SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FROM: TLMA-Adminstrative Service Department

SUBMITTAL DATE:
January 27, 2010

SUBJECT: Far West Industries' Appeal of the Western Riverside County Transportation Uniform Mitigation Fee (TUMF)

RECOMMENDED MOTION: That the Board of Supervisors:

1) Deny Far West's appeal concerning its protested payment of TUMF; and
2) Authorize the Chairman to execute the attached proposed written decision; and
3) Direct the Clerk of the Board to forward the Board's decision letter to the Appellant and Western Riverside Council of Governments for review and concurrence.

BACKGROUND: The County of Riverside ("County") is a member agency of the Western Riverside Council of Governments ("WRCOG"), a joint powers agency comprised of the County of Riverside and sixteen (16) cities located in Western Riverside County. In 2002, the Board of Supervisors ("Board") adopted Riverside County Ordinance No. 824, which authorizes the County's participation in the Western Riverside County Transportation Uniform Mitigation Fee

Katherine Gifford
Director of TLMA Adminstrative Service Department

KG:ml
(Continued On Attached Page)

FINANCIAL DATA				
	Current F.Y. Total Cost:	$ N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	$ N/A	Budget Adjustment:	N/A
	Annual Net County Cost:	$ N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS: N/A

Positions To Be Deleted Per A-30 ☐

Requires 4/5 Vote ☐

C.E.O. RECOMMENDATION:

APPROVE

BY: Tina Grande

County Executive Office Signature

Departmental Concurrence

☒ Policy ☐ Policy

☐ Consent ☐ Consent

Dep't Recomm.: Per Exec. Ofc.:

Prev. Agn. Ref. 1/26/10, Item 3.40 | **District:** 2 | **Agenda Number:** 3.54

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

Program ("TUMF"). The County collects the TUMF and forwards these fees to WRCOG in conformance with Ordinance No. 824, the WRCOG TUMF Fee Calculation Handbook and WRCOG adopted TUMF Administrative Plan.

Section 6.B. of Ordinance No. 824 provides that fees shall be paid at the time issuance of a certificate of occupancy or, upon the discretion of the applicant, may be paid prior to the time a certificate of occupancy is issued. The fee payment shall be calculated based on the fee in effect at that time and that fees shall not be waived. Section 6.D. indicates that fee appeals shall be filed with WRCOG in accordance with the provisions of the TUMF Administrative Plan. If the Appellant desires a review by the Board, the Appellant shall submit its written request for review within 5 days of receiving the TLMA staff's written determination. This Plan requires that the Board of Supervisors shall forward its written decision to WRCOG for review and concurrence.

On October 19, 2009, Far West Industries submitted a letter of protest for the TUMF imposed and collected on the new permits issued for 14 residential lots in Tract 31875 (Attachment 1). After consulting with WRCOG staff and reviewing the record of actions with the County Building Official, TLMA responded to Far West in a letter dated December 8, 2009 (Attachment 2) indicating that TLMA staff had collected the correct fees, in accordance with Ordinance No. 824 and TUMF Administrative Plan, and did not have the discretion to modify the fees. When the new building permits were issued, the calculation of the fees was based on the fee in effect at that time and any County action to the contrary could result in a penalty against the County and a requirement that the County pay WRCOG the outstanding balance.

On December 15, 2009, Mr. Berkson filed an appeal with the Board of Supervisors (Attachment 3). The key facts regarding the fee appeal are:

1. The building permits for the 14 lots had expired when they reached the maximum 360-days allowed by Riverside County's Ordinance No. 457 for building permit processing.
2. The Building Official assisted Mr. Berkson by exercising his discretion in allowing the building permits to be processed under the 2007 UBC provisions, but there is no discretion on how the fees are calculated.
3. The Building Official is only authorized to levy and collect the TUMF pursuant to Ordinance No. 824. A waiver of TUMF fees is not permitted.
4. WRCOG and TLMA worked with the BIA in notifying its membership on the TUMF Agreement program. The information was posted on County and WRCOG websites and displayed at the Permit Assistance Centers. No agreement was filed for Tract 31875.

The action today by the Board will allow the fee appeal to proceed to WRCOG, who has the discretion to review the record and award any fee adjustment to Mr. Berkson. It is recommended that the Board of Supervisors deny Far West's appeal and forward to WRCOG for their review and concurrence.

MINUTES OF THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

3.40

On motion of Supervisor Stone, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the recommendation from the TLMA/ Administrative Service Department to refer Far West Industries Appeal of the Western Riverside Council of Governments (WRCOG) Transportation Uniform Mitigation Fee (TUMF) to the WRCOG Executive Committee is continued to Tuesday, February 9, 2010 at 9:00 a.m.

