



Fresno County Council of Governments

**Regional Transportation
Mitigation Fee**

Wednesday, August 31, 2011



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Topics

- Recent Movements in Impact Fees
- Laws That May Apply
- Case Study: Reduction in WRCOG's TUMF
- A Different Option for Reducing the Fee
- Conclusions

Recent Movements in Impact Fees

What Other Agencies Are Doing ...

- Many jurisdictions face the simultaneous problems of budget shortfalls and slow economy, prompting some of them to consider changing fees
- A web search was conducted on changes in impact fees in the last six months:
 - 9 cases were found of jurisdictions considering or enacting fee reductions
 - 12 cases were found of jurisdictions considering or enacting fee increases
 - 2 cases were found of jurisdictions considering changes but deciding not to take action
- No clear direction one way or the other

Laws That May Apply

Guidance from Measure “C”

Use of “shall” means that the fee is mandatory for agencies

“The RTMF **shall be enacted by all cities in the County and by Fresno County** to become effective by no later than January 1, 2009. ... It is important to the implementation of the RTP-MC that every incorporated city in the County and Fresno County enact the RTMF. **If any city or Fresno County should choose to not implement the RTMF, then that agency shall forfeit annually** from the Local Transportation Program Street Maintenance Allocation an amount equal to the amount of RTMF that would otherwise have been paid for development projects within that jurisdiction during the year”.

The enforcement mechanism is loss of access to Measure C funding

Guidance from Measure “C”

Use of “shall” means that the fee is mandatory for developers, too

Regional traffic impacts shall be determined based upon the COG Regional Transportation Model analysis. 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. Essential public facilities (as defined by state law) shall be exempt from such fees. However, 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.

Only one type of exemption is listed, and it is not economic stimulus

Nexus Requirements in the Mitigation Fee Act

- Demonstrate a reasonable relationship between the fee’s use and the type of development on which the fee is being imposed (benefit);
- Demonstrate a reasonable relationship between the need for the public facility and the type of development on which the fee is imposed (impact); and
- Demonstrate a reasonable relationship between amount of the fee and the cost of the facility attributable to the project on which the fee is imposed (rough proportionality).
- Identify all sources and amounts of funding anticipated to complete financing of incomplete TUMF network improvements.

Collecting less than the amount computed in the nexus study may violate the proportionality requirement

CEQA Issues

- CEQA requires projects to mitigate significant impacts whenever it is feasible to do so.
- Our nexus study showed that development has a significant cumulative impact on the state roadway system that must be mitigated.
- With the RTMF at its full nexus-study level, developers can cite their payment of the RTMF as mitigation of this portion of their traffic impacts
- **Reducing the RTMF does not reduce a developer's obligation** to mitigate impacts; it just means that the developer has to pay Caltrans directly
- A developer could take the risk of not paying, or paying some lesser amount, but then their EIR would be open to easy challenge for unmitigated impacts. The nexus study provides the challenger with all the information they would need in court

Case Study:

Western Riverside Council of Governments **Transportation Uniform Mitigation Fee (TUMF)**



Many Similarities to RTMF

- Multi-jurisdictional (16 agencies); one uniform fee
- Used to fund road projects of regional importance
- Ballot measure requires participation to get program funding
- Ballot measure requires jurisdictions to make up for any TUMF they choose not to collect

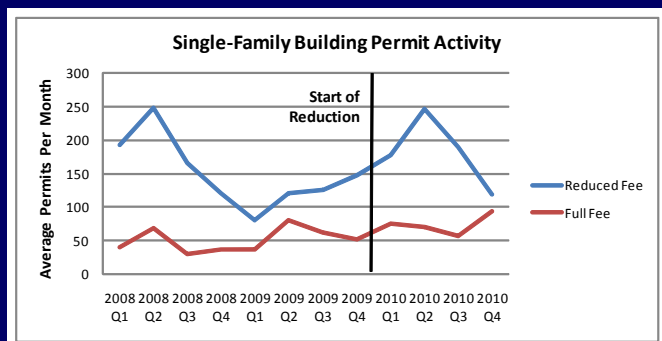
One Key Difference

- Each agency collects the fee itself on developments within their jurisdiction

Temporary Reduction

- In 2009 the local chapter of the BIA approach WRCOG and requested a temporary suspension of reduction in the TUMF
- WRCOG approved a measure giving agencies the option of a 50% reduction in TUMF for one year
- Agencies are responsible for backfilling the uncollected amount
- 10 agencies chose to reduce fees; 6 chose to keep fees at their previous level
- Near-perfect test case of the effect of a reduction

