

**FRESNO COUNTY REGIONAL TRANSPORTATION
MITIGATION FEE AGENCY
AGENDA**

Date: September 30, 2010

Time: Immediately Following Council of Fresno County
Governments Policy Board Meeting

Place: COG Sequoia Room
2035 Tulare Street, Suite 201, Fresno, CA

<i>Item</i>	<i>Description</i>	<i>Enclosure</i>	<i>Action*</i>
I.	Minutes of June 24, 2010	Yes	Approve
II.	Regional Transportation Mitigation Fee Appeals Process Information Update	Yes	Information
III.	OTHER BUSINESS A. Items from Staff B. Items from Members		
IV.	PRESENTATIONS A. Public Presentations This portion of the meeting is reserved for persons wishing to address the Board on items within its jurisdiction but not on this agenda. Note: Prior to action by the Board on any item on this agenda, the public may comment on that item. Unscheduled comments may be limited to 3 minutes.		

*Items listed as information still leave the option for guidance/direction actions by the Committee.

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**FRESNO COUNTY REGIONAL TRANSPORTATION
MITIGATION FEE AGENCY
EXECUTIVE MINUTES**

Date: June 24, 2010

Time: Immediately Following Council of Fresno County
Governments Policy Board Meeting

Place: COG Sequoia Room
2035 Tulare Street, Suite 201, Fresno, CA

Members Present: Mayor Trinidad M. Rodriguez, City of Kerman, Chair
Mayor Dennis Lujan, City of Selma, Vice Chair
Mayor Javier Marquez, City of Firebaugh
Councilmember Rico Aguayo, City of Fowler
Mayor Bruce Blayney, City of Kingsburg
Mayor Robert Silva, City of Mendota
Mayor Victor Lopez, City of Orange Cove
Mayor Armando Lopez, City of Parlier
Mayor Mary Fast, City of Reedley
Mayor Amarpreet Dhaliwal, City of San Joaquin
Mayor Pro Tem Rosa Pena, City of Sanger
Supervisor Judy Case, County of Fresno

Janelle Kelley, Legal Counsel
Tony Boren, Executive Director
Les Beshears, Finance Director

I. PRESENTATIONS

A. Public Presentations

This portion of the meeting is reserved for persons wishing to address the Board on items within its jurisdiction but not on this agenda. **Note: Prior to action by the Board on any item on this agenda, the public may comment on that item. Unscheduled comments may be limited to 3 minutes.**

There were no Public Presentations.

II. Minutes of October 29, 2009

A motion was made by Mayor Lopez (Orange Cove) and seconded by Mayor Fast (Reedley) to approve the minutes as written. A vote was called for and the motion carried.

III. Regional Transportation Mitigation Fee Vesting Issues – RTMF RESOLUTION 2010-01

Les Beshears (Fresno COG) presented this item and clarified the intent of the RTMF subcommittee.

A motion was made by Mayor Fast (Reedley) and seconded by Mayor Lopez (Parlier) to approve Resolution 2010-01 clarifying vesting language in fee adoption Resolution 2009-01. A vote was called for and the motion carried.

IV. Appeal Process - Information

Les Beshears (Fresno COG) presented this item and advised that the appeal process belonged with the RTMF JPA and staff is working with county counsel to prepare the appropriate resolutions. The item will go before the Authority Board in August and come to this body for action in September.

V. OTHER BUSINESS

A. Items from Staff

There were no items from Staff.

B. Items from Members

There were no items from Members.

There being no further business the meeting was adjourned.

Respectfully submitted,

Tony Boren, Executive Director
Council of Fresno County Governments

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Attachment A
Observers and Non-Members
June 24, 2010

Jeffrey D. Webster, Fresno County Rural Transit Agency
Tom Webster, Fresno COG
Marla Day, Fresno COG
Toni Graham, Fresno COG

RTMF Appeals Process Information Update

Section D of Resolution 2009-01 Adopting the RTMF Fee provides;

Section D. Appeals - *Appeals shall be filed with FCTA in accordance with the administrative procedures established by FCTA. Appealable issues shall be the application of the fee, application of credits, application of reimbursement, and application of exemption. Appeals may also be made that the fee level for development of unique types of land uses 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.*

Section D was drafted under the assumption that since FCTA (Authority) administers the fee per the ballot measure and indemnifies the RTMF Board for imposing and collecting the fee, the final decision on appeals vest with the Authority.