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on January 26, 2010 of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors
Dated: January 26, 2010
Kecia Harper-Ihem, Clerk of the Board of Supervisors, in
(seal) and for the County of Riverside, State of California.

By: _____ Deputy

AGENDA NO.
3.40

xc: TLMA/Admin, COB

FAR WEST INDUSTRIES

Real Estate Development
www.farwestindustries.com

2922 Daimler St. • Santa Ana, CA 92705 • (949) 224-1970• Fax: (949) 224-1963

October 19, 2009

Marshall Lee
County of Riverside
Transportation Land Management Agency
4080 Lemon St.
Riverside, CA 92501-3609

Re: Tract No. 31875 – TUMF Fee Appeal

Dear Mr. Lee:

This letter shall serve as Far West Industries' ("Far West") formal appeal and request for refund of the supplemental TUMF fees Far West was required to pay in order to complete the homes we were building on all 14 lots within Tract No. 31875 (the "Property"). We are requesting a total refund of those supplemental fees totaling $37,066.00. Our request is based on the following information:

In 2006 Far West obtained building permits and started construction on the Property. As is the usual practice in the building trade, when we learned that the TUMF fees would be increasing in the near future, the decision was made to prepay these fees which was an available option to builders who had building permit ready projects. It was our understanding that once the fees were paid, no additional fees would be due on the building permits. Therefore, on June 9, 2006 we paid a total of $101,472.00 as mitigation fees under Case No. MT 063515, which fees were for all 14 lots on the Property (see attached receipt).

Two 180 day extensions were granted for the building permits. The permit extensions were requested due to the sudden downturn in the economy and its affect on the building industry. In August of 2008 the permits were granted an additional extension. Throughout most of this time period, construction continued on the Property and a majority of the off-site work was completed and the houses were built to slab only. In October of 2008 Far West was ready to resume construction on the homes. In order to allow enough time for framing, plumbing, mechanical and electrical work to be completed before inspection, we requested another extension.

In requesting the additional extension, we met and exchanged e-mails with various County staff, including Susan Swieca, Deputy to Second District Supervisor John Tavaglione, Ruthann Taylor Berger, Deputy Executive Director of Western Riverside Council of Governments ("WRCOG"), Mike Lara, Director of Building and Safety and Joe Tronti, Regional Office Manager, Riverside Permit Assistance Center. In an e-mail to Ms. Swieca, Mr. Lara suggested that we:

> "...would be better off to renew these permits now under the old codes and [he] would waive the plan check fees and just issue the permits... Once renewed, these would be viewed as new permits, which

> will provide an additional 6 month time frame and give [Far West] an opportunity to request an additional 6 month extension should [Far West] have trouble completing the homes".

In essence, the Director of Building and Safety advised that Far West would be granted "new permits", under the old codes. Nowhere in any of the discussions was it mentioned that the "new permits" would require additional TUMF fees. It appears that the Director of Building and Safety thought this would be the easiest way for the County to handle the matter.

I also spoke with and corresponded with Joe Tronti regarding renewing the permits. After several conversations and e-mails, on October 8, 2009, Mr. Tronti e-mailed me the following information:

> "You need to RENEW the permits. You will be paying a new permit fee but you will not be required to adhere to new code...".

In light of the above information, it was our understanding that, although, Mr. Lara talked about "new permits" in a technical sense, we were actually only renewing the existing permits and, thus, no further TUMF fees would be required.

However, since Far West would be unable to have additional inspections of the Property until the permit situation was resolved, after further conversations with other County staff and Ms. Taylor Berger, we agreed to pay, under protest, the additional TUMF fees as follows:

TUMF Case No.	Lots Nos.	Amount Paid	Date Paid
MT 090441	1, 2, 3, 12 & 13	$13,990.00	June 3, 2009
MT 090777	4 through 7	$10,256.00	August 20, 2009
MT 090943	Lots 8, 9, 19, 11 & 14	$12,820.00	September 16,2009
Total additional TUMF fees paid under protest:		$37,066.00* (*see attached receipts and check)	

Unbeknownst to Far West, apparently the Western Riverside Council of Governments ("WRCOG") developed an agreement that would allow a developer to lock in fees paid in the 2005/2006 fiscal year. In Ms. Taylor Berger's e-mail to me of June 2, 2009, she stated that "The agreement allowed a developer to freeze the TUMF obligation provided the project remained the same and the developer was not entitled to a refund under any circumstances". She also stated that two separate mailings went out to property owners/developers.

Unfortunately, it appears Far West was not on the mailing list, although at the time we owned this project. We received no mailings regarding the agreement for this project. In fact, we did not find out about the agreement until our meetings with Ms. Taylor Berger and Mr. Lara on May 20, 2009. We were also told that the County and WRCOG worked closely with the BIA Riverside County Chapter on the agreement. Far West is a member of the Orange County BIA but not the Riverside County BIA, so we did not receive notice from the Riverside County BIA either. In addition, although in one of our meetings I requested to see a list of owners/developers on the mailing list for the agreement, the list was never provided to me. Obviously, if we had received notice, we would have entered

into such an agreement as it would have been in our best interest. In fact, our actions during this period were in compliance with the agreement.

