

# Fresno County Regional Transportation Mitigation Fee Agency

## AGENDA

**Date:** Thursday, April 24, 2014

**Time:** 5:30 PM

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

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

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

The Fresno COG offices and restrooms are ADA accessible. Representatives or individuals with disabilities should contact Fresno COG at (559) 233-4148, at least 3 days in advance, to request auxiliary aids and/or translation services necessary to participate in the public meeting / public hearing. If Fresno COG is unable to accommodate an auxiliary aid or translation request for a public hearing, after receiving proper notice, the hearing will be continued on a specified date when accommodations are available.

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

##### **I. Minutes of March 20, 2014 [APPROVE]**

##### **II. Consideration of Request by City of Fresno to Postpone Regional Transportation Mitigation Fee (RTMF) Appeal Hearing for Spencer Enterprises Project Located at North Fig Garden Drive and West Bullard Avenue [Beshears]**

**Summary:** Earlier this month at our Policy Advisory Committee (PAC) meeting, the City of Fresno requested PAC support for a motion to postpone the scheduled RTMF Appeal Hearing for a Spencer Enterprises project located at North Fig Garden Drive and West Bullard Avenue. Fresno's basis for the postponement request is that the project "may" qualify for a reduced RTMF as a result of the completion of the RTMF Study update which is now underway and is scheduled to be completed in the Fall of 2014. The premise is that the updated RTMF study may provide a provision for reduced fees for projects that qualify as "in-fill" under the updated RTMF fee structure.

Lengthy discussion of the issue by the PAC and COG staff revealed several areas of concern including:

1. Legal concerns regarding the melding of the RTMF collection process, which is governed by state law in conjunction with the State Subdivision Map Act and Fresno COG's SB 375 Sustainable Communities regional planning process which is voluntary in nature at this point in time.
2. Continuing the appeal several months into the future and introducing an issue (in-fill) unrelated to the central issue of RTMF "fee collection" could adversely complicate the collection of the RTMF on projects with similar vesting issues.
3. Financial implications for the RTMF fund balance in the event the appeal is upheld and other groups who have already paid the RTMF begin to seek their refunds.
4. Uncertainty of whether the updated RTMF Ordinance's definition of "in-fill" will apply to the Spencer project and how it would retroactively be applied should it be enacted as a part of the update.

5. The Spencer appeal is not an application for a future development. The fee has been paid and the project is complete.

Upon conclusion of the discussion, a motion was made by the City of Fresno, seconded by Reedley to recommend the Policy Board consider postponing the Spencer RTMF Appeal hearing scheduled for April 24, 2014, until the RTMF update is complete. The motion passed 11 ayes to 1 no (County of Fresno).

**Information/Discussion:** Direction may be provided at the discretion of the RTMF Board.

### **III. Regional Transportation Mitigation Fee-Figarden Drive Apartments, LLC Appeal [Beshears]** **[REVIEW/ACTION]**

**Summary:** In July 2013, Figarden Drive Apartments, LLC paid, under protest, \$198,794.28 in Regional Transportation Mitigation Fees (RTMF) to Fresno COG. The RTMF fees are for a 160-unit multi-family project being developed at the subject location in the City of Fresno. The appellant is claiming that Parcel Map 2006-20 was vested per the State of California’s Subdivision Map Act which governs these issues. The fact that the map was vested is not under contention by COG staff, however it is COG staff’s contention that the map was “vested” with zoning in place for a C-2 (Community Shopping Center) only. It was not vested for a multi-family residential development.

With this in mind, when the developer requested a rezone to allow residential development, staff determined through consultation with our RTMF consultant- PB America and our legal counsel, that per state law and RTMF adopted policy, the new rezone constituted a new entitlement and therefore the RTMF fee was applicable. The key point in the staff determination is that per the Subdivision Map Act, a tentative map is vested in substantial compliance with the ordinances, policies, and standards in place at the “time of acceptance”. The City of Fresno zoning ordinance prohibits residential development in a C-2 zoned parcel therefore a residential development clearly is not in compliance with the ordinances, policies, and standards of a commercial development. Staff met with Figarden Drive LLC prior to the zoning change and explained our perspective on the issue, however they chose to proceed with the development and now wish to contest the fee.

Recommendation – Staff recommends the appeal be denied and the Board make the following Findings of Fact.

#### Findings of Fact

1. Section 66498.1 provides that approval of a vested map shall confer a vested right to proceed with development in substantial compliance with the ordinances, polices, and standards in effect at the time the vested map is approved.
2. When originally approved, Vested Parcel Map 2006-20 was approved for C2 Zoning.
3. Residential Apartments are prohibited under City of Fresno C2 Zoning.
4. Vested Parcel Map 2006-20 included no conditions indicating approval for an inconsistent use per Section 66498.3 (a).

**Action:** Board to hear the appeal and take action.

### **IV. OTHER BUSINESS**

A. Items from Staff

B. Items from Members

V. **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)**