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May 20, 2014

HAND DELIVERED

Fresno COG Policy Board/RTMF Agency Members
Regional Transportation Mitigation Fee Joint Powers Agency
2035 Tulare Street, Suite 201
Fresno, CA 93721

Re: **Appeal of Clovis-Herndon, LLC**

Ladies and Gentlemen:

We are attorneys for Clovis-Herndon, LLC. This letter is in response to the Staff e-mail preview of the May 29, 2014, RTMF Agenda and Staff Report dated May 15, 2014.

Initially, we wish to caution all interested persons that unless Judge Cabrera issues a peremptory writ of mandate prior to the hearing of May 29, 2014, we believe, as we have previously informed the County Counsel, that the Board of Directors of the Regional Transportation Mitigation Fee Agency will not have jurisdiction to hear this matter and/or to make any decisions or rulings that will be binding or effective.

1. The Staff Report accurately states that Appellant's ". . . project was approved by the City of Clovis in 2003, again in 2007, and finalized in 2009"
2. However, the Staff argues that the appeal should be denied on grounds that are **not** issues in dispute:
 - a. **Vested Rights.** Appellant does not now contend and never has contended that it should not be required to pay the RTMF because it has vested rights. There is no dispute that a vesting tentative map was not approved for the project and no claim that a building permit was issued before January 1, 2010.

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By
FRESNO COG

- b. **Double Charge.** Although Appellant initially raised the possibility of a double charge in its Notice of Appeal of September 18, 2012, Appellant elected not to pursue this contention in its Petition for Writ of Administrative Mandate filed with the Fresno County Superior Court on February 15, 2013, and does not make this argument now.
3. The issues before the Board to be determined are:
 - a. **Application of the RTMF.** Whether the RTMF applies to Appellant's project because it received final approval on June 29, 2009, before the effective date of the RTMF on January 1, 2010.

There is no dispute, and the Staff agrees, that the City of Clovis gave Appellant's project final approval on June 29, 2009.

Section 4.E. of Resolution 2009-01 provides:

"Applicability. The RTMF shall apply to all new development within the Cities and the County effective January 1, 2010, unless otherwise exempt hereunder."

Moreover, there is no dispute that the Agency's Administrative Manual provides:

"The RTMF is effective for all developments approved on or after January 1, 2010, unless the development is exempt for one of the reasons described below."

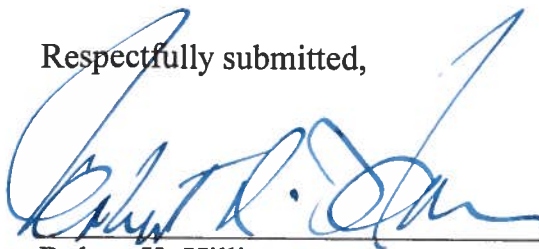
- b. **Equal Protection.** If the Board chooses to ignore the undisputed evidence of final approval and the provisions of the Agency's Administrative Manual interpreting this Board's Resolutions, which was designed and prepared to ". . . provide a step by step guidance for administering the program . . .", then and only then the question before the Board to be determined is whether there is a rational basis for distinguishing between approval of vesting maps for residential projects and final approval, e.g., site plan review, for commercial projects. Because there is no rational basis for such a distinction, the

Agency's policy of exempting residential projects with approved vesting maps and not exempting commercial projects with final approval violates the constitutional guarantee of equal protection and, accordingly, the appeal should be upheld on that ground.

4. **Conclusion.** Because there is no dispute that Appellant's project received final approval before the effective date of the RTMF on January 1, 2010, and because the Agency's Administrative Manual states that the RTMF applies only to projects approved after January 1, 2010, the Staff's arguments for denying the appeal should be rejected, its recommendation should not be followed, and the appeal should be granted.

Appellant requests thirty (30) minutes to present its arguments to the Board at the hearing. Thank you for your consideration.

Respectfully submitted,



Robert K. Hillison

Attorneys for Appellant Clovis-Herndon LLC

RKH/ch

c: David H. Paynter