

RESOLUTION NO. 2015-01

A RESOLUTION OF
THE FRESNO COUNTY REGIONAL TRANSPORTATION MITIGATION FEE AGENCY
PROCEDURES FOR RESOLVING APPEALS OF THE REGIONAL TRANSPORTATION
MITIGATION FEE WHERE THE BOARD IS DEADLOCKED

The Board of Directors of the Fresno County Regional Transportation Mitigation Fee Agency ordains as follows:

Section 1: Findings

A. Pursuant to that certain “Joint Powers Authority Agreement For The Creation of the Fresno County Regional Transportation Mitigation Fee Agency” (hereafter the Joint Powers Agreement”, the County of Fresno (hereafter referred to as the “County”) and the incorporated cities situated in Fresno County (hereafter referred to as the “Cities”) formed the Fresno County Regional Transportation Mitigation Fee Agency (hereafter, the “Agency”).

B. The Agency was formed to exercise the powers of the Cities and the County pursuant to the Mitigation Fee Act to enact, adopt, establish implement, impose, collect and administer the Regional Transportation Mitigation Fee to mitigate the regional transportation impacts of new development in the jurisdictional boundaries of the Cities and County.

C. Section 3.5.2 of the Joint Powers Agreement provides that “. . . any motion or action of the Board in order to be deemed carried or approved must receive an affirmative vote of the majority of the members in good standing, which vote must represent no less than 40% of the total population of the members in good standing . . .” Therefore, for any motion or proposed action of the Board to carry, it must satisfy two prongs: (1) it must be supported by the affirmative vote of the majority of the members in good standing, and (2) the affirmative votes must represent 40% or more of the total population of the members in good standing. Taken together, these two prongs are sometimes referred to as the Board’s “dual-weighted voting requirement”.

D. On October 29, 2009, the Board adopted Resolution No. 2009-01, the “Fresno County Regional Transportation Mitigation Fee Resolution of 2009” (hereafter referred to as “Resolution No. 2009-01”), which established the “Fresno County Regional Transportation Mitigation Fee” (hereafter referred to as the “RTMF”) and the procedures for the levy, collection, and disposition of fees.

E. Section 6.D of Resolution No. 2009-01 provided that appeals of the RTMF shall be filed with the Fresno County Transportation Authority and that appealable issues shall be limited to the application of the fee, application of credit, application of reimbursement, and application of exemption.

F. On October 28, 2010, the Board adopted Resolution No. 2010-02, “Fresno County Regional Transportation Mitigation Fee Special Studies and Appeals Resolution of 2010” (hereafter referred to as “Resolution No. 2010-02”).

G. Resolution No. 2010-02 established procedures for (1) special studies as directed by the “Fresno County Transportation, Safety, Road Repair Measure” approved by the voters of Fresno County on November 7, 2006 (hereafter referred to as the “Measure ‘C’ Extension”), and (2) appeals of the Regional Transportation Mitigation Fee (hereafter referred to as the “Appeals Procedures”).

H. Section 5.A. of Resolution No. 2010-02 provides that the Appeals Procedures superseded and replace the procedure established in Section 6.D. of Resolution No. 2009-01.

I. Section 5 of Resolution No. 2010-02 prescribe the (1) grounds on which an appeal may be taken; (2) the method by which an appeal may be initiated; (3) the documentation that may be filed in support of an appeal; and (4) the types of action the Board may take on an appeal.

J. Section 5 of Resolution No. 2010-02 does not address the disposition of an appeal where the Board is unable to act due to a deadlock.

K. The Board finds that there are occasions where the Board is unable to adopt a motion satisfying its dual-weighting voting requirement. When this occurs in the context of an appeal of the RTMF, the resulting deadlock frustrates the timely and appropriate disposition of the appeal.

L. The Board finds that it is necessary to provide a mechanism to resolve appeals in the event that the Board is deadlocked.

M. The Board hereby adopts this Resolution No. 2015-01, which prescribes the procedure to resolve appeals where the Board is deadlocked.

Section 2: Definitions

A. "Agency" means the Fresno County Regional Transportation Mitigation Fee Agency.

B. "Appeal" means a request that the amount of RTMF owed by an applicant for a specific project be other than the amount that would be owed if the RTMF was applied following its usual procedures.

C. "Applicant" means the developer of a project subject to the RTMF as generally applied.

D. "Board" means the Board of Directors of the Agency.

E. “Deadlock” occurs when the Board is unable to adopt a motion that satisfies the Board’s dual-weighted voting requirement.

F. "Executive Director" means the Executive Director of the Agency.

G. "Record of Payment" means the document used to calculate and record the RTMF amount for a specific project, a copy of which is included in the Fresno Regional Transportation Mitigation Fee Administration Manual.

H. "Special Study" means a technical analysis carried out for the purpose of establishing an appropriate RTMF level for a specific project.

I. "Staff" means the staff of the Agency.

Section 3: Procedures for Resolving Appeals of the RTMF Where the Board is Deadlocked

A. Where the Board is deadlocked on an appeal of the RTMF, the determination of Agency staff regarding the subject of the appeal shall be the final decision of the Agency.

B. Within 15 calendar days of the Board reaching deadlock on an appeal of the RTMF, Agency staff shall deliver by first class mail, written findings to the applicant that explain staff's determination that the RTMF applies to the project under consideration. Such findings shall be approved by the Executive Director or his/her designee.

C. If an appeal of the RTMF is deadlocked at the effective date of this Resolution, the Agency staff shall deliver by first class mail the written findings required by Section 3.B. to the applicant within 15 calendar days after the effective date of this Resolution.

Section 4: Effective Date

A. This Resolution shall become effective as of April 30, 2015. Its provisions shall apply to all appeals pending before the Board as of the Effective Date and all appeals which may arise thereafter.

By _____
AMPAREET DHALIWAL, CHAIR
BOARD OF DIRECTORS

ATTEST:

TONY BOREN
EXECUTIVE DIRECTOR