

**AGENDA ADDENDUM
POLICY ADVISORY COMMITTEE
ADDED OCTOBER 7, 2014**

**Date: Friday, October 10, 2014
Time: 10 am
Place: COG Sequoia Conference Room
2035 Tulare St., Suite 201, Fresno, CA**

II. TRANSPORTATION ACTION/DISCUSSION ITEMS

E. RTMF Statutory Five Year Update [Beshears] [INFORMATION]

Summary: State statute requires us to update the RTMF Nexus each five years. The update involves reviewing the project cost and incorporating the current SCS Traffic modeling assumptions into the fee calculation. The contract with Parsons Brinkerhoff was expanded to include this task. Initial calculations have been done and subcommittee meetings were held on March 17, 2014 and August 25, 2014. A follow up meeting was held with Caltrans and the City of Fresno on October 6 to address specific request for information. The consultant will incorporate additional input subsequent to that meeting into the calculation and have a staff recommendation for the board to act on in November so the Nexus will be updated by January 1, 2015 as required by state law to allow continued collecting of the fee. An October 6, 2014 Technical Memorandum discussing the first five years of fee collection is included as information.

During the subcommittee process two additional issues were discussed. The first issues relates to the exemption provided in the ballot for "Essential Public Facilities" to include public schools and institutions of higher education. The other issue incorporates a fee category for qualified infill developments per section 66005.1 of the state code. Resolutions and staff reports for each of these items appear in the agenda.

Action: Information. Direction may be provided at the discretion of the Committee.

**F. Definition of Essential Public Facilities expanded for public education [Beshears]
[ADOPT]**

Summary: The ballot provided an exemption to the RTMF fee for "Essential Public Facilities (as defined in state law)". During the extensive committee process that occurred during the development of the Nexus and establishment of the RTMF JPA it was agreed that public schools

should be considered essential public facilities hence exempt from the RTMF. The committee specifically considered whether churches should be included in this definition and concluded that they shouldn't unless building a dedicated private school to teach state required educational criteria. Language was incorporated into the administrative manual and adopted by the board to this effect however no reference was made to specific statutes. The result was that various developments, including churches, attempted to stretch the definition of public education to include various kinds of teaching, training, course of instruction, religious orientation, or bible study that wasn't required by state statute. The consultant has provided a definition of public education, based on curriculum defined in state code that is consistent with the intent to allow the exemption for public education. A technical memo from the consultant is included.

Action: Staff recommends that the Policy Board adopt Resolution 2014-01 establishing that facilities built for public education meet the definition of "Essential Public Facilities" as provided in the Measure "C" ballot.

G. Fee reduction for Infill Development [Beshears] [ADOPT]

Summary: Since the 1990's research has indicated development in infill locations results in lower traffic impact. Early implementation of this concept created paradox's because standards for trip generation rates and level of service developed of suburban areas overstated the impacts of infill requiring excessive mitigation through CEQA. Various methods were used to address this problem including incorporating section 66005.1 into the mitigation fee act. Resolution 2014-02 incorporates section 66005.1 into the RTMF mitigation fee structure by providing a 15% fee reduction for qualifying infill development. To qualify a development must;

1. Be within ½ mile of a transit station and have direct walkable access.
2. Be within ½ mile of retail and food stores.
3. Have minimal parking required by local code.

Currently no locations in Fresno County meet the requirements because current Transit routes operate on 20 or 30 minute peak hour headways, however when the BRT is implemented with 10 minute peak hour headways there will be four locations in Fresno that qualify. The Down Town station, Manchester, Fresno State at Shaw, and River Park. A technical memo is included in the agenda.

Action: Staff recommends that the Policy Board adopt Resolution 2014-02 establishing a 15% fee reduction for qualifying infill Development per Section 66005.1.

**PARSONS
BRINCKERHOFF**
Technical Memorandum

2329 Gateway Oaks Drive, Suite 200
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Phone: 916-567-2500
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To: Tony Boren, Executive Director, Fresno COG
From: Don Hubbard, TE, AICP, Parsons Brinckerhoff
Subject: Report on First Years of RTMF Operation
Date: October 6, 2014

As part of the five-year update of the Regional Transportation Mitigation Fee (RTMF) we have looked into the performance of the program in its first few years of operation. This memo summarizes the performance of the program in terms of applications processed and revenues collected, and also compares this history with the original targets and with other fee programs.

Applications Processed

As of May 2014, 6,665 applications have been processed to either pay the RTMF or to claim an exemption (see Exhibit 1 and

Exhibit 2). Each application covers a single building, so in the case of single-family dwellings each house has its own application while for multi-family residences each application covers a multi-unit apartment building.

Application Type	Applications			Dwelling Units			Fee Collected
	Exempt	Non-Exempt	Total	Exempt	Non-Exempt	Total	
SFD	1,951	4,086	6,037	1,951	4,086	6,037	\$ 6,342,042
SFD (Affordable)	14	29	43	14	29	43	\$ 24,890
MFD	20	117	137	243	771	1,014	\$ 844,749
MFD (Affordable)	14	23	37	148	343	491	\$ 184,233
Total	1,999	4,255	6,254	2,356	5,229	7,585	\$ 7,395,914
% of Total	32%	68%		31%	69%		

Exhibit 1: Residential Applications Processed

Application Type	Applications			Square Feet of Building Space			Fee Collected
	Exempt	Non-Exempt	Total	Exempt	Non-Exempt	Total	
Education	5	0	5	20,650		20,650	\$ -
Government	5	0	5	85,125		85,125	\$ -
Retail	21	84	105	186,019	1,318,111	1,504,130	\$ 2,540,661
Office	15	89	104	101,778	718,463	820,241	\$ 801,492
Light Industrial	8	45	53	37,655	356,691	394,346	\$ 157,040
Heavy Industrial	3	96	99	9,751	2,183,372	2,193,123	\$ 207,766
Other	14	26	40	78,099	326,286	404,385	\$ 109,895
Total	71	340	411	227,283	3,584,812	3,812,095	\$ 3,816,853
% of Total	17%	83%		6%	94%		

Exhibit 2: Non-Residential Applications Processed

Of the residential units processed thus far, 7% have met the criteria for “affordable housing”, which is very close to the 8% originally forecast. Affordable housing is given a 50% reduction in fee, per the ballot measure.

Nearly a third (31%) of residential applications qualified for exemption all based on vesting. In contrast, only 6% of non-residential development qualified for an exemption, including some projects that were exempt because they were for governmental or educational entities.

Of the \$11,212,767 in fees collected thus far, 66% have come from residential development and 34% from commercial development. The original forecast assumed that 76% of revenues would come from residential development. So the original forecast was reasonably close in terms of the mix of development expected.

Receipts by Month and Year

Exhibit 3 shows the RTMF receipts by month and year in tabular form; Exhibit 4 shows the same data as a graph. This data shows several things:

- This is an erratic revenue source, with wide swings in receipts from one month to the next
- There is no strong pattern in terms of which months have the most activity. December 2010 and December 2011 were both unusually high, but this was due to applicants filing their paperwork before new regulations went into effect on January 1st, including increases in the RTMF¹. When there are no important new regulations then December is not a particularly active month (2012 and 2013).
- There is a clear upward trend in receipts as the economy recovers. This trend should accelerate as the stock of vested units depletes over time and the percentage of units paying the fee rises.

Month	Year				
	2010	2011	2012	2013	2014
Jan	\$ 16,800	\$ 8,495	\$ 97,775	\$ 524,604	\$ 508,466
Feb	\$ 37,700	\$ 74,857	\$ 93,098	\$ 437,457	\$ 122,086
Mar	\$ 20,555	\$ 35,361	\$ 61,963	\$ 265,002	\$ 677,124
Apr	\$ 30,540	\$ 81,902	\$ 108,733	\$ 199,912	\$ 290,889
May	\$ 45,452	\$ 62,182	\$ 217,804	\$ 303,486	\$ 200,067
Jun	\$ 117,775	\$ 102,017	\$ 243,577	\$ 241,955	
Jul	\$ 55,200	\$ 77,422	\$ 123,447	\$ 348,216	
Aug	\$ 128,419	\$ 67,715	\$ 226,556	\$ 673,168	
Sep	\$ 131,684	\$ 65,670	\$ 173,756	\$ 238,669	
Oct	\$ 261,036	\$ 110,572	\$ 334,543	\$ 312,180	
Nov	\$ 119,037	\$ 75,373	\$ 133,403	\$ 324,234	
Dec	\$ 555,814	\$ 541,923	\$ 154,354	\$ 261,636	
Total	\$ 1,520,012	\$ 1,303,488	\$ 1,969,010	\$ 4,130,518	\$ 1,798,632

Receipts are generally increasing on a year-on-year basis.

