



Technical Memorandum

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To: Tony Boren, Executive Director, Fresno COG
From: Don Hubbard, TE, AICP, Parsons Brinckerhoff
Subject: Fee Discounts for Transit-Oriented Development
Date: October 29, 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 transit oriented 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 (VT) 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:

- The Public Resources Code, which covers CEQA, was amended to provide for streamlined review for small residential infill projects (see Appendix A for details).
- 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) had already adopted fee reductions on their own.
- 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 VMT².

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

² 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

The growing consensus that infill projects, especially transit-oriented developments (TODs), have fewer traffic impacts than other types of development and the new requirements brought on by the revisions to the Mitigation Fee Act raise the question 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 analysis must be based on the FCOG regional transportation model.
- 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 appears to mean that the JPA is required to collect the fee in full unless state law provides authority to do otherwise.

Changes to the Mitigation Fee Act

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

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.

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 65460.1³. "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"). As mentioned earlier, for the RTMF the analytical assessment must be performed using the FCOG travel demand model ("Regional traffic impacts shall be determined based upon the COG Regional Transportation Model analysis").

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 follows⁴, "'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 minimum⁵ 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, which is why the fact that the law is already in effect has had little practical effect on the RTMF thus far. The reason no place meets the criteria is that the Fresno Area Express (FAX) and Clovis Transit Stageline routes run on 20- or 30-minute headways

³ This section is attached as Appendix B

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

⁵ This is somewhat awkwardly phrased. A clearer way to say this is, "At a minimum, route headways cannot exceed 10 minutes".

during peak hours. Since the requirement is based on “route headways” rather than combined headways even if places are served by several routes they would not 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 Exhibit 2). FAX is currently in the process of developing its strategic plan which may include re-organizing its routes; it is possible that additional locations could meet the criteria in the future.

Analysis of a Potential TOD Fee Reduction Using the FCOG Model

The FCOG travel demand model forecasts trips made by future residents in a way that takes account of the choice of modes available for each trip. So for future⁶ residents of TODs, the model takes into account the opportunity to use the BRT system or to walk or and bike for trips to certain destinations. The average vehicle-trips per person living in the four TODs shown in Exhibit 1 was computed and compared to the average for the rest of Fresno County. The model forecast a 31% reduction in per-capita vehicle trips for TOD residents. This is within the range of reductions found in field surveys of existing TODs⁷ (see Exhibit 1), which lends credibility to the results. The reduction forecast by the FCOG model is at the low end of the range but that is not surprising since it is the smallest city in the group and the only one with a bus-only transit system.

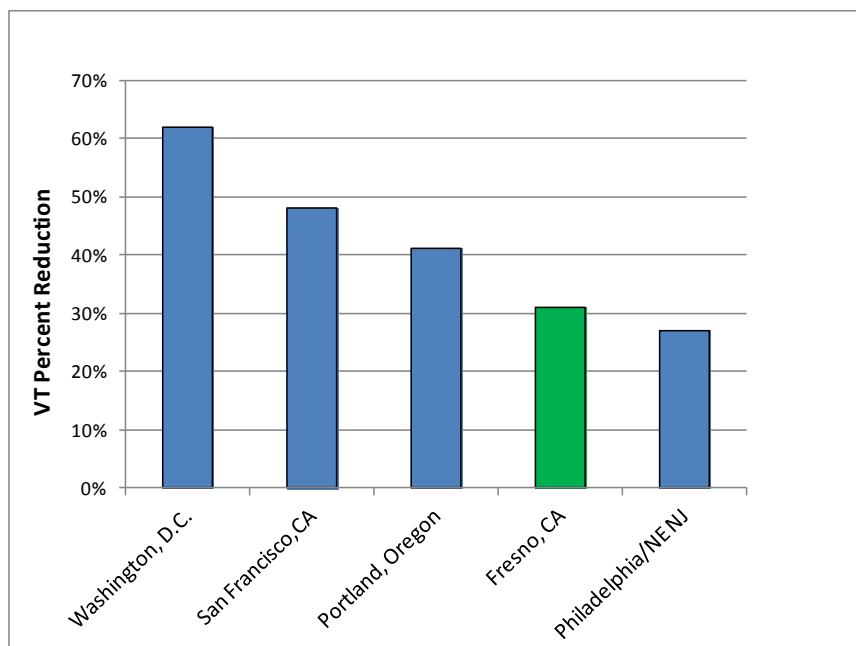


Exhibit 1: Reductions in Vehicle Trip-Making for TOD Residents Compared with Average

⁶ Year 2027, when Measure ‘C’ Extension expires and the RTMF comes to an end if not renewed.

