

Resolution No. 2015-02
A Resolution of the Fresno County Regional Transportation Mitigation
Fee Agency
Findings of Fact

In the Matter of the Appeal of Clovis Herndon LLC, concerning the applicability of the RTMF to the Clovis Crossing Project:

The application of Clovis Herndon, LLC (Clovis-Herndon”) from staff’s imposition of the Regional Transportation Mitigation fee (“RTMF”) upon the Clovis Crossing Shopping Center project (“Clovis Crossing”), came on regularly scheduled hearing before the Fresno County Regional Transportation Mitigation Fee Agency (“FCRTMFA”) on May 28, 2015. After receiving oral and documentary evidence and argument submitted by the Appellant and FCRTMFA staff, the Board renders its decision to deny the appeal and to uphold staff’s determination that the RTMF applies to the Clovis Crossing project.

I. FINDINGS

1. Clovis-Herndon owns a portion of Clovis Crossing located at the northeast corner of Clovis and Herndon Avenues in the City of Clovis. Clovis-Herndon has paid \$479,468.01 under protest relating to imposition of the RTMF upon Clovis Crossing.
2. Clovis-Herndon received certain City of Clovis land use approvals for Clovis Crossing prior to January 1, 2010, and did not obtain a building permit until after that date. The land use approvals did not involve a subdivision map.
3. The Measure “C” Ballot approved by voters in 2007 established the Regional Transportation Mitigation Fee (RTMF) shall apply to all development not specifically exempted by the ballot measure.
4. Regional Transportation Mitigation Fee Agency Resolution 2009-01, as amended by Resolution 2010-01, provides:
 - a. Section 3.L: “Development” means any work or improvement that requires a building permit or development approval.

- b. Section 3. M: “New Development” means any development on vacant land or additions or expansions on existing development wherein square footage of the development, in the case of non-residential use, or the number of dwelling units, in the case of residential use, is increased, or where the use is changed. This provision contemplates physical building of structures, which occurs only after the building permit issues.
 - c. Section 4.A: All new development in the Cities and the County shall be responsible for paying the RTMF unless otherwise exempted by this Resolution. None of the exemptions in Resolution 2009-01 apply to Clovis Crossing Shopping Center nor does appellant make such a claim of exemption.
 - d. Section 4.B. addresses how the fee is calculated. For “non-residential projects, the fee rate utilized shall be based on a per-square-foot of the building or structure identified on the building permit.” The fee can be calculated only by reference to information contained on the face of the building permit issued, which supports the proposition that New Development is a development for which a building permit has not timely issued.
 - e. Section 4.E: Applicability. The RTMF shall apply to all new development within the Cities and the County effective January 1, 2010, unless otherwise exempt hereunder.
5. The FCRTMA Administrative Manual does not support Clovis-Herndon’s position that the project “approval” before 2010 take Clovis Crossing out of the definition of “New Development.” Clovis-Herndon focuses on the term, “approval”, where it appears in a truncated one-page Information Summary in the Administrative Manual, and argues that the pre-2010 project “approval” by the City of Clovis take the project outside the definition of new development. However, placing in context the term, “approval”, where it appears in the Information Summary, it is clear that “approval” is intended to mean approval of a subdivision map, which Clovis-Herndon does not claim to have obtained. In the Administrative Manual, at page 5, it is

stated, “For the purposed of the RTMF program, all properties subject to a Final Subdivision Map or Final Parcel Map that has been approved and recorded prior to January 1, 2010 will be considered to have vesting rights as to the RTMF and will therefore be exempt from paying the RTMF...” Accordingly, the term “approval”, where it appears in the Informational Summary, means approval of a subdivision map, when context is supplied. The on-page Information Summary also contains a disclaimer that it is intended to “provide general guidance “ only and that it is not legal advice.

6. Clovis City Council’s last approval of Clovis Crossing in 2009 contemplates that additional fees or exactions can be assessed against Clovis Crossing. Condition 94 of the Site Plan Review, SPR 2005-017, which Clovis City Council incorporated into the approval of Clovis Crossing, provides: “Additional fees may be assessed and must be paid prior to issuance of subsequent development permits...Additional fees payable to the City of other agencies (FMFCD) may become due as supplemental information regarding the project is received by the City.”
7. The RTMF fee is levied to mitigate traffic impact to components of the State Highway System and therefore does not duplicate or overlap fees paid to mitigate local traffic impacts.
8. Clovis-Herndon possesses no common law vested right because it did not obtain a building permit prior to the implementation of the Regional Transportation Mitigation Fee on January 1, 2010. Alternatively, because Clovis-Herndon, LLC had not obtained a building permit for Clovis Crossing prior to January 1, 2010, the development fits the definition of “New Development” as defined in Resolution 2009-01 as amended by Resolution 2010-01, and the RTMF applies to the development.

II. ADOPTION OF FINDINGS

The foregoing Findings of Fact and decision are adopted by the FCRTMFA Board on May 28, 2015.

By: _____

AMPAREET DHALIWAL, CHAIR

FRESNO COUNTY REGIONAL MITIGATION FEE AGENCY

ATTEST:

TONY BOREN, EXECUTIVE DIRECTOR