Subsequently, PB Americas developed a process for evaluating Special Studies and Appeals which was introduced to the RTMF subcommittee and the RTMF Board in June. During the subcommittee discussions it was determined that it would be logical for the Authority to transfer the Appeal process to the RTMF Policy Board. It was initially reported to this board that the Authority would take action to transfer the appeal process in August and the policy would come back for the RTMF board for adoption in September. However the Authority raised an issue with the Appeal Process and it is now anticipated the Authority will act to pass the appeal process back to the RTMF Board at their October 20 meeting, therefore the earliest the RTMF board can adopt the Appeal process and start hearing appeals would be at the October 28, 2010 meeting, pursuant to Authority Board action.

Section 66020 of the California Mitigation Fee Act requires payment of the fee in full or making some other arrangement, satisfactory to the entity imposing the fee, ensuring payment of the fee. The issue raised at the August Authority Board meeting regarded the requirement the fee must be paid prior to the appeal being filed. The Authority requested staff explore ways to allow Terry's House, a Charitable Non Profit who is building a facility at Community Medical Center to provide temporary housing for out of town people attending sick loved ones, to proceed with their appeal prior to paying the fee due to the extraordinary circumstances surrounding the timing of the adoption of the appeal process. Terry's House has indicated they would like to open their doors in October, and would like to appeal the fee prior to paying it, however they are caught in the 'no mans land' where there is not only no formal appeal process in place, but it hasn't been formerly determined which board will hear the appeal. Staff has no authority to waive the fee and this issue presents a number of problems which are discussed in some detail below, however the most obvious point is, if staff signs off on the RTMF and allows the certificate of occupancy to be issued in advance of collecting the fee while an appeal is proceeding, and if the appeal is lost, then the motivation to compel an entity to pay the fee is lost and it is possible legal action would be required to collect it.

PB American and county counsel has cautioned strongly about allowing this first potential appeal situation to drive the adoption of the appeal process. The Staff recommendation regarding the adoption of the appeal process remains unchanged and staff has advised Terry's House that the course of action before them is to pay the fee and if their appeal is successful, it will be refunded promptly. Another option the City of Fresno may explore is to allow Terry's house to proceed with a 120 day conditional occupancy while the appeal process is addressed, or explore ways the city may help with the fee.

Background Discussion

This sensitive issue has political support and was discussed in some depth at the June 9 subcommittee meeting. The subcommittee discussed whether a special category should be created to exempt Charitable Non Profits and considered;

The California Revenue & Tax Code list 26 different categories of Non Profits.

Terry's House advises it is a Category 23701h corporation, which is a broad non specific category covering a large variety of organizations.

The State Attorney General maintains a Registry of Charitable Trust which could be used to limit the definition to Charities as opposed to other types of non- profit organizations. There are around 150,000 charities registered in California.

Other cities have similar humanitarian projects coming on line. It has been the practice of the City of Clovis to not waive fees for these type of projects and in some instances the city has found ways to assist payment of development fees for worthy projects.

The ballot measure was not silent on the topic of exemptions. It specifically granted exemptions to "Essential Government Services", and made an allowance to give Low Income Housing a reduced fee. The requested exemption for "Charitable Non Profits" was not spelled out in the ballot measure.

PB America pointed out the calculation supporting the RTMF Nexus is by necessity a generalization. The legal basis for the Nexus requires similar treatment for broad categories of similar development. Fine tuning to make the fee more specific for one group as opposed to another similar group could result in legal challenges that could ultimately destroy the Nexus.

In a recent court case a local city was successfully sued by a homeowners association for not collecting a traffic impact fee.

The subcommittee determined it would be exceedingly difficult to attempt to develop and exemption for Terry's House that would exclude other charitable Trusts, including

churches. It may be possible to develop a narrowly worded exemption that included phrases such as Childrens Health, Charitable Donations, or Humanitarian Purposes, but it is impossible to know how many other worthy cause organizations would fall under the narrowed exemption. The committee felt it could open a Pandora's box of appeals and lawsuits from similar interest, and weaken the legal Nexus that created the fee. Ultimately, rather than create a special category of exemption, the subcommittee felt the issue should be left to the Boards discretion on a case by case basis.

The subcommittee also discussed the issue of how broad the Boards discretion on appeals may be. One view held that the Board had ultimate authority to grant appeals as they wished. Another point of view expressed the discretion of the Board to grant appeals was limited by the ballot measure. A third view held the Board most certainly could grant appeals as they saw fit, but should be apprised of the liability associated with such a decision. County Counsel has been requested to comment.