¹ The RTMF was phased in over a three-year period, with increases effective on January 1st.

Report on First Years of RTMF Operation

Exhibit 3: RTMF Receipts by Month (Table)

Report on First Years of RTMF Operation

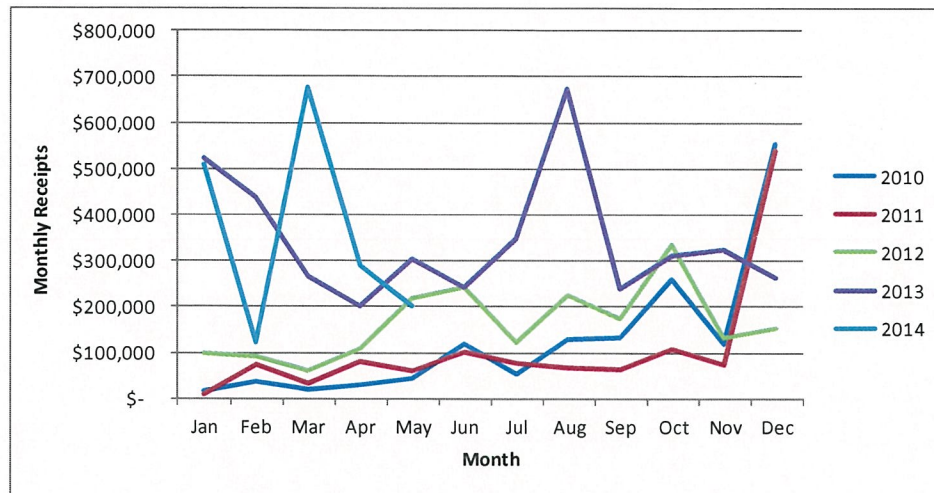


Exhibit 4: RTMF Receipts by Month (Graph)

Comparison of Actual to Forecast Revenues

The original nexus study made forecast for revenues over the entire 20-year life of the program (\$221M) but did not make predictions for revenues in any given year. Distributed pro-rata, and taking into account the reduced fees for the first two years due to the phase-in of the fee, approximately \$40M might have been expected to be collected in the first four years of the program compared to approximately \$9M in actual receipts (22%).

It is very common for impact fee programs to have low receipts in the first few years because a high proportion of the construction activity is for projects that have vested exemptions from before the fee came into effect. Perhaps more important for the RTMF was unfortunate timing, in that the program came into effect in the midst of the worst real estate slump in generations. The slump has seriously reduced the amount collected from similar transportation mitigation fees in other parts of California, as can be seen in Exhibit 5 and Exhibit 6.

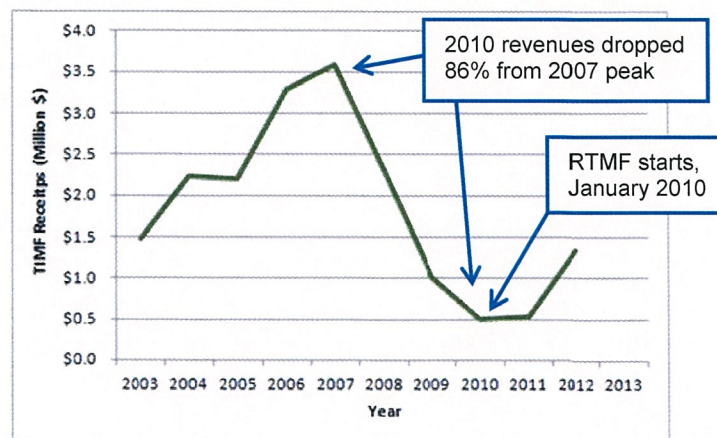


Exhibit 5: Revenues for the San Joaquin County Traffic Impact Mitigation Fee

Report on First Years of RTMF Operation

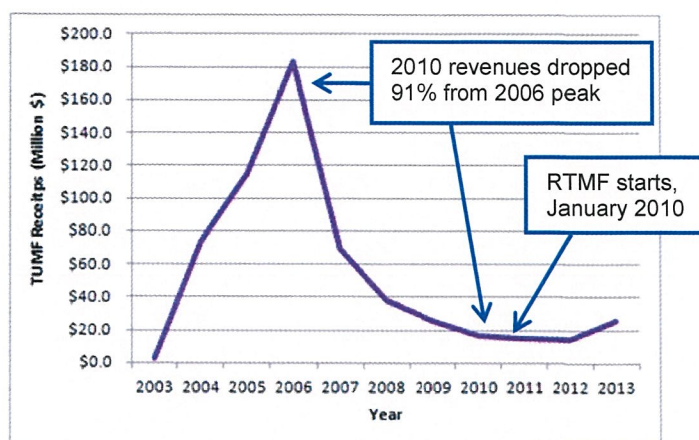


Exhibit 6: Revenues for the Western Riverside Transportation Uniform Mitigation Fee

While 2010 and 2011 were years of low revenue for the RTMF and its peer programs in other counties, revenues were up sharply in 2012 and 2013 (see Exhibit 7).

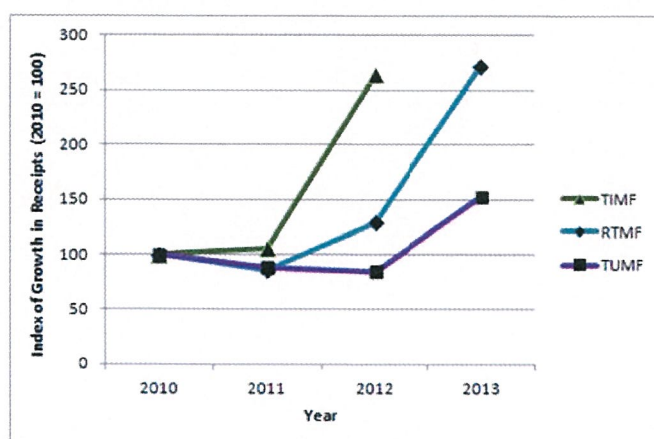


Exhibit 7: Revenues for Various Traffic Impact Fees, 2010 to 2013

If the RTMF were to continue to collect \$4.1 million per year for the remainder of the 20-year program then total revenues, including those already received, would reach approximately \$75M, approximately 3/4ths of the \$102M target in the ballot measure. It would be reasonable to assume, based on the upward trajectory shown in Exhibit 7, that actual revenues will meet or exceed the target in absolute terms. However, revenues are likely to fall short of providing 20% of the funds needed for Tier 1 projects, which was another target set in the ballot measure².

² The ballot measure stated in one place that, "These projects will be funded using ... Approximately \$102 million from developer fees" and in a different place that, "It is anticipated that 20% of the total program shall be funded through implementation of a Regional Transportation Mitigation Fee (RTMF) on new or expanded development that increases traffic impacts". These values diverged when project costs escalated over time.

**Technical Memorandum**

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To: Tony Boren, Executive Director, Fresno COG
From: Don Hubbard
Subject: RTMF Exemption for Educational Uses
Date: January 14, 2011

Recently the COG notified PB of an issue that has arisen regarding the definition of “education development” for the purpose of determining if a proposed development is exempt from the fee. This memo reviews the definition in the current draft of the RTMF Administrative Manual and its potential implications. It then notes one definition based on the California Education Code (CEC), and then a possible modification the Administrative Manual that could clarify the current definition with the CEC-based definition. The memo ends with a discussion of new steps the JPA may wish to take.

Please note that this memo is not intended to be, nor is, legal advice.