⁷ Source: Transit Cooperative Research Program Report 128 - *Effects of TOD on Housing, Parking, and Travel*. Transportation Research Board, 2008.

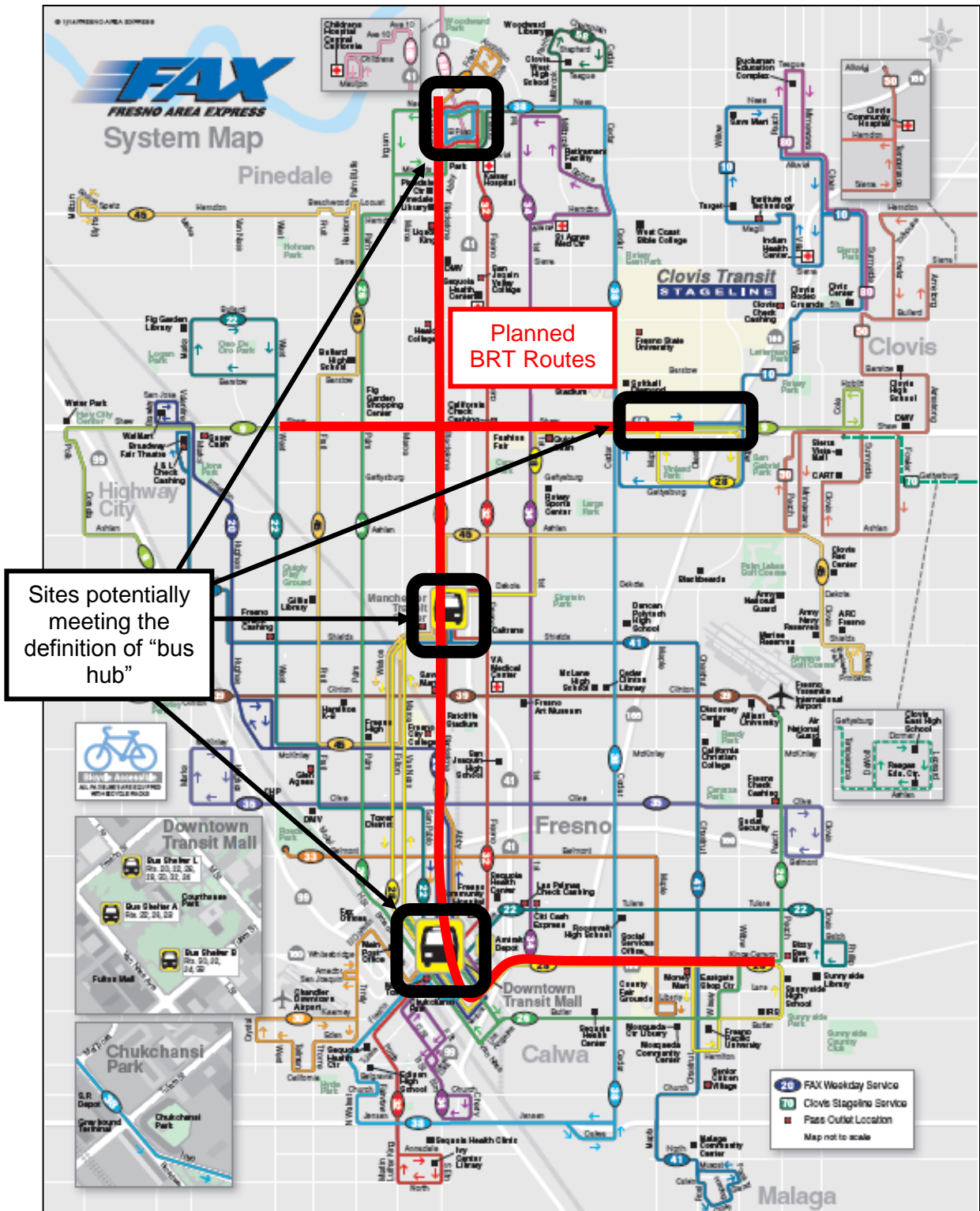


Exhibit 2: Fresno Area Bus Route Map and Potential TOD Sites

The FCOG model was also used to forecast the potential loss of RTMF revenue is a 31% fee reduction were to be given to residential development within the four likely TOD sites shown in Exhibit 2. This was done by multiplying the forecast number of new dwelling units⁸ by the fee per unit to get the total potential RTMF revenue, and then taking 31% of that as the total potential loss. This calculation is shown in the center columns of Exhibit 3. The potential loss in RTMF revenue from adopting this reduction is forecast to be on the order of \$665,000. Note that nearly two-thirds of the expected development in the four TODs is expected to be apartments for low-income households. Since this type of unit already pays the lowest RTMF rate of any residential type a further reduction of 31% is relatively small in absolute terms.

