

## 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)

**Fresno County Regional Transportation Mitigation Fee Agency**

**Executive Minutes**

**Date: Thursday, March 26, 2015**

**Time: 5:30 PM**

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

Members Attending: Councilmember Bob Whalen, City of Clovis  
Mayor Ron Ramsey, City of Coalinga  
Mayor Craig Knight, City of Firebaugh  
Mayor David Cardenas, City of Fowler  
Councilmember Clinton Olivier, City of Fresno  
Mayor Sylvia Chavez, City of Huron  
Mayor Stephen Hill, City of Kerman  
Mayor Chet Reilly, City of Kingsburg  
Mayor Robert Silva, City of Mendota  
Mayor Victor Lopez, City of Orange Cove  
Mayor Pro Tem Raul Villanueva, City of Parlier  
Councilmember Robert Beck, City of Reedley  
Mayor Amarpreet Dhaliwal, City of San Joaquin  
Mayor Joshua Mitchell, City of Sanger  
Mayor Scott Robertson, City of Selma  
Supervisor Henry Perea, County of Fresno

Arthur Wille, Legal Counsel  
Tony Boren, Executive Director  
Les Beshears, Finance Director

Others Attending: Kimberly Mayhew, Caswell Bell & Hillison LLP

**QUORUM:** At the start of the meeting there were 15 members present representing 97.41% of the population and there was a quorum to conduct business. (Clovis, Coalinga, Firebaugh, Fowler, Fresno, Huron, Kerman, Kingsburg, Mendota, Orange Cove, Parlier, Reedley, San Joaquin, Sanger, Selma, Fresno County)

Mayor Dhaliwal (San Joaquin) Chair, called the meeting to order at 5:48 pm.

**I. Executive Minutes for February 26, 2015 [APPROVE]**

A motion was made by Mayor Lopez (Orange Cove) and seconded by Mayor Cardenas (Fowler) to approve the Executive Minutes of February 26, 2015 as presented. A vote was called for and the motion carried.

**II. 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 00488**

Kimberly Mayhew, from Caswell Bell & Hillison LLP, representing Clovis Herndon LLC made a public presentation stating that at the last meeting the Board directed staff to develop a policy regarding breaking a vote deadlocked per the dual weighted voting system and it was the firms opinion that if such a policy were developed it should not apply to the Clovis Herndon appeal as that would be a change in the rules pertaining to an appeal in process and have due process implications regarding the ongoing litigation.

The Board retired to Closed Session.

**QUORUM:** 5:58 pm – Mayor Mitchell (Sanger) arrived. There were 16 members present representing 100% of the population.

6:30 pm – Return from Closed Session. Nothing to report.

**III. OTHER BUSINESS**

A. Items from Staff

None

B. Items from Members

None

**IV. 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.

There were no public presentations.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Tony Boren, Executive Director

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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.

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By \_\_\_\_\_  
AMPAREET DHALIWAL, CHAIR  
BOARD OF DIRECTORS

ATTEST:

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TONY BOREN  
EXECUTIVE DIRECTOR