The Education Exemption as Described in the Current Administrative Manual

In its deliberations the Technical Advisor Committee (TAC) considered whether non-governmental entities serving an educational purpose should be exempt from the fee (public schools are already exempt). As a matter of policy the committee concluded the intent of the ballot measure was to avoid inhibiting the provision of essential¹ services through the imposition of a fee. In accordance with this intent the committee decided that the exemption should be extended to include private schools that provided an education of the sort deemed “essential” under state law, while schools offering other types of education would not be exempt. The TAC’s decision was used in framing the following section of the Administrative Manual:

“Exemptions

The JPA has determined that educational development and government development shall be exempt from paying the RTMF. For the purposes of the RTMF, educational development and government development are defined as:

An “education development” means any development project that is predominately dedicated to conducting regular academic instruction at preschool, kindergarten, elementary, secondary, and collegiate levels and including graduate schools, universities, non-profit research institutions and religious institutions. This definition applies only to public or non-profit institutions and does not include schools, academies or institutes, incorporated or otherwise which operate for profit, nor does it include commercial or trade schools.

¹ Appendix D of the RTMF ballot measure states that, “Essential public facilities (as defined by state law) shall be exempt from such fees”.

“Government development” is defined as any development project that is predominately dedicated to provision of administrative, clerical, law enforcement, public safety, taxation and governance services by public institutions with legislative, executive or judicial authority. The key issue is the use to which the development is put, not ownership of the property. Government-owned land that is leased for commercial purposes is not exempt, while private property in long-term (20 year or more) leased to a government agency would be exempt.

These definitions are based on the policies of the JPA Board and may be revised from time to time.”

For both the government and education exemptions, it appears that the determining factor is not ownership but whether the facility is intended for an essential use.

We understand from you that recently, a non-profit organization that proposes to construct a building that will be used for religious instruction has requested an education exemption from the RTMF. It is our understanding that they based their request on the final words of the first sentence of the section highlighted above (“... and religious institutions”). From the TAC’s point of view the key phrase is “... predominately dedicated to conducting regular academic instruction ...” and the intent of the last three words was to say that the fact that an institution happens to be religious would not bar it from receiving the exemption if it provided education of a regular academic nature. This is consistent with the logic that the determining factor is use, not ownership. It also appears that the CEC accepts non-governmental schooling as a substitute for public schooling as long as certain requirements are met².

In order to avoid future misunderstandings it may be advisable to replace the current passage in the Manual with a more precise definition of the type of instruction that is exempt from the RTMF. The next section attempts to provide one possible definition.

CEC-Based Definition

Rather than attempting to develop an independent description of the type of instruction that is exempt it may be better to cite an existing definition from a source consistent with the guidance in the ballot measure (“as defined by state law”). We found three sections in the California Education Code that provide possible definitions. Section 51210 establishes the mandatory curriculum for primary education, Section 51220 establishes the mandatory curriculum for secondary education, and Section 66010(b) defines those “independent institutions of higher education” that fall within the state Master Plan for tertiary education. These sections are shown in full as an attachment. They could be incorporated in the Administrative Manual through the following changes in the section on exemptions:

² CEC Section 48222

*An "education development" means any development project that is predominately dedicated to **instruction in the course of study described in the California Education Code Section 51210 or in Section 51220, or both, or that meets the definition of an "independent institution of higher education" set forth in Education Code Section 66010.(b).** ~~conducting regular academic instruction at preschool, kindergarten, elementary, secondary, and collegiate levels and including graduate schools, universities, non-profit research institutions and religious institutions. This definition applies only to public or non-profit institutions and does not include schools, academies or institutes, incorporated or otherwise which operate for profit, nor does it include commercial or trade schools.~~*

This definition would go further to clarify that the exemption is for developments used primarily for academic instruction. The key here is that the school teaches the state's academic curriculum, then they would likely be performing the essential public service that is exempt from the fee.

Next Steps

Once the immediate issue has been resolved, we suggest that the passage in the Administrative Manual could be revised as described above to be more specific.

Excerpts from the California Education Code

[Section 51210 establishes the compulsory curriculum for grades K-6, and Section 51220 establishes the compulsory curriculum for grades 7-12. It is the teaching of this curriculum that is the “essential” public service. The school may teach other subjects as well, but if they do not teach this curriculum then they are not performing the essential service that is exempt from the fee. This means that music schools, martial arts schools, driving schools, etc. are not exempt.]

51210. Course of Study, Grades 1 to 6

The adopted course of study for grades 1 to 6, inclusive, shall include instruction, beginning in grade 1 and continuing through grade 6, in the following areas of study:

- (a) English, including knowledge of, and appreciation for literature and the language, as well as the skills of speaking, reading, listening, spelling, handwriting, and composition.
- (b) Mathematics, including concepts, operational skills, and problem solving.
- (c) Social sciences, drawing upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology, designed to fit the maturity of the pupils. Instruction shall provide a foundation for understanding the history, resources, development, and government of California and the United States of America; the development of the American economic system including the role of the entrepreneur and labor; the relations of persons to their human and natural environment; eastern and western cultures and civilizations; contemporary issues; and the wise use of natural resources.
- (d) Science, including the biological and physical aspects, with emphasis on the processes of experimental inquiry and on the place of humans in ecological systems.
- (e) Visual and performing arts, including instruction in the subjects of dance, music, theatre, and visual arts, aimed at the development of aesthetic appreciation and the skills of creative expression.
- (f) Health, including instruction in the principles and practices of individual, family, and community health.
- (g) Physical education, with emphasis upon the physical activities for the pupils that may be conducive to health and vigor of body and mind, for a total period of time of not less than 200 minutes each 10 schooldays, exclusive of recesses and the lunch period.
- (h) Other studies that may be prescribed by the governing board.

51220. Courses of Study, Grades 7 to 12

The adopted course of study for grades 7 to 12, inclusive, shall offer courses in the following areas of study:

- (a) English, including knowledge of and appreciation for literature, language, and composition, and the skills of reading, listening, and speaking.
- (b) Social sciences, drawing upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology, designed to fit the maturity of the pupils. Instruction shall provide a foundation for understanding the history, resources, development, and government of California and the United States of America; instruction in our American legal system, the operation of

the juvenile and adult criminal justice systems, and the rights and duties of citizens under the criminal and civil law and the State and Federal Constitutions; the development of the American economic system, including the role of the entrepreneur and labor; the relations of persons to their human and natural environment; eastern and western cultures and civilizations; human rights issues, with particular attention to the study of the inhumanity of genocide, slavery, and the Holocaust, and contemporary issues.

(c) Foreign language or languages, beginning not later than grade 7, designed to develop a facility for understanding, speaking, reading, and writing the particular language.

(d) Physical education, with emphasis given to physical activities that are conducive to health and to vigor of body and mind, as required by Section 51222.

(e) Science, including the physical and biological aspects, with emphasis on basic concepts, theories, and processes of scientific investigation and on the place of humans in ecological systems, and with appropriate applications of the interrelation and interdependence of the sciences.

(f) Mathematics, including instruction designed to develop mathematical understandings, operational skills, and insight into problem-solving procedures.

(g) Visual and performing arts, including dance, music, theater, and visual arts, with emphasis upon development of aesthetic appreciation and the skills of creative expression.

(h) Applied arts, including instruction in the areas of consumer and homemaking education, industrial arts, general business education, or general agriculture.

(i) Career technical education designed and conducted for the purpose of preparing youth for gainful employment in the occupations and in the numbers that are appropriate to the personnel needs of the state and the community served and relevant to the career desires and needs of the pupils.

(j) Automobile driver education, designed to develop a knowledge of the provisions of the Vehicle Code and other laws of this state relating to the operation of motor vehicles, a proper acceptance of personal responsibility in traffic, a true appreciation of the causes, seriousness and consequences of traffic accidents, and to develop the knowledge and attitudes necessary for the safe operation of motor vehicles. A course in automobile driver education shall include education in the safe operation of motorcycles.

(k) Other studies as may be prescribed by the governing board.

[Section 48222 can be interpreted to mean that private schools teaching the compulsory curriculum are performing the same “essential” service as public schools, since the state deems them to be an acceptable substitute.]