Residential Development Category	RTMF per Unit	TODs (only)		Entire BRT Corridor	
		New Units	Total RTMF	New Units	Total RTMF
Single-Family Dwelling (market-rate)	\$1,591	127	\$202,391	554	\$882,301
Single-Family Dwelling (affordable)	\$796	33	\$26,443	125	\$99,387
Multi-Family Dwelling (market-rate)	\$1,117	832	\$930,159	2,404	\$2,686,373
Multi-Family Dwelling (affordable)	\$559	1,766	\$986,738	2,697	\$1,506,756
Total		2,759	\$2,145,731	5,781	\$5,174,816
Recommended Fee Reduction			31%		31%
RTMF Revenue Lost			\$665,177		\$1,604,193

Exhibit 3: Calculation of Potential Loss of RTMF Revenue Due to Fee Reductions for TODs

It has been suggested that the discount for TODs should be extended beyond the sites meeting the State criteria to all residential development within half-a-mile from a BRT route as an encouragement to development in the areas targeted for growth in the Sustainable Communities Strategy. The potential loss of RTMF revenue from such a policy is calculated in the right-most columns of Exhibit 3. As can be seen in the exhibit, the addition of other parts of the BRT corridors would mean that about half of the new residences receiving the reduction would be market-rate units that would otherwise pay a relatively high RTMF fee. A policy extending the fee reduction to the entire BRT system would result in approximately \$1.6 million in lost RTMF revenue.

The calculations shown in Exhibit 3 are based on forecasts of all new units expected to be built between now and 2027 when Measure ‘C’ Extension, and RTMF, are scheduled to expire. The Mitigation Fee Act only requires that the reduction be offered to units that are completed after the site meets the criteria (in this case after the BRT system is opened). Depending on how many of these units are built before the BRT lines open the revenue loss could be less than is shown in Exhibit 3.

Administering a Potential Fee Reduction

In the event that the RTMF Board decides to adopt a fee reduction for TODs, instructions will need to be given to developers and agency staff on how the reduction will be implemented. Agencies that currently offer the fee reduction vary in the amount of documentation required from developers. The Western Riverside Council of Governments, as an example, requires developers to submit a map showing the location of their project in relation to at least seven non-residential land uses (individual shops, offices, parks, etc.) in order to prove that it really is a mixed-use site.

Given the limited geographic scope of the relevant area we do not believe that elaborate documentation is needed for the RTMF. We believe that the COG should prepare a map showing the locations where the

⁸ The FCOG model uses the growth assumptions in the new Sustainable Communities Strategy

TOD reduction is applicable and only require developers to show that their project is within the designated area. In the event that only part of a project is within the designated area then the fee reduction would apply only to that portion and not to the portion outside of the designated area.

Conclusions

Based on our analysis of this issue:

- We recommend that the RTMF comply with the revision to state law by offering a fee reduction to infill developments meeting the criteria set forth in CGC Section 66005.1.(a). The Board may wish to extend this reduction to the entire BRT corridor. In either case the fee reduction would only become effective once the BRT or some other public transportation service (high-speed rail?) creates conditions where the criteria are met.
- We recommend that the reduction be 31%. This figure was determined using the FCOG traffic model (per guidance in Measure 'C' Extension) and is in line with actual reductions in auto use found in existing TODs.
- We recommend that once any place in Fresno County meets the criteria set forth in CGC Section 66005.1.(a) that staff be instructed to prepare a map showing where the fee reduction will apply. Developers wishing to get the reduction should only need to show that their project, or a portion thereof, is located in the designated area. If a project is partly inside the designated area and partly outside then only the portion in the designated area would receive the fee reduction.

A draft resolution for adopting these recommendations is attached as Appendix C.

APPENDIX A – EXCEPTS FROM CALIFORNIA PUBLIC RESOURCES CODE

Some sections of the Public Resources Code are intended to make infill development easier. The definition of “infill” in the CPRC is:

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.

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(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.”

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 discusses 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:

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.

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.

APPENDIX B – 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 C – DRAFT RESOLUTION

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 analyses with the Fresno COG travel demand model provide substantial evidence that certain types of infill development projects generate approximately 31 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 31 percent of the fee that would otherwise apply to the development in question.

Section 4: Effective Date

This Resolution shall become effective January 1, 2015.

By: _____

Chairman, Board of Directors

ATTEST:

Secretary to the Board

By: _____