and place set for the hearing, the Board duly considered that data and information provided by the public relative to the proposed Procedures for Special Studies and Appeals and all other comments, whether written or oral, submitted prior to the conclusion of the hearing.

H. The Board finds the proposed Procedures for Special Studies and Appeals a fair and reasonable method for dealing with unusual cases regarding the RTMF.

- I. The Board hereby adopts the proposed Procedures for Special Studies and Appeals.

Section 3: Definitions

For the purpose of this Resolution, the following words, terms and phrases shall have the following meanings:

- A. “**Agency**” means the Fresno County Regional Transportation Mitigation Fee Agency.
- B. “**Special Study**” means a technical analysis carried out for the purpose of establishing an appropriate RTMF level for a specific project.
- C. “**Appeal**” means a request that the amount of RTMF owed by an applicant for a specific project be other than the amount that would be owed if the RTMF was applied following its usual procedures.
- D. “**Applicant**” means the developer of a project subject to the RTMF as generally applied.
- E. “**Executive Director**” means the Executive Director of the Agency.
- F. “**Staff**” means an employee of the Agency.
- G. “**Board**” means the Board of Directors of the Agency.

Section 4: Procedures for Special Studies

A. **Requesting a Special Study.** An Applicant wishing to initiate a Special Study may do so by submitting a written request to the Agency to be considered for a Special Study. The developer shall include in the request the reasons they believe that their project is unique and that the RTMF as generally applied would produce a result contrary to state law or the intent of the voters of Fresno County in their approval of Measure “C” Extension.

B. **Determination of Uniqueness.** Upon receipt of a written request from an Applicant, the Executive Director shall determine whether a project is sufficiently unique to warrant special consideration. A project will be considered sufficiently unique only if it is a type that has never or very rarely been implemented in Fresno County prior to the election of November 2006. Any development of a type that was commonly known in Fresno County in 2006 is deemed to have been taken into account by the electorate when they voted in favor of land use categories incorporated into Measure “C” Extension. The Executive Director shall send a written response to the applicant stating their determination that the project does or does not meet this standard. Sample letters are attached to this memorandum.

C. **Types of Special Studies.** If the Executive Director finds that a Special Study is warranted then, in consultation with the Applicant, the Executive Director selects one of three permissible types of Special Study:

- i. An existing study that, in the opinion of the Executive Director, is sufficiently relevant and of a sufficiently high technical quality to serve as the basis for determining the traffic impacts of the project. The JPA staff will use the information in the study to compute the fee.
- ii. Staff may perform a traffic study in-house using the Fresno COG travel demand model and other analytical tools available to Staff.
- iii. The Agency may contract with another entity, public or private, to perform a traffic study. In such a case the Agency must ensure that the analysis is sufficiently relevant and of a sufficiently high technical quality to serve as the basis for determining the traffic impacts of the project.

D. **Costs of Special Studies.** Having selected the study type, Staff shall make arrangements for the Applicant to cover the cost of the Special Study. The arrangement could be, for example, a contract with a consulting company to carry out the work using funds provided by the Applicant.

E. **Approval of Fee to be Applied.** Once the Special Study is completed Staff shall then submit the results of the study to the Executive Director for approval. Upon receiving approval of the project-specific fee, Staff shall then notify the Applicant and carry out the same procedures to implement the fee as it would with any other project, excepting only that the amount to be collected shall be that determined by the Special Study.

Section 5: Procedures for Appeals

A. **Supersedes Previous Process.** The procedures herein supersede and replace the procedure established in Resolution 2009-01 Section 6.D.

B. **Initiating an Appeal.** An Applicant wishing to appeal the applicability or amount of the RTMF may do so by submitting a letter to the Chairman of the Board stating the reasons they believe that the fee as calculated by Staff is not justified and the amount of fee the Applicant believes to be correct. This letter must be accompanied by a copy of the Record of Payment.

C. **Supporting Documentation.** The Applicant may submit additional documentation to support their appeal. If the Applicant chooses to submit the supporting documentation then they must submit, at their own expense, twenty-two copies of each document they want considered by the Agency. These copies are for the use of the Agency and will not be returned to the applicant. Appropriate supporting documentation may include, but is not limited to, any or all of the following:

- i. If the Appeal is based on some document other than the Record of Payment, such as a document issued by a local jurisdiction indicating the starting date of vesting rights or a document showing earlier payments for which the Applicant wants credit, then copies of this document must be included or it will not be considered.
- ii. If the Appeal is based on a technical issue related to traffic or trip generation then the Applicant must submit a technical analysis for consideration by the Board. The Applicant is responsible for the cost of this analysis.
- iii. If the Appeal is based on policy considerations the Applicant may elect to provide letters of support from persons or organizations whose views may be of interest to the Board.

D. **Board Action.** The Board shall act on Appeals within three regular meetings. The Board may invite the Applicant to attend the Board meeting to speak on behalf of their request and to answer clarifying questions. However, the Applicant cannot introduce new arguments in support of the Appeal or introduce new factual evidence not already covered in the Appeal and its supporting documentation. The Board may also invite other parties to provide information on the Appeal. Based on its consideration of the Appeal, the Board may choose set the RTMF for the Applicant's project at the amount stated in the Appeal, the amount recommended by Staff based on the RTMF as generally applied, or some other amount deemed appropriate based on the information presented in the Appeal.

Section 6: Severability

If any one or more of the terms, provisions or sections of this Resolution shall to any extent be judged invalid, unenforceable and/or voidable for any reason whatsoever by a court of competent jurisdiction, then each and all of the remaining terms, provisions and sections of this Resolution shall not be affected thereby and shall be valid and enforceable.

Section 7: Effective Date

This Resolution shall become effective as of August 1, 2010.

By: _____

Chairman, Board of Directors

ATTEST:

Secretary to the Board

By: _____