Article 3. Pupils Exempt

48222. Attendance in Private School

Children who are being instructed in a private full-time day school by persons capable of teaching shall be exempted. Such school shall, except under the circumstances described in Section 30, be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the state. The attendance of the pupils shall be kept by private school authorities in a register, and the record of attendance shall indicate clearly every absence of the pupil from school for a half day or more during each day that school is maintained during the year.

Exemptions under this section shall be valid only after verification by the attendance supervisor of the district, or other person designated by the board of education, that the private school has complied with the provisions of section 33190 requiring the annual filing by the owner or other head of a private school of an affidavit or statement of prescribed information with the Superintendent of Public Instruction. The verification required by this section shall not be construed as an evaluation, recognition, approval, or endorsement of any private school or course.

[Section 66010(b) defines "independent institutions of higher education" as accredited non-profit degree-granting institutions. Colleges that meet this definition are performing an “essential” service and should be exempt from the RTMF. Schools not meeting this definition, such as music schools, dance schools, martial arts schools, driving schools, etc. are not exempt.]

Article 1. Definitions

66010. (a) Public higher education consists of (1) the California Community Colleges, (2) the California State University, and each campus, branch, and function thereof, and (3) each campus, branch, and function of the University of California.

(b) As used in this part, "independent institutions of higher education" are those nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both, and that are formed as nonprofit corporations in this state and are accredited by an agency recognized by the United States Department of Education.

(c) No provision of this part is intended to regulate, subsidize, or intrude upon private education, including, but not limited to, independent educational institutions and religious schools, nor to vary existing state law or state constitutional provisions relating to private education.

RESOLUTION NO. 2014-01

A RESOLUTION OF
THE FRESNO COUNTY REGIONAL TRANSPORTATION MITIGATION FEE AGENCY

DEFINITION OF "EDUCATION DEVELOPMENT" FOR USE IN DETERMINING EXEMPTIONS FROM
THE OBLIGATION TO PAY THE FRESNO COUNTY REGIONAL TRANSPORTATION MITIGATION
FEE

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 Education Exemption Resolution of 2014" (the "Resolution").

Section 2: Findings

A. This Resolution clarifies the policy on exempting certain projects from the obligation to pay the "Fresno County Regional Transportation Mitigation Fee" (the "RTMF"), which is part of 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 that Measure 'C' Extension states that the RTMF shall apply to, "... *certain traffic generating nonessential public facilities*" but that, "*Essential public facilities (as defined by state law) shall be exempt from such fees.*"

C. The Board finds that the California Education Code Sections 51210 and 51220 establish courses of study for primary and secondary education, respectively, and that Section 66010(b) establishes a definition for "independent institutions of higher learning", that these are essential public services, and that facilities used to perform such services are "essential public facilities" regardless of whether the facilities are publicly or privately owned.

D. The Board finds that some applicants have had difficulty in understanding the definition of "education development" provided by the Board in Resolution No. 2009-01 and in determining whether or not their project qualifies for exemption.

E. The Board hereby adopts a clarified definition as guidance on the exemptions for education development.

Section 3: Definition of Education Development

A. **Eligibility for Exemption.** The previous definition of "education development" provided in Resolution No. 2009-01 Section 3.E. is hereby replaced with:

E. "Education Development" means any development project that is predominately dedicated to instruction in the course of study described in the California Education Code Section 51210 or in Section 51220, or both, or that meets the definition of an "independent institution of higher education" set forth in Education Code Section 66010.(b).

Section 4: Effective Date

This Resolution shall become effective October 23, 2014.

By: _____

Chairman, Board of Directors

ATTEST:

Secretary to the Board

By: _____

**Technical Memorandum**

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To: Tony Boren, Executive Director, Fresno COG
From: Don Hubbard, TE, AICP, Parsons Brinckerhoff
Subject: Fee Discounts for Infill Development
Date: August 19, 2014

As part of the five-year update of the Regional Transportation Mitigation Fee (RTMF) we have been asked to look into the issue of whether or not infill developments should receive a discount in the RTMF. This memo discusses the background to this issue, describes the applicable statutes, and discusses how they apply to the case of the RTMF.

Background on Infill Development

Since the mid 1990's¹ research has shown that developments in infill locations generate fewer vehicle trips and vehicle miles of travel (VMT) than similar developments located on the urban fringe. This is due to a variety of factors, the most important of which is the ability to make use of other modes of travel besides automobiles (transit, bikes, and walking, for example). The units also tend to be smaller and have fewer residents/unit. Because of its potential for reducing auto use, infill development is being promoted as an important component in the state's overall strategy for reducing greenhouse gas emissions.

Early attempts to implement this strategy soon encountered a paradox in that California's environmental laws were among the chief obstacles to environmentally-friendly infill development. The problem was that the trip generation rates and level-of-service (LOS) standards developed for suburban areas were systematically over-estimating the impacts of infill development, which were then required to provide expensive mitigations for traffic problems that would, in fact, not occur. This problem is being addressed in a number of ways, including:

- Many jurisdictions, the City of Sacramento for example, have changed their LOS policies to allow for a higher threshold in infill areas, thus reducing the need for mitigations.
- The state has added a section to the Mitigation Fee Act, which is discussed later in this memo, providing for a reduction in impact fees for infill development. Some jurisdictions (Fresno, Reedley, and Turlock, for example) already adopted reductions.
- SB-743, enacted last year, mandates that CEQA be revised so that the parking and LOS effects of transit-oriented infill projects would no longer be considered significant impacts. Instead impacts would be measured in terms of VMT. The Governor's Office of Planning and Research has issued Draft Guidelines on how this is to be implemented. The draft does not preclude jurisdictions from continuing to use LOS and automobile delay as a regulatory tool in their general plans and zoning codes. As a consequence, projects could still be subject to an LOS analysis and infrastructure improvement requirements, in addition to a VMT analysis and related mitigation measures.

¹ R. Cervero & K. Kockelman, *Travel Demand and the 3Ds: Density, Diversity, Design*, Transportation Research, 1996

The question therefore arises as to whether the RTMF-JPA should adopt a policy that would reduce the fee for infill development and, if so, by how much.

Guidance from Measure C

The text of the ballot measure offers little guidance on how infill development is to be handled. The two most relevant paragraphs are,

“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.

It is in the public interest and welfare to make exception for certain types of land uses. To that purpose, affordable housing shall be required to pay only 50% of any fee established for the land use category. Affordable housing is defined as housing affordable to persons with 80% of Fresno County median income or less annually. The definition for median income and affordable housing is as provided annually by the U.S. Housing & Urban Development Agency (HUD) to the County of Fresno.”

Three things can be taken from these paragraphs, namely:

- The FCOG regional transportation model must be used in some way in the analysis.
- We are to limit the number of land use categories used in the program “to the extent possible” to those named in the measure. This could be interpreted to mean that the RTMF-JPA cannot introduce infill development as a new land use category unless authorized to do so by a higher authority such as state or federal law.
- The issue of offering discounts to different types of land uses was considered and such discounts were limited to affordable housing and essential public services. The absence of any mention of a discount for infill development could be interpreted as deliberate.

The statement that, “*The RTMF shall apply to all types of land uses ...*” (emphasis added) and the absence of any clear authority to offer discounts to infill projects could be interpreted to mean that the JPA is required to collect the fee in full unless state law provides authority to do otherwise.

Applicable Sections of State Law

The two part of the state law most pertinent to the RTMF are the Government Code, which includes the Mitigation Fee Act, and the Public Resources Code, which covers CEQA.