In summary, although the developer may pay TUMF fees at occupancy or final inspection, Far West chose to prepay these fees in June of 2006 due to an upcoming fee increase which is "... not uncommon" as stated in an e-mail to me from Ms. Taylor Berger, dated June 2, 2009. In addition, at the time we asked for an additional extension to our existing permits which were issued under previous code requirements, Mr. Lara, representing the County, it would be "easier" to just "renew" the permits under the old code by issuing new permit numbers. However, at no time was it mentioned that the "new permits" (which were, in reality, extensions of the existing permits as evidenced by the fact that a code update and plan check were not necessary) would trigger assessment of additional TUMF fees. Finally, although we were informed, after the fact, that notices were sent out in two mailings to property owners/developers advising them that they could enter into an agreement with the County to lock in fees paid in the 2005/06 fiscal year, Far West received no such mailings for the subject Property and, because we had already begun construction, we would not have been entitled to request a refund of our pre-paid TUMF fees.

For all of the reasons stated above, we are hereby appealing the payment of the supplemental TUMF fees paid earlier this year and requesting a full refund in the amount of $37,066.00.

Thank you for your assistance in this matter and if you have any questions or comments on the above, please contact me.

Very truly yours,

Brian Berkson
Project Manager

Encs.

COUNTY OF RIVERSIDE
TRANSPORTATION AND LAND MANAGEMENT AGENCY

George Johnson
Agency Director

Katherine Gifford	*Ron Goldman*	*Juan Perez*	*Mike Lara*	*John Boyd*	*Carolyn Syms Luna*
Director,	*Director,*	*Director,*	*Director,*	*Director,*	*Director,*
Administrative	*Planning*	*Transportation*	*Building & Safety*	*Code Enforcement*	*Environmental*
Services Dept.	*Department*	*Department*	*Department*	*Department*	*Programs Dept.*

December 8, 2009

Brian Berson
Project Manager
Far West Industries
2922 Daimier Street
Santa Ana, CA 92705

Re: Protest of TUMF Development Impact Fees- Riverside County Ord. 824 letter dated October 19, 2009 Tract 31875 lots 1-14, building permit numbers BRS065952-66 and BRS081665-78

Dear Mr. Berson:

Regarding the protested payment of the Transportation Uniform Mitigation Fee (TUMF) per Riverside County Ordinance 824, we have reviewed your position that the additional TUMF fees should not apply to your new building permits, BRS081665-78 on lots 1-14 of Tract 31875. The following summarizes our records on the case:

- Far West's application for the original building permits on lots 1-14 of Tract 31875 was submitted on May 18, 2006.
- The applicant paid the TUMF fees for these lots on June 9, 2006 prior to a WRCOG's rate increase.
- These original building permits, BRS065952-66, were issued on June 28, 2007. With the building permits due to expire, the applicant requested a 180-day extension of time, as permitted by the 2007 California Building Code, on February 25, 2008.
- After 360 days of the last inspection of the building permits, BRS065952-66 for lots 1-14 of Tract 31875 was expired per the building code requirements. The applicant and staff had numerous discussions on the need for new building permits in order to re-start construction on these lots. Staff agreed to allow the applicant to continue the construction on these lots under the old building code.
- New building permits, BRS081665-78, were issued on January 12, 2009. As required by the Western Riverside Council of Government (WRCOG) requirements, these new permits were subject to the new TUMF amounts in effect at the time and additional TUMF mitigation fees were required to satisfy the TUMF obligation. The applicant paid the additional TUMF mitigation fee amounts, under protest.

On June 11, 2007 WRCOG approved a TUMF Fee Agreement for expired building permits that would ensure that the prior TUMF mitigation fee payment would be considered a payment in full, regardless of any fee increases. This agreement was only available on lots in which building permits were issued between July 1, 2005 and June 30, 2006. The agreement would also require the applicant to agree to forfeit any refund claims of monies that were paid to satisfy the TUMF obligation. Entering into this agreement required the developer to make a business decision to either lock the TUMF mitigation fee amount on a project or maintain the flexibility to request a refund of these funds from WRCOG to pay other obligations the company determines.

After posting WRCOG's approval of this agreement on the TLMA web site and at the Permit Assistance Centers public lobbies, the 180-day open enrollment period was launched on October 5, 2007. This agreement was also shared with members of the Building Industry Association (BIA) in Riverside County's BIA/Building and Safety monthly Coordinating Committee meetings. