

## Fresno County Regional Transportation Mitigation Fee Agency

**Date: Thursday, October 24, 2013**

**Time: 5:30 PM**

**Place: COG Sequoia Conference Room**

**2035 Tulare St., Suite 201, Fresno, CA**

### **FOLLOWING THE FRESNO COG POLICY BOARD MEETING - ALL POLICY BOARD MEMBERS**

#### **Americans with Disabilities Act (ADA) Accommodations**

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### **FRESNO COUNTY RTMF AGENCY AGENDA**

#### **I. Minutes of March 28, 2013 [APPROVE]**

#### **II. Regional Transportation Mitigation Fee Appeal - Walmart Neighborhood Market [Beshears] [DIRECTION]**

The Walmart Neighborhood Market at 6855 N. Willow Avenue, Fresno, Ca. is appealing the \$69,516.80 RTMF fee. The appeal is based on two issues. The appellant claims that Vested Parcel Map 2005-04, recorded in 2005 prior to formation of the RTMF in January 1, 2010, should exempt them from the fee and also claims the project was already required to mitigate all traffic impacts.

The Map Act and RTMF policy preserve vesting rights for two years from the date the map is recorded therefore since the map was recorded in 2005, the vesting has expired.

Appellant chose not to provide a copy of the Traffic Impact report, done by TJKM for the original developer, to support their claim that traffic impact on the state highway system was mitigated. Instead appellant relies on a 2004/05 Fresno Madera Interchange Deficiencies study done for FCOG, also by TJKM. Although the FCOG Interchange study was not intended as a project specific analysis, in a series of letters between Caltrans, TJKM, and the City of Fresno, TJKM made various adjustments to the FCOG study and stated that no mitigation for the state highway system was required. Caltrans strongly disagreed, however the city approved the project. Subsequent to these events FCOG performed a 2008 Study that looked at the entire state highway system in Fresno County and determined that projects such as this do impact the system and should be mitigated. This study led to the formation of the RTMF.

In summary, vesting protections for Parcel Map 2005-04 have expired, and Appellant provides no evidence traffic impacts to the state highway system have been mitigated therefore the appeal should be denied.

**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.**

**FOR YOUR INFORMATION:**

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

**\*\*All enclosures are available on our website at [www.fresnocog.org](http://www.fresnocog.org)**

## Fresno County Regional Transportation Mitigation Fee Agency

### Executive Minutes

**Date: Thursday, March 28, 2013**

**Time: 5:30 PM**

**Place: COG Sequoia Conference Room  
2035 Tulare St., Suite 201, Fresno, CA**

**Members Attending:** Mayor Lynne Ashbeck, City of Clovis  
Mayor Ron Lander, City of Coalinga  
Mayor Marcia Sablan, City of Firebaugh  
Mayor David Cardenas, City of Fowler  
Mayor Sylvia Chavez, City of Huron  
Mayor Gary Yep, City of Kerman  
Mayor Chet Reilly, City of Kingsburg  
Mayor Robert Silva, City of Mendota  
Mayor Gabriel Jimenez, City of Orange Cove  
Mayor Armando Lopez, City of Parlier  
Mayor Robert Beck, City of Reedley  
Mayor Amarpreet Dhaliwal, City of San Joaquin  
Supervisor Henry Perea, Fresno County

Janelle Kelley, Legal Counsel  
Tony Boren, Executive Director

**Absent:** Mayor Ashley Swearengin, City of Fresno  
Mayor Joshua Mitchell, City of Sanger  
Mayor Kenneth Grey, City of Selma

Mayor Dhaliwal, City of San Joaquin, Chair, called the meeting to order.

**QUORUM:** At the start of the meeting there were 13 members present representing 41.49% of the population and there was a quorum. (Clovis, Coalinga, Firebaugh, Fowler, Huron, Kerman, Kingsburg, Mendota, Orange Cove, Parlier, Reedley, San Joaquin and Fresno County).

### **FRESNO COUNTY RTMF AGENCY AGENDA**

#### **I. Minutes of February 28, 2013 [APPROVE]**

Following an expressed opportunity for public comment, a motion was made by Mayor Chavez (Huron) and seconded by Mayor Yep (Kerman) to approve the executive minutes of February 28, 2013 as submitted. A vote was called for and the motion carried.

#### **II. Election of Chair and Vice Chair**

Nominations were opened for Chair. Mayor Chavez (Huron) nominated Mayor Dhaliwal (current Chair). The nomination was seconded by Mayor Beck (Reedley). There being no further nominations, a vote was called for and passed unanimously.

Nominations were opened for Vice Chair. Mayor Chavez (Huron) nominated Mayor Cardenas (current Vice Chair). The nomination was seconded by Mayor Yep (Kerman). There being no further nominations, a vote was called for and passed unanimously.

**III. OTHER BUSINESS**

A. Items from Staff

None

B. Items from Members

None

**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.**

Elizabeth Jonasson, CCA, briefly commented on SB535.

There being no further business, the meeting was adjourned to the Fresno County Rural Transit Agency meeting.

Respectfully submitted,

Tony Boren, Executive Director

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## RTMF Appeal – Walmart Neighborhood Market

The Walmart Neighborhood Market at 6855 N. Willow Avenue, Fresno, Ca. is appealing the \$69,516.80 RTMF fee. This is a different shopping center than was the subject of an October 2012 appeal by Clovis Herndon LLC regarding the shopping center at Herndon and Clovis Blvd; the current appeal is for a property at Willow and Herndon and should not be confused.

The appeal is based on two issues. The appellant claims that Vested Parcel Map 2005-04, recorded prior to formation of the RTMF in January 1, 2010 should exempt them from the fee and also claims the project was already required to mitigate all traffic impacts.

### **Vesting Issue**

Vested Parcel Map 2005-04 was approved along with Conditional Use Permit C-05-045 on June 15, 2005. The final map was recorded December 21, 2005 to develop a 70,980 sq. ft. retail shopping center at the southwest corner of Willow and Herndon. The anchor tenants were to be a Walgreen's Drug Store and a prospective supermarket, to be determined later. Walgreens promptly pulled permits and built per the vested map and in 2012 the property for the supermarket was sold to Walmart.

The appellant claims that vesting maps serve to "lock in " all applicable ordinances, fees, etc which existed at the time of approval and points out that even if the map were not vested, RTMF Resolution No. 2009-01 states,

*"Tentative maps approved prior to January 1, 2010 shall also be exempt from the RTMF, unless they require discretionary approvals after that date, in which case the RTMF shall apply."*

The problem with appellant's argument is that Parcel Map 2005-04 is no longer a tentative map. It is a final recorded map. California Government Code Section 66424.5 provides the definition of a tentative map.

*"Tentative Map" refers to a map made for the purpose of showing the design and improvement of a proposed subdivision and the existing conditions in and around it and need not be based upon an accurate or detailed final survey of the property.*

CGC Section 66434 provides a long explanation, (not reproduced here), of the many detailed requirements of a final map. The significant difference between a tentative map and a final map is the tentative map is a generalized preliminary concept while the final map, which is recorded against the property, includes all official surveys, engineering reports, certificates, and other entitlement requirements relevant to the development. The process of going from a tentative map to a final map is lengthy and complex so the Map Act gives vesting protection to tentative maps that can be extended for several years to allow complex developments to proceed through the process without having to readdress the fee structure. However once all the conditions of the tentative map have

been accomplished the final map is recorded, the development is ready to proceed and a specific time frame is given to draw permits before vesting rights expire. Section 66498.5 provides,

*The rights conferred by a vesting tentative map as provided by this chapter shall last for an initial time period, as provided by ordinance, but shall not be less than one year or more than two years beyond the recording of the final map. (emphasis added)*

Vested Parcel Map 2005-04 was recorded December 21, 2005. The vesting rights conferred by this adoption expired December 21, 2007, therefore the project has no vesting under the Map Act or adopted RTMF policy.

## **Mitigation of Traffic Impacts**

Appellant states the Projects traffic impacts were analyzed in a traffic study, which utilized then current Council of Fresno County Governments regional travel models which resulted in the requirements which were incorporated into the Project site design and conditions of approval. On this basis appellant claims the Project's local and regional traffic impacts were also adequately analyzed and accounted for through payment of other fees and construction of off-site improvements. Appellant also claims the City undertook a detailed analysis in 2005 in consultation with Caltrans which determined that 1) the project would not have any significant impacts to freeway interchanges; 2) that even if the Project did result in impacts to freeway ramp improvements, there was no legally permissible fee mechanism in place at the time by which the City could collect fees to mitigate impacts on roadways not under its jurisdiction.

Some clarification is in order regarding appellant's initial statement that the Projects traffic impacts were analyzed in a traffic study, which utilized the then current Council of Fresno County Governments regional travel models. There are actually two different traffic studies referred to in the appeal; a project specific study done by TJKM specifically addressing the project traffic impacts and a regional study entitled the Interchange Deficiency Study in Fresno and Madera, also performed by TJKM, but for the Council of Governments. Both studies occurred at around the same time period. The COG study focused on the adequacy of certain freeway interchanges and did not examine the impacts of individual property developments.

The Appellants Exhibit 2, Conditional Use Permit No. C-05-45 identifies a traffic impact study prepared by TJKM Transportation Consultants to examine appropriate major street improvements and site design measures to address traffic congestion as required by MEIR No. 10130 mitigation measures. This refers to the project-specific traffic study that was reviewed and approved by the City of Fresno's Public Works Department. This study resulted in the identification of appropriate project requirements, which were incorporated into the site design and conditions of approval. The traffic impacts and mitigation fees required by the city derived from this report, not the COG study. COG staff requested a copy of this report which is the basis for the Appellant's claim that their

project has no regional impacts. However appellant's representative stated they did not have a copy of the report. Therefore we have no way to determine if regional traffic impacts were or were not addressed in this report. At this point all we can say is that the burden of proof is on the appellant to provide evidence to support their claim that regional impacts were studied, and thus far they have failed to provide such evidence and must assume they weren't.

At this juncture Appellant's claim that the Regional Traffic Impacts were mitigated becomes somewhat complex. Caltrans submitted (at least) three written responses to the draft traffic impact study and TJKM responded in two letters. These five letters, in conjunction with the COG Interchange Deficiencies study appear to be the detailed analysis Appellant claims the City undertook in 2005 to determine the project would have no significant impact to the state highway system. The first letter from Caltrans, March 28, 2005 reiterates comments apparently made from a previous correspondence that the development may impact the Herndon, Bullard and Shaw interchanges on SR 168 and states the Traffic Impact study failed to address Phase 3 of the project.

On May 11, 2005 TJKM responded. The letter addresses some of the confusion over the phasing of the project and confirms the traffic impact study addresses the entire project. It notes the Council of Fresno County Governments county wide model includes a generalized land use for the project site with assumed development by 2025, not currently. The letter refers to traffic counts made during the Interchange Deficiency Study within a few months of the counts made for the traffic impact study for the project. The counts for the regional study were at the SR 168 Interchanges at Herndon, Bullard, and Shaw. Trip trace tables were attached. The letter discusses the methodology TJKM used to adjust the 2004 COG model output to 2008 and manually add 2025 forecast of the interchanges. TJKM then concludes they did not find any improvements needed at the interchanges with or without the project therefore no fair and equitable contribution for improvements at these interchanges was required.

On May 17, 2005 Caltrans responded, assessing the mitigation required for the Shaw and Bullard Interchanges at \$97,036 based on the information TJKM provided in the May 11 letter and pointing out that Interchange Deficiency Study Work Paper #2 did identify the interchanges at Bullard at Shaw as being in a category of "Interchanges requiring ramp widening and signals, improved traffic operations or widened crossings." Due to the regional scope of the study it was determined that improvements costing less than \$450,000 would not be subject to further analysis. However even though the deficiencies concerning said interchanges did not meet the threshold of the study, they did meet Caltrans requirements for improvements.