Government Code

The Mitigation Fee Act (Government Code section 66000, et seq.) provides the framework under which the RTMF was developed. The Act was recently (after the establishment of the RTMF) amended to include the following provision,

“66005.1. (a) When a local agency imposes a fee on a housing development pursuant to Section 66001 for the purpose of mitigating vehicular traffic impacts, if that housing development satisfies all of the following characteristics, the fee, or the portion thereof relating to vehicular traffic impacts, shall be set at a rate that reflects a lower rate of automobile trip generation associated with such housing developments in comparison with housing developments without these characteristics, unless the local agency adopts findings after a public hearing establishing that the housing development, even

with these characteristics, would not generate fewer automobile trips than a housing development without those characteristics:

- (1) *The housing development is located within one-half mile of a transit station and there is direct access between the housing development and the transit station along a barrier-free walkable pathway not exceeding one-half mile in length.*
- (2) *Convenience retail uses, including a store that sells food, are located within one-half mile of the housing development.*
- (3) *The housing development provides either the minimum number of parking spaces required by the local ordinance, or no more than one onsite parking space for zero to two bedroom units, and two onsite parking spaces for three or more bedroom units, whichever is less.*
- (b) *If a housing development does not satisfy the characteristics in subdivision (a), the local agency may charge a fee that is proportional to the estimated rate of automobile trip generation associated with the housing development.*
- (c) *As used in this section, "housing development" means a development project with common ownership and financing consisting of residential use or mixed use where not less than 50 percent of the floorspace is for residential use.*
- (d) *For the purposes of this section, "transit station" has the meaning set forth in paragraph (4) of subdivision (b) of Section 65460.1². "Transit station" includes planned transit stations otherwise meeting this definition whose construction is programmed to be completed prior to the scheduled completion and occupancy of the housing development.*
- (e) *This section shall become operative on January 1, 2011."*

This section requires the RTMF-JPA to either adopt lower fees for certain infill developments or adopt a finding stating that lower fees are not warranted. In either case, it appears that the agency must base its decision on some sort of analytical assessment of trip generation rates ("a rate that reflects a lower rate of automobile trip generation associated with such housing developments"). There are several ways that such an assessment could be made:

- We could run the FCOG traffic model to compare the VMT/unit for the proposed project with the average VMT/unit for the county as a whole. This would adhere closest to the guidance in the ballot measure ("*Regional traffic impacts shall be determined based upon the COG Regional Transportation Model analysis*"). This would entail some staff time and expense that would have to be borne by the applicant. The outcome would be a reduction that would differ for each site and would not be known to developers until they were ready to pay the fee.
- Instead of the FCOG model, we could use any of half-a-dozen spreadsheet-based tools for calculating the trip generation rate for the proposed project. These tools use various formulas for computing the reduction based on residential density, access to transit, mix of land uses, etc. and are better suited to this sort of calculation than the FCOG model (which is designed to operate on a larger scale). Again, this would entail staff time and cost and produce a different percentage reduction for each proposed project. The FCOG model would still be used to assess the overall impact of new development in the road system, as required by the ballot measure.
- The RTMF-JPA could base the reduced fees on the findings of a study showing the average reductions associated with infill development in California. The cost of adopting an average figure would be minimal and the result would be consistent for all projects meeting the criteria for infill development. This is the only procedure that would allow developers to know the size of the discount in advance; the other methods would compute the discount when the developer applied to pay the fee at the certificate of occupancy stage. The FCOG model would still be used to

² This section is attached as Appendix A

assess the overall impact of new development in the road system, as required by the ballot measure.

For reasons of practicality and consistency we recommend taking the third approach.

Section 66005.1.(d) cited above requires that the infill site be within one half-mile of a "transit station" as defined by paragraph (4) of subdivision (b) of Section 65460.1. That definition reads as follows³, *"Transit station" means a rail or light-rail station, ferry terminal, bus hub, or bus transfer station.* "Bus hub" and "bus transfer station" are defined as,

"Bus hub" means an intersection of three or more bus routes, with a minimum⁴ route headway of 10 minutes during peak hours.

"Bus transfer station" means an arrival, departure, or transfer point for the area's intercity, intraregional, or interregional bus service having permanent investment in multiple bus docking facilities, ticketing services, and passenger shelters.

No place in Fresno County currently meets these criteria. The problem is that the Fresno Area Express and Clovis Transit Stageline routes run on 20- or 30-minute headways during peak hours. Since the requirement is based on "route headways" rather than combined headways, the fact that a place is served by several routes would not enable it to meet this requirement.

However, if the Fresno Bus Rapid Transit (BRT) system is implemented according to the current plan with 10-minute headways then the Downtown Transit Mall, the Manchester Transit Center, Shaw Avenue at Fresno State, and the River Park Shopping Center would all meet the requirement (see attached system map in Appendix B). This is a small portion of the urbanized area and the reductions would only be for developments that are completed after the BRT is in place, so the impact of the change on RTMF revenues would be limited.

Public Resources Code

It has also been suggested that the infill provisions of the Public Resources Code might apply to the RTMF. The definitions chapter of the Public Resources Code states that:

"Infill site" means a site in an urbanized area that meets either of the following criteria:

(a) The site has not been previously developed for urban uses and both of the following apply: (1) The site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses, and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses. (2) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.

(b) The site has been previously developed for qualified urban uses."

This definition is used in various places in the Public Resources Code, often in regard to a streamlined review process or reduced requirements for infill projects.

Note that this definition is based entirely on proximity to other developments; i.e. it does not include considerations of the transportation choices or its proximity to transit, and so is unrelated to VMT reductions. Later in the code there is a section (§ 21081.2, which is attached as Appendix C) discussing agency findings for approving a project for which in an environmental impact report was certified. This section includes the following text with regards to statements of overriding consideration,

³ The text of CGC Section 65460.1 is attached. Although paragraph 4 is cited, the definition of "transit station" actually appears in paragraph 5.

⁴ This is somewhat awkwardly phrased. A clearer way to say this is, "At a minimum, route headways cannot exceed 10 minutes".

“(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment. 21081.2. (a) Except as provided in subdivision (c), if a residential project, not exceeding 100 units, with a minimum residential density of 20 units per acre and within one-half mile of a transit stop, on an infill site in an urbanized area is in compliance with the traffic, circulation, and transportation policies of the general plan, applicable community plan, applicable specific plan, and applicable ordinances of the city or county with jurisdiction over the area where the project is located, and the city or county requires that the mitigation measures approved in a previously certified project area environmental impact report applicable to the project be incorporated into the project, the city or county is not required to comply with subdivision (a) of Section 21081 with respect to the making of any findings regarding the impacts of the project on traffic at intersections, or on streets, highways, or freeways.” (emphasis added)

This section exempts projects that meet the definition of Infill Development plus other requirements regarding project type (residential) project size (100 units or less) and proximity to transit from the requirement to make findings regarding traffic impacts. In effect, their direct traffic impacts are automatically considered less-than-significant.

This exemption means that an agency need not override significant traffic impacts identified in the EIR and, apparently, to nothing else. Since the RTMF is designed to mitigate cumulative traffic impacts rather than direct traffic impacts it appears that this exemption would not have any bearing on the RTMF.

Example from Western Riverside Council of Governments (WRCOG)

WRCOG's Transportation Uniform Mitigation Fee (TUMF) program is the largest inter-jurisdictional traffic fee program in the country, and is used as a model for fees programs elsewhere.

WRCOG took the position, supported by various studies, that simply being near a transit hub was not sufficient to ensure that the auto trip generation rate would be reduced to any appreciable extent. They adopted a system from the Leadership in Environmental and Energy Design's (LEED®) *LEED 2009 for Neighborhood Development Rating System* (USGBC, April 2012) to determine whether a project site was sufficiently transit-friendly to warrant a reduction in the impact fee. Among other things, besides being near a food outlet this rating system requires the site to be within ½ mile of at least six other uses of at least two other types (retail, services, civic or community facilities). For example, a site with ½ mile of a supermarket, mini-mart, school, two banks, and two restaurants would meet the requirement (see Appendix D for details). Developers are required to submit documentation to prove that they meet all of the criteria.

WRCOG opted to use a uniform discount of 11.5% for all infill projects. This number was based on an average of the reductions found in several studies done by others (i.e. WRCOG did not commission a new study).

Conclusions

Based on our review of the relevant passages of the text of Measure C, the Government Code, and the Public Resources Code, and the WRCOG example, we recommend that a discount be offered to infill developments meeting the criteria set forth in CGC Section 66005.1(a). We recommend that a flat discount be offered and that it be based on existing studies of trip generation for infill sites in California. We do not recommend adding new requirements beyond those already in CGC Section 66005.1 because the four places where the reduction would apply are known to have a good mix of land use types, so requiring documentation would be onerous and unnecessary.

