

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.

H. 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.

I. 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.

J. 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.

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

L. The Board hereby adopts this Resolution No. 2015-01, which revises and restates the procedures to be used by the Agency to resolve appeals to the Board of the Regional Transportation Mitigation Fee. As revised and restated herein, Resolution No. 2015-01 replaces Sections 5 and 6 of Resolution 2010-02.

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 Appeals

A. **Supersedes Previous Process.** The procedures herein supersede and replace the procedure established in Resolution 2010-02 Sections 5 and 6.

B. **Grounds For Appeal.** An Applicant may appeal the following matters to the Board: (1) Executive Director's decision that the project is not sufficiently unique to justify a Special Study; (2) application of the fee; (3) application of credits; (4) application of reimbursement; and (5) application of exemption.

C. **Initiating an Appeal.** An Applicant wishing to file an appeal of Staff's determination to the Board must pay in full the RTMF Staff has imposed and file a written notice of appeal within 10 calendar days of the date of Staff's written notification to Applicant of the RTMF to be imposed on the project via a copy of the Record of Payment. The written notice of appeal must set forth the reasons Applicant believes that the fee as calculated by Staff is not justified and the amount of fee the Applicant believes to be correct. This letter must be accompanied by a copy of the Record of Payment.

D. **Supporting Documentation.** The Applicant may submit additional documentation to support its appeal. If the Applicant chooses to submit the supporting documentation then they must submit, at their own expense, twenty-two copies of each document they want considered by the Agency. These copies are for the use of the Agency and will not be returned to the applicant. Appropriate supporting documentation may include, but is not limited to, any or all of the following:

- i. If the Appeal is based on some document other than the Record of Payment, such as a document issued by a local jurisdiction indicating the starting date of vesting rights or a document showing earlier payments for which the Applicant wants credit, then copies of this document must be included or it will not be considered.
- ii. If the Appeal is based on a technical issue related to traffic or trip generation then the Applicant must submit a technical analysis for consideration by the Board. The Applicant is responsible for the cost of this analysis.

Section 4: Consideration of Appeal by Board. The Board shall consider an Appeal within 3 regular meetings of the Agency's receipt of the written Appeal. Based on its consideration of the Appeal, the Board may choose to set the RTMF for the Applicant's project at the amount stated in the Appeal, the amount recommended by Staff based on the RTMF as generally applied, or some other amount deemed appropriate based on the information presented to the Board. The Board shall adopt written findings setting forth justification for their determination. If a Deadlock of the Board occurs, the provisions of Section 5 of this Resolution shall control.

Section 5: Procedure for Resolving An Appeal of the RTMF When A Deadlock of the Board Occurs

A. When a Deadlock of the Board regarding an appeal of the RTMF occurs, staff shall schedule one or more subsequent hearings on the appeal to attempt to break the Deadlock. If, after the third hearing the board remains deadlocked, the adopted policy based 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 making a determination on an appeal of the RTMF that the fee applies, or in the absence of a Board determination due to Deadlock, a policy based determination by staff that the fee applies, Agency staff shall deliver by first class mail, written findings to the applicant that explain the policy determination that the RTMF applies to the project under consideration. Such findings shall be approved by the Executive Director or his/her designee, as evidenced by his or her signature and date of execution.

Section 6: Imposition of Fee For Purposes of Government Code Section 66020 et seq.

A. For purposes of filing a protest and legal challenge to the fee under Government Code section 66020 et seq., the RTMF will be deemed to have been imposed on the date the Board takes action on an Appeal, or, if a Deadlock of the Board occurs, the date of the Deadlock, whichever is applicable.

B. If no timely Appeal is filed, the RTMF will be deemed to have been imposed on the date of Staff's written notification to Applicant of the RTMF to be imposed on the project via a copy of the Record of Payment or on the date of the Executive Director's written notification of his decision that a Special Study is not warranted, whichever is applicable.

Section 7: Effective Date

A. This Resolution shall become effective as of September 24, 2015. Its provisions shall apply to all appeals initiated after its Effective Date.

By _____
Amarpreet Dhaliwal, CHAIR
BOARD OF DIRECTORS

ATTEST:

Tony Boren
EXECUTIVE DIRECTOR