TJKM responded to the May 17 letter stating that regardless of the criteria in the Interchange Deficiency Study, the fact that none of the ramp intersections of SR 168 with Herndon Avenue, Bullard Avenue and Shaw Avenue show a need for mitigation using LOS E as the criterion for the state highways in the Fresno Area. Even using LOS D, there is no need for mitigation with the project through 2025.

On June 3, 2005 Caltrans stood by their comments stating that significant unmitigated impacts will remain if the project is not required to mitigate impacts to the state highway system and reiterated the appropriateness of a \$97,036 fee. Caltrans stated the traffic impact study was prepared to support the city's environmental assessment of the project and assumed the study would be used to mitigate local streets claiming "If the projects impacts cannot be reduced to a level of insignificance, a mitigated negative declaration is an inappropriate environmental document. If impacts cannot or will not be mitigated, the lead agency needs to require an environmental impact report, and then make a finding of overriding consideration in order to approve the project. "

Twelve days later, on June 15, 2005 the City approved the project (Conditional Use Permit No C-05-45). In the approval is a statement to effect that although the City has met its legal obligations for addressing impacts to the state highway system for the purposed of CEQA, the City has not ruled out working with Caltrans to obtain fees for the state highway system for projects such as this one. Also in the CUP, an admission by the City; at the time the City did not have a legally permissible means for collecting fees for such a purpose. This is probably a key reason as to why a fee to mitigate the state highways wasn't collected. The report then alludes to a cooperative engagement among the City, the County, the Council of Governments, Caltrans, and the other cities that would eventually lead to Phase II of the Fresno Madera Freeway Interchange Deficiency's Study, the RTMF Nexus study and formation of the Regional Transportation Mitigation Fee Joint Powers agency to collect such fees.

Lost in the discussion of which nearby ramps should or should not be improved is the fact that every project trip that entered or exited the freeway at the nearby ramps also use the main line of the freeway and some other ramp at the other end of their trip. The effect of the proposed development on traffic congestion on these other freeway facilities was apparently not studied at all, or at least not in the project-specific study. In 2008 a technically and legally valid nexus was done for the COG in preparation for the establishment of the RTMF which studied exactly that effect. The study found that the effects of planned new development on the freeway system were cumulatively significant and required mitigation. Payment into the RTMF has been established as the mitigation for these impacts.

To summarize the issues regarding Appellants claim that all traffic impacts were mitigated:

- Appellant claims they have studied the regional impacts of their project and found that none would occur. However, they have not produced a copy of this study for examination by COG staff so there is no way to substantiate their claim.
- The Appellant claims that their project would not have a significant impact on nearby freeway ramps. However, Caltrans disagreed with this conclusion, in writing, at the time when the project went to the city for approval.
- The Appellant claims, correctly, that at the time of approval (2005) no mechanism existed that would enable them to pay for improvements to the state highway system.



- However, all this is irrelevant because the project is not being built in 2008. It is being built in 2013. Subsequent to the adoption of the CUP in 2005, events transpired that broadened the scope of the Freeway Interchange Deficiency's study done by TJKM to prove that projects such as this do have an impact on the state highway system and that they should be mitigated. Those events were Phase II of the Fresno Madera Freeway Deficiency's study and development of the Regional Transportation Mitigation Fee Nexus that led to the creation of the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency and the establishment of the fee itself. The claim that traffic impacts to the state highway system have been mitigated therefore must fail and the fee applies.

To conclude: the Appellant claims that they have a vested map, but the evidence shows their map's vested period expired before the establishment of the RTMF. Their claim for exemption based on vesting should therefore be denied. They made the additional claim, without providing supporting evidence, that their project has no regional traffic impacts. Two technically and legally valid COG studies, namely Phase II of the Fresno Madera Freeway Deficiency study and the Regional Transportation Mitigation Fee Nexus Study, both found their project would in fact contribute to cumulatively significant impacts. So their claim to have no regional impacts should also be denied. Staff recommends the appeal be denied.