APPENDIX A – EXCEPTS FROM CALIFORNIA GOVERNMENT CODE

Section 65460.1

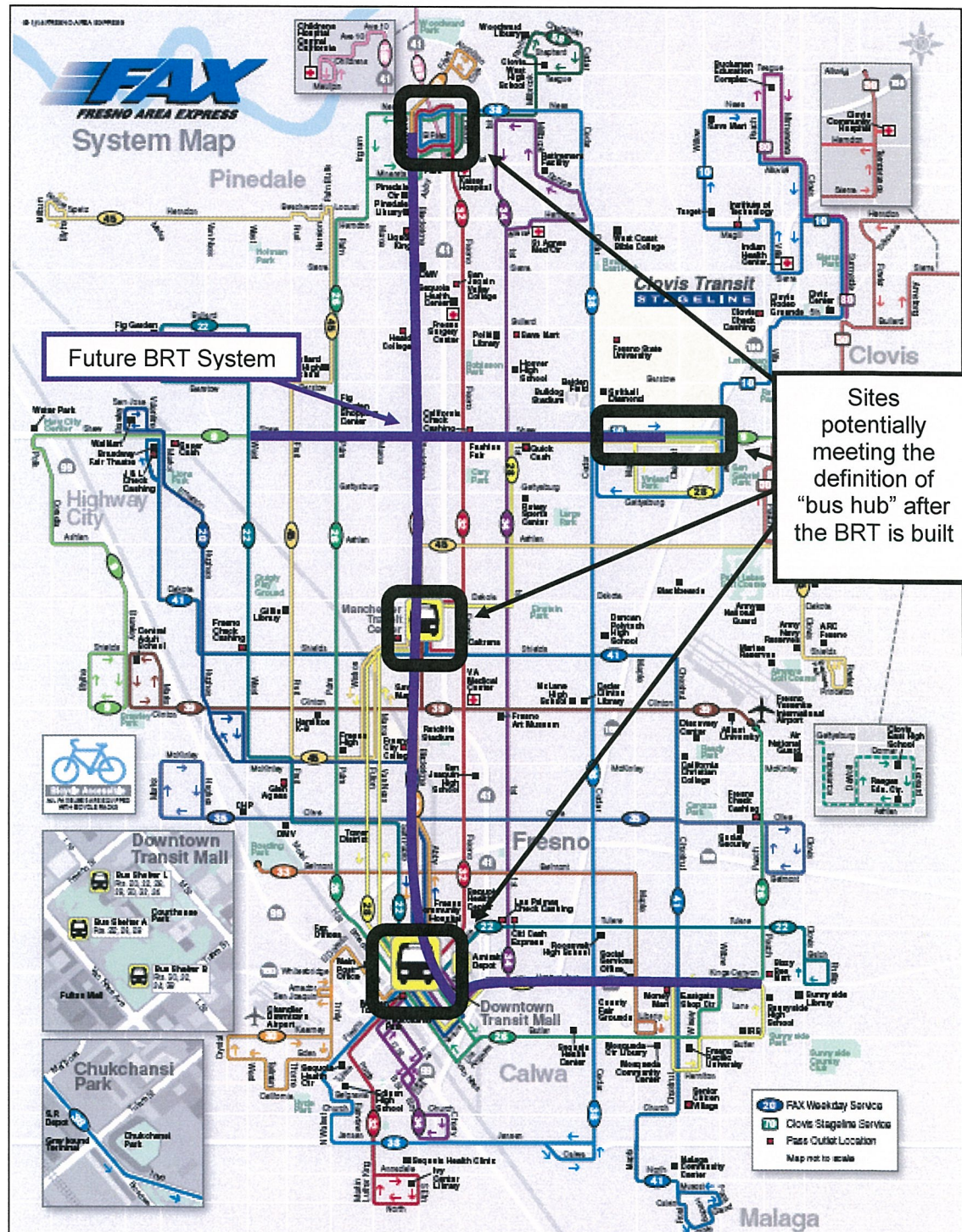
(a) The Legislature hereby finds and declares all of the following:

- (1) Federal, state, and local governments in California are investing in new and expanded transit systems in areas throughout the state, including Los Angeles County, the San Francisco Bay area, San Diego County, Santa Clara County, and Sacramento County.
- (2) This public investment in transit is unrivaled in the state's history and represents well over ten billion dollars (\$10,000,000,000) in planned investment alone.
- (3) Recent studies of transit ridership in California indicate that persons who live within a one-half-mile radius of transit stations utilize the transit system in far greater numbers than does the general public living elsewhere.
- (4) The greater use of public transit facilitated by the development of transit villages improves local street, road, and highway congestion by providing viable alternatives to automobile use.
- (5) The development of transit village development districts can improve environmental conditions by increasing the use of public transit, facilitating the creation of and improvement to walkable, mixed-use communities, and decreasing automobile use.
- (6) The development of transit village development districts throughout the state should be environmentally conscious and sustainable, and related construction should meet or exceed the requirements of the California Green Building Standards Code, Part 11 of Title 24 of the California Code of Regulations, or its successor code.
- (7) Only a few transit stations in California have any concentration of housing proximate to the station.
- (8) Interest in clustering housing and commercial development around transit stations, called transit villages, has gained momentum in recent years.

(b) For purposes of this article, the following definitions shall apply:

- (1) "Bus hub" means an intersection of three or more bus routes, with a minimum route headway of 10 minutes during peak hours.
- (2) "Bus transfer station" means an arrival, departure, or transfer point for the area's intercity, intraregional, or interregional bus service having permanent investment in multiple bus docking facilities, ticketing services, and passenger shelters.
- (3) "District" means a transit village development district as defined in Section 65460.4.
- (4) "Peak hours" means the time between 7 a.m. to 10 a.m., inclusive, and 3 p.m. to 7 p.m., inclusive, Monday through Friday.
- (5) "Transit station" means a rail or light-rail station, ferry terminal, bus hub, or bus transfer station.

APPENDIX B – FRESNO AREA EXPRESS SYSTEM MAP



APPENDIX C – EXCEPTS FROM CALIFORNIA PUBLIC RESOURCES CODE

Section 21061.2

"Infill site" means a site in an urbanized area that meets either of the following criteria:

- (a) The site has not been previously developed for urban uses and both of the following apply:
 - (1) The site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses, and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses.
 - (2) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.
- (b) The site has been previously developed for qualified urban uses.

Sections 21081 and 21081.2

21081. Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

- (a) The public agency makes one or more of the following findings with respect to each significant effect:
 - (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
 - (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
 - (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
- (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

21081.2.

(a) Except as provided in subdivision (c), if a residential project, not exceeding 100 units, with a minimum residential density of 20 units per acre and within one-half mile of a transit stop, on an infill site in an urbanized area is in compliance with the traffic, circulation, and transportation policies of the general plan, applicable community plan, applicable specific plan, and applicable ordinances of the city or county with jurisdiction over the area where the project is located, and the city or county requires that the mitigation measures approved in a previously certified project area environmental impact report applicable to the project be incorporated into the project, the city or county is not required to comply with subdivision (a) of Section 21081 with respect to the making of any findings regarding the impacts of the project on traffic at intersections, or on streets, highways, or freeways.

(b) Nothing in subdivision (a) restricts the authority of a city or county to adopt feasible mitigation measures with respect to the impacts of a project on pedestrian and bicycle safety.

(c) Subdivision (a) does not apply in any of the following circumstances:

- (1) The application for a proposed project is made more than five years after certification of the project area environmental impact report applicable to the project.
 - (2) A major change has occurred within the project area after certification of the project area environmental impact report applicable to the project.
 - (3) The project area environmental impact report applicable to the project was certified with overriding considerations pursuant to subdivision (b) of Section 21081 to the significant impacts on the environment with respect to traffic or transportation.
 - (4) The proposed project covers more than four acres.
- (d) A project shall not be divided into smaller projects in order to qualify pursuant to this section.
- (e) Nothing in this section relieves a city or county from the requirement to analyze the project's effects on traffic at intersections, or on streets, highways, or freeways, or from making a determination that the project may have a significant effect on traffic.
- (f) For the purposes of this section, "project area environmental impact report" means an environmental impact report certified on any of the following:
- (1) A general plan.
 - (2) A revision or update to the general plan that includes at least the land use and circulation elements.
 - (3) An applicable community plan.
 - (4) An applicable specific plan.
 - (5) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.
 - (6) A zoning ordinance.