At the request of the Authority, this item went back to the TTC/PAC in September as an informational item. The City of Fresno representative expressed dismay that the appeal process is taking so long as the city letter supporting Terry's House was written in April, the project is nearing completion, and the fee hasn't been resolved. The City of Clovis representative, who was present at the Measure "C" formation committee discussions when the RTMF language was developed for the Ballot, reaffirmed the City of Clovis policy of not waiving fees and recalled the formation committee determined to narrowly tailor the exemptions language in the Ballot to only essential government functions, schools, and provide a discount for low income housing. Due to the great diversity of possible projects, the formation committee deliberately decided against including a category for Charitable Non Profits. The City of Kingsburg representative, who was also present at the Measure "C" formation committee, concurred that the formation committee struggled with the subject of waivers and determined there should be no free ride, therefore if a waiver is granted on the basis of the project being a very worthwhile and humanitarian cause, we should be prepared for the fact that it's going to open the door and we won't be able to define this so narrowly that we won't be faced with challenges down the road. The Kingsburg rep. also acknowledged the difficulties of collecting a fee after the certificate of occupancy, but went on to suggest that due to the extraordinary circumstances and timing staff should attempt to find a way to allow Terry's House to open their doors with the understanding that a bill may be coming in the future. The City of Fresno concurred with this and stated that they didn't have issues with the appeal process as proposed, only with the lack of recourse available to Terry's House.



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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 model³ 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 agencies⁴. Moreover, frequent use of special studies runs the risk of creating a de facto new RTMF

³ See *Technical Memorandum - Computing Fees Using the COG Model*, Parsons Brinckerhoff, May 2010

⁴ 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-two⁵ 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

⁵ 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 tender any required payment in full or provide satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition (Gov. Code § 66020(a)(1).) The JPA shall determine if the requirement under Gov. Code § 66020(a)(1) has been satisfied.
- 2) The Applicant then submits a letter to the JPA stating that payment was tendered or shall be tendered under protest along with 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 (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 during the open portion of a Board meeting within 180 days of receipt of the written appeal. The Applicant will have a chance to speak on behalf of their request and to answer questions. 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 must first tender any required payment in full or provide satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition. The JPA shall determine whether this requirement has been satisfied. They must then submit a letter to the Chairman of the Board stating payment was tendered or will be tendered when due under protest and 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 during the open portion of a Board meeting within 180 days of receipt of the written 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 to the Board.

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: _____



Bruce A. Rudd
Interim City Manager

April 5, 2010

Mr. Tony Boren, Executive Director
Council of Fresno County Governments
2035 Tulare Street, Suite 201
Fresno, California 93721

Dear Mr. Boren:

RE: REGIONAL TRANSPORTATION MITIGATION FEE

As you know, the Regional Transportation Mitigation Fee (RTMF) contained in the extension of Measure C is applied to new development projects and is used to help augment the funding of regional transportation projects, contained in the Measure C expenditure plan. The RTMF also contains an exemption for public facilities that are considered to be "essential" under state law.

The City of Fresno, as a strong supporter of the RTMF, is seeking the Council of Fresno County Government's support for an amendment to the RTMF to expand this exemption to include facilities which provide temporary and/or transitional housing not funded by the public sector.

An example of a temporary housing project is Community Medical Foundation's "Terry's House" project, which is being built across from the Community Regional Medical Center. Community Regional Medical Center is home to the only Level 1 trauma and comprehensive burn center between Los Angeles and Sacramento; treating patients from a 15,000 square-mile-region that spans nine counties. Currently, many family members cannot afford to stay in a hotel and at times are found sleeping by the bedside, in waiting rooms or even in their cars. Once constructed, Terry's House will provide families with critically ill or injured loved ones who are hospitalized for long periods of times, a place to sleep, shower and have a meal.

Transitional housing is different in that it has historically been used to provide short-term housing for people or families who find themselves homeless. Many of the chronically homeless do not own a car and rely extensively on public transportation for shopping, medical appointments, etc. While the construction of transitional housing has historically been funded by the public sector, and therefore exempt under the current RTMF provisions, the City of Fresno is working with the private sector in creating a non-profit organization that would also assist in providing transitional housing and other related services needed to address our growing homeless population.

City of Fresno
City Hall • 2600 Fresno Street • Fresno, California 93721-3601
(559) 621-7770 • FAX (559) 621-7776 • www.fresno.gov

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BY: _____
FRESNO COG

In both cases, the number of daily trips generated by these types of projects would not have an impact on our existing or future transportation facilities. In fact, projects such as Terry's House would help in reducing commuter trips, as family members would be staying within walking distance of the hospital and their loved ones.

Therefore, the City of Fresno is formally requesting your support in amending the RTMF exemption to also include temporary and/or transitional housing projects such as the ones described above.

Please feel free to contact me at (559) 621-7780 or at bruce.rudd@fresno.gov if you have any questions or need further information.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruce Rudd", with a stylized, cursive script.

Bruce A. Rudd
Interim City Manager

cc: Honorable Mayor Ashley Swearengin
Council President Larry Westerlund
Fresno City Council
Mr. Mark Mathieson, Sr. VP Facilities Management, Community Medical Centers
Mr. Tom Richards