

## Fresno County Regional Transportation Mitigation Fee Agency

### AGENDA

**Date: Thursday, April 30, 2015**

**Time: 5:30 PM**

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

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

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

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

- I. Minutes of March 26, 2015 [APPROVE]**
- II. Hearing**
  - A. Clovis- Herndon LLC RTMF Appeal**

**Summary:** Clovis-Herndon LLC is appealing a staff determination their project is subject to the fee. The project is the shopping center development on the northeast corner of Herndon and Clovis Blvd (Clovis Crossing). Appellant represents there is approximately 238,337 sq. ft. of commercial retail in this development owned by Clovis-Herndon Center, LLC subject to this appeal resulting in \$479,468.04 paid in fees. The appeal includes only property owned by Clovis-Herndon, LLC and not property for other owners in the shopping center subject to the fee.

On October 25, 2012, the board denied the appeal and Clovis-Herndon LLC filed suit. On May 29, 2014 the court ordered the RTMF Agency to hold another hearing, make a new determination, and adopt findings to support that determination. In June and July 2014 the RTMF Board held hearings, listened to testimony and voted 12-3 to deny the appeal. That motion failed because the dual weighted voting system requires 40% of the population to agree and the vote only secured 32.91% of the population. On January 28, 2015 the court once again ordered the Fresno County Regional Transportation Mitigation Agency to hold a hearing, make a determination, and adopt findings regarding the Clovis Herndon appeal. On February 26, 2015 the board held another hearing and was again deadlocked. On March 26, 2015 the board directed staff to hold another hearing to attempt to break the deadlock.

The documentation for this issue is significant. To facilitate your review the following three links are provided.

**Clovis Herndon Appeal** - Caswell, Bell, & Hillison LLP (CBH) file an Appeal, including a Brief and 52 tabs, to be heard before the RTMF agency on 10/25/12. On 10/18/12 a supplement to the appeal is filed.

Here's the link to this file:

<https://www.hightail.com/download/bXBiRE9xZy9CSnBESjhUQw>

**102512 Hearing** –Board Meeting Package, Staff Rebuttal, a Power Point highlighting staff recommendation, Minutes, Verbatim Transcripts.

Here's the link to this file:

<https://www.hightail.com/download/bXBiRE9xZy9reEFPd3NUQw>

**073114 Hearing –**

05/20/14 Caswell, Bell & Hillison letter stating basis for appeal.

Caswell, Bell & Hillison Power Point presentation.

RTMF Information Summary

Resolution 2009-01

06/30/14 Executive Minutes

07/31/14 RTMF Board Agenda

Transcript of 07/31/14 hearing

Minutes of the 02/26/15 Hearing

Here's the link to this file:

<https://www.hightail.com/download/bXBiRE9xZy9veFBFdzUQw>

**Recommendation:** Staff recommends the appeal be denied.

**B. Resolution 2015-01 Findings of Fact**

**Summary:** Per the court order, County Counsel recommends in the event the Board denies the appeal, they adopt Findings of Fact consistent with the Board determination.

**Recommendation:** Staff recommends adoption of Resolution 2015-01.

**III. Public Presentations Related To Closed Session Only And Then Retire To Closed Session**

- a. **Conference with legal counsel - Existing Litigation; Government Code section 54956.9(d)(1): *Clovis-Herndon, LLC v. Fresno County Regional Transportation Mitigation Fee Agency, Fresno County Superior Court, Case No. 13 CECG 0048***

**IV. OTHER BUSINESS**

- A. Items from Staff

B. Items from Members

V. **PRESENTATIONS**

A. **Public Presentations**

This portion of the meeting is reserved for persons wishing to address the Board on items within its jurisdiction but not on this agenda. **Note: Prior to action by the Board on any item on this agenda, the public may comment on that item. Unscheduled comments may be limited to 3 minutes.**

**FOR YOUR INFORMATION:**

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