APPENDIX D – WRCOG GUIDANCE ON TRANSIT-ORIENTED DEVELOPMENT

Section 1.01 Transit-Oriented Development

(a) Summary

As described in the California Mitigation Fee Act, a transit-oriented development (TOD) is “a development project consisting of residential use or mixed use where not less than 50 percent of the floorspace is for residential use...if located within ½ mile of a transit station and with direct walking access to the station, within ½ mile of convenience retail uses including a store that sells food, and with a maximum number of parking spaces as required by state statute or local ordinance.”

For the purpose of calculating the TUMF obligation, a factor reflecting the reduction in automobile trip generation associated with residential TOD will be applied to the standard residential TUMF obligation.

The residential TOD TUMF obligation is calculated by multiplying the standard residential TUMF obligation (either single family or multi-family, as appropriate) by the automobile trip reduction factor. The methodology outlined in **Worksheet A.1.2** and described as follows will be applied to determine the TOD TUMF obligations.

1. Complete the TOD qualification checklist and prepare TOD documentation.
2. Determine the standard TUMF obligation for eligible residential TOD land uses using **Worksheet A.1.1**.
3. Multiply the result for Step 2 by 0.885.

Documentation will be submitted with the development application as the basis for determining the eligibility of the residential land use as a TOD. Documentation will include a site plan indicating that at least 50% of the floorspace of the development is dedicated to residential use and the required number of parking spaces associated with the subject development. Documentation will also include a map showing the location of the subject development circled with a ½ mile radius, as well as the location of a transit station(s), the location of diverse uses and direct walking routes of ½ mile or less between the subject development and the listed uses to justify that the development satisfies the characteristics of TOD.

(b) Detailed Narrative

The California Mitigation Fee Act requires that impact fees for residential development that satisfy certain characteristics of transit-oriented development (TOD) “be set at a rate that reflects a lower rate of automobile trip generation associated with such housing developments in comparison with housing developments without these characteristics.”

Section 66005.1 of the California Government Code (Mitigation Fee Act) states the following with regard to Transit-Oriented Development and impact fees:

“(a) When a local agency imposes a fee on a housing development pursuant to Section 66001 for the purpose of mitigating vehicular traffic impacts, if that housing development satisfies all of the following characteristics, the fee, or the portion thereof relating to vehicular traffic impacts, shall be set at a rate that reflects a lower rate of automobile trip generation associated with such housing developments in comparison with housing developments without these characteristics, unless the local agency adopts findings after a public hearing establishing that the housing development, even with these characteristics, would not generate fewer automobile trips than a housing development without those characteristics:

- (1) The housing development is located within one-half mile of a transit station and there is direct access between the housing development and the transit station along a barrier-free walkable pathway not exceeding one-half mile in length.*
- (2) Convenience retail uses, including a store that sells food, are located within one-half mile of the housing development.*

- (3) *The housing development provides either the minimum number of parking spaces required by the local ordinance, or no more than one onsite parking space for zero to two bedroom units, and two onsite parking spaces for three or more bedroom units, whichever is less.*
- (b) *If a housing development does not satisfy the characteristics in subdivision (a), the local agency may charge a fee that is proportional to the estimated rate of automobile trip generation associated with the housing development.*
- (c) *As used in this section, "housing development" means a development project with common ownership and financing consisting of residential use or mixed use where not less than 50 percent of the floorspace is for residential use.*
- (d) *For the purposes of this section, "transit station" has the meaning set forth in paragraph (4) of subdivision (b) of Section 65460.1. "Transit station" includes planned transit stations otherwise meeting this definition whose construction is programmed to be completed prior to the scheduled completion and occupancy of the housing development.*

With regard to the definition of transit station, Section 65460.1 of the California Government Code (Transit Village Development Plan Act) states that *the following definitions shall apply:*

- (1) *"Bus hub" means an intersection of three or more bus routes, with a minimum route headway of 10 minutes during peak hours.*
- (2) *"Bus transfer station" means an arrival, departure, or transfer point for the area's intercity, intraregional, or interregional bus service having permanent investment in multiple bus docking facilities, ticketing services, and passenger shelters.*

[...]

- (5) *"Transit station" means a rail or light-rail station, ferry terminal, bus hub, or bus transfer station."*

Research regarding the relationship between automobile trips and TOD is summarized in Table 4.1. Table 4.1 indicates the lower automobile trip generation rates that have been determined to be associated with TOD compared to conventional developments.

Table 4.1 – Examples of Automobile Trip Reduction Rates	
Situation	Automobile Trip Reduction Rate
Housing development within 2,000 ft of a light-rail or commuter rail station ¹	9%
Housing development in settings with intensive transit services ²	15%
Housing or business TOD ³	2 - 16%
TOD housing in California ³	15%
Average trip reduction rate (if the case study indicates a range the average rate was used)	11.5%

Sources

1: Santa Clara County Congestion Management Agency

2: California Air Resource Board study; Parker et al.; 2002

3: Effects of TOD on housing, parking, and travel; R. Cervero et al.; TCRP report 128; 2008

The California Air Resources Board, which estimates the air quality impacts of new developments, calls for up to a 15 percent reduction in trip rates for housing in settings with intensive transit services. The Santa Clara County California's Congestion Management Agency recommends a 9 percent trip reduction in estimated trip generation levels when setting impact fees for new housing developments within 2,000 feet of a light-rail or commuter-rail station. Studies also found that mode shifts and automobile trip reductions are more noticeable in areas where transit use is already high.

Those studies also found wide variations between automobile trip reduction rates from development to development, depending on several factors such as housing density, proximity to downtown, or intensity of transit service. For instance, a 2003 California TOD travel characteristics study found that commute shares of residents living within ½ mile of a transit station strongly differ from the shares of those living outside the station-area. The statewide weighted average difference in transit shares compared against the surrounding ½ mile to 3 miles was nearly 27 percent inside the ½ mile radius and 7 percent outside.

Based on case studies and considering the relatively low housing density in Western Riverside County, as well as the intensity of transit service, an average automobile trip reduction rate of 11.5% will be used to calculate the TUMF obligation for TODs as described in the California Mitigation Fee Act.

The U.S. Green Building Council (USGBC), the Congress for the New Urbanism (CNU), and the Natural Resources Defense Council (NRDC) have developed a national standard for assessing and rewarding environmentally superior neighborhood development practices within the framework of the Leadership in Environmental and Energy Design (LEED®) Green Building Rating System™. As stated in *LEED 2009 for Neighborhood Development Rating System* (USGBC, April 2012), LEED for Neighborhood Development “places emphasis on the site selection, design, and construction elements that bring buildings and infrastructure together into a neighborhood and relate the neighborhood to its landscape as well as its local and regional context. LEED for Neighborhood Development creates a label, as well as guidelines for both decision making and development, to provide an incentive for better location, design, and construction of new residential, commercial, and mixed-use developments.”

LEED Neighborhood Development (LEED ND) Certification utilizes three environmental categories: Smart Location and Linkage, Neighborhood Pattern and Design, and Green Infrastructure and Buildings. The Smart Location and Linkage (SLL) is consistent with the principles of TOD having the intent described as follows:

- “To encourage development within and near existing communities and public transit infrastructure.
- To encourage improvement and redevelopment of existing cities, suburbs, and towns while limiting the expansion of the development footprint in the region to appropriate circumstances.
- To reduce vehicle trips and vehicle miles traveled (VMT).
- To reduce the incidence of obesity, heart disease, and hypertension by encouraging daily physical activity associated with walking and bicycling.”

In order to achieve LEED ND certification, a prerequisite is meeting the requirements of SLL. A requirement of SLL directly applicable to TOD and mixed use is locating a “project near existing neighborhood shops, uses, and facilities collectively referred to as “diverse uses” such that the ... project’s geographic center is within 1/2-mile walk distance of at least seven diverse uses.” This SLL requirement and LEED ND prerequisite provides an appropriate measure for determining a development meets national standards for mixed use in the context of TOD. Although the California Mitigation Fee Act specifically cites the requirement to be located in proximity to Convenience Retail uses, the LEED ND SLL diverse uses requirement will be utilized by WRCOG as the basis for determining that a development application meets the mixed use requirements of a TOD to adequately reduce trip generation rates.