Temporary Reduction



Jurisdiction Type	Average Activity		Percent Change
	2008-09	2010	
Reduced Fee (10 jurisdictions)	150	183	22%
Full Fee (6 jurisdictions)	51	74	46%

Construction activity increased in both types of jurisdiction; but grew twice as fast in the places without a reduction

There is no evidence that the fee reduction had the intended effect on increasing activity

Aftermath of Temporary Fee Reduction

- Legal counsel was concerned that the reduction weakened the legally-required nexus between development impact and the fee.
- With no evidence that the fee reduction was working, the technical committee recommended 13-to-1 to either end the reduction program or strengthen assurances that losses will be backfilled by agencies
- WRCOG Exec Committee voted to extend reduction program one year, but with new provisions clarifying the obligation to backfill funds within 5 years
- Several jurisdictions chose not to extend the reduction, allowing it to expire after one year

A Different Option for Reducing Fees

Amending the Nexus Study

- The original nexus study began in 2007 and was based on construction prices from 2006
- The Mitigation Fee Act requires the nexus to be revisited at least every five years
- It was adopted in 2009, so first review must be done by 2014
- However, the JPA has the option to review the nexus now, to take into account changes in construction prices
- It would then have a rock-solid basis for changing the fee, if it chose to do so

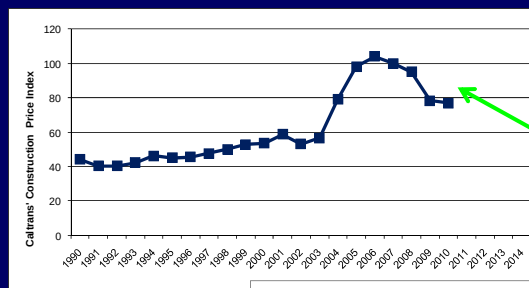
Two Ways to Revise Costs

Actual Construction Costs

*"The RTMF shall be adjusted to reflect **actual construction costs every 5 years**, but shall be adjusted annually on July 1st to reflect the percentage increase or decrease in the **Engineering News Record Index for the California Cities** for the twelve (12) month period preceding December of each year."*

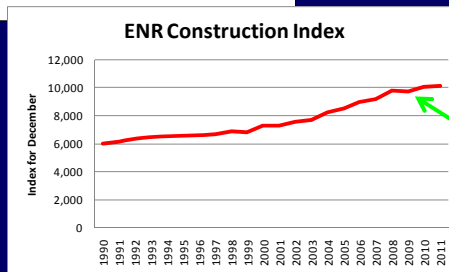
ENR index for California Cities

Caltrans' Construction Price Index vs. ENR



RTMF was based on 2006 bid prices

2010 bid prices were 27% lower



2010 item costs were 12% higher

Amending the Nexus Study

- The nexus amendment could be limited to re-calibrating the prices; a relatively quick and inexpensive study
- If it commissions the study, then the JPA would probably be legally bound to revise the fee as soon as it was completed (i.e. it would lose the option to wait until 2014). This is from the “proportionality” requirement in the Mitigation Fee Act
- Lowering the fee now carries some risk if prices spike in the future. If the JPA chooses this option, then we would recommend adopting a policy requiring the nexus to be re-calculated if prices rise more than a certain threshold (10%? 15%?)

Conclusions

Conclusions About Reducing or Suspending the RTMF

- Not many agencies are changing their fees. Those that do are raising and lowering fees in about equal numbers
- Measure C requires collection of the RTMF, or else requires agencies to forego a like amount of their sales tax receipts
- Reducing or suspending the fee may be a violation of the proportionality requirement in the Mitigation Fee Act
- There is no clear evidence that reducing the fee would have the desired stimulative effect, even if it were enacted
- The JPA has the option to re-calibrate the fees to today's construction prices, or wait until 2014 to do so.

Questions & Answers