Documentation of TOD that must be submitted with the development application as the basis for determining the TUMF fee obligation consists of the following:

1. Site Plan including a table or narrative detailing that not less than 50% of the total floorspace of the planned development is dedicated for residential use, and indicating the number of parking spaces associated with the subject development does not exceed the minimum number of parking spaces required by the local ordinance, or no more than one onsite parking space for zero to two bedroom units, and two onsite parking spaces for three or more bedroom units, whichever is less.

2. Location Map showing the location of the subject development circled with a ½ mile radius, as well as the location of a transit station(s), the location of diverse uses and direct walking routes of ½ mile or less between the subject development and the listed uses. The map must also indicate the pedestrian connectivity from the development to a transit station and the other diverse use locations along a barrier-free walkable pathway not exceeding ½ mile.

At least seven diverse uses from the list in Table 4.2 must be identified within a ½ mile walking distance of the development to qualify a TOD. The qualifying diverse uses must include at least one Food Retail establishment and at least one use from each of two other categories. A single establishment may be counted as having more than one diverse use when separate and distinct uses within the establishment fall within different categories. For example, a supermarket (Food Retail category) may also include a pharmacy (Community-Serving Retail category) and a bank (Services category) providing a total of three diverse uses in a single establishment.

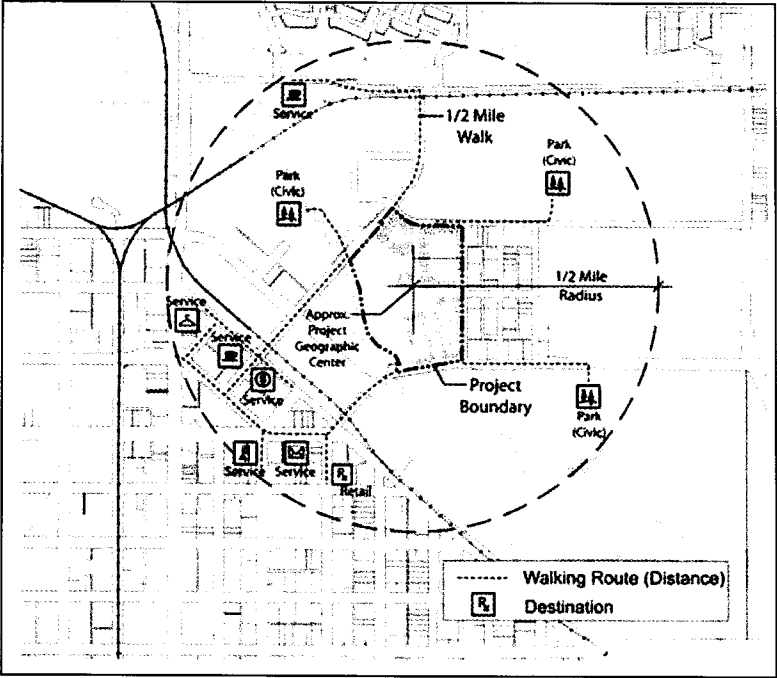
Table 4.2 – List of Diverse Uses^[1]

Category	Use
Food Retail	Supermarket
	Other food store with produce
Community-Serving Retail	Clothing store or department store selling clothes
	Convenience store
	Farmer's market
	Hardware store
	Pharmacy
	Other retail
Services	Bank
	Gym, health club, exercise studio
	Hair care
	Laundry, dry cleaner
	Restaurant, café, diner (excluding establishments with only drive-throughs)
Civic and Community Facilities	Adult or senior care (licensed)
	Child care (licensed)
	Community or recreation center
	Cultural arts facility (museum, performing arts)
	Educational facility (including K–12 school, university, adult education center, vocational school, community college)
	Family entertainment venue (theater, sports)
	Government office that serves public on-site
	Place of worship
	Medical clinic or office that treats patients
	Police or fire station
	Post office
	Public library
	Public park
	Social services center

Figure 4.1 depicts a sample map of how the Walkability Assessment and Map of Diverse Uses may be presented to meet the requirements.

^[1] Adapted from LEED 2009 for Neighborhood Development Rating System, updated April 2012, USGBC

Figure 4.1 – Walkability Assessment and Map of Diverse Uses within ½ mile of Development



RESOLUTION NO. 2014-02

A RESOLUTION OF
THE FRESNO COUNTY REGIONAL TRANSPORTATION MITIGATION FEE AGENCY
ESTABLISHING A REDUCTION IN RTMF FEE LEVEL FOR CERTAIN INFILL DEVELOPMENT
PROJECTS

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 Infill Project Fee Reduction Resolution of 2014" (the "Resolution").

Section 2: Findings

A. This Resolution establishes a policy for offering certain types of residential infill projects reductions in the "Fresno County Regional Transportation Mitigation Fee" (the "RTMF"), which is part of 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 that the Mitigation Fee Act (California Government Code section 66000, et seq.), which provides the legal framework for the RTMF and other impact fees was, after the RTMF came into effect, amended to provide a reduction in fees for infill projects having certain characteristics, unless the local agency adopts findings that such projects would not generate fewer automobile than other developments without those characteristics. The reduction is to reflect the lower rate of automobile trip generation associated with such housing developments in comparison with housing developments without these characteristics.

C. The Board finds that a new policy is needed to bring the RTMF into compliance with the Mitigation Fee Act, as amended.

D. The Board finds that studies by the California Air Resources Board and others provide substantial evidence that certain types of infill development projects generate approximately 15 percent less vehicular traffic than similar projects in other types of locations and so have on average fewer traffic impacts requiring mitigation.

E. The Board hereby adopts a new policy establishing a reduction in the RTMF for residential developments meeting certain criteria.

Section 3: Definitions

For the purpose of this Resolution, the following words, terms and phrases shall have the following meanings:

- A. **"Housing Development"** means a development project with common ownership and financing consisting of residential use or mixed use where not less than 50 percent of the floorspace is for residential use.
- B. **"Transit Station"** has the meaning set forth in paragraph (4) of subdivision (b) of the California Government Code Section 65460.1. "Transit station" includes planned transit stations otherwise meeting this definition whose construction is programmed to be completed prior to the scheduled completion and occupancy of the housing development.

Section 4: Policy on Fee Reduction for Residential Infill Development

A. **Eligibility for Fee Reduction.** To be eligible for a fee reduction as a residential infill project a project must meet all of the following criteria:

- i. The housing development is located within one-half mile of a transit station and there is direct access between the housing development and the transit station along a barrier-free walkable pathway not exceeding one-half mile in length.
- ii. Convenience retail uses, including a store that sells food, are located within one-half mile of the housing development.
- iii. The housing development provides either the minimum number of parking spaces required by the local ordinance, or no more than one onsite parking space for zero to two bedroom units, and two onsite parking spaces for three or more bedroom units, whichever is less.

If only part of a development project meets these criteria then the reduction shall apply only to that portion meeting the criteria.

B. **Determination of Eligible Areas.** RTMF-JPA staff shall determine which localities in Fresno County meet the criteria in Section 4.A and provide a map of these localities to interested parties.

C. **Applying for the Fee Reduction.** Project developers desiring the reduction must submit evidence that their project, or a portion of their project, lies within the eligible areas identified by RTMF-JPA staff pursuant to Section 4.B. Developers of projects outside these areas may also request the reduction but must provide evidence demonstrating that their project meets the criteria set forth in Section 4.A. The RTMF-JPA shall determine whether or not to grant the reduction based on the evidence provided. All evidence pursuant to this fee reduction is to be submitted as attachments to the Record of Payment.

D. **Amount of Fee Reduction.** The reduction in RTMF fee shall be 15 percent of the fee that would otherwise apply to the development in question.

Section 4: Effective Date

This Resolution shall become effective October 23, 2014.

By: _____

Chairman, Board of Directors

ATTEST:

Secretary to the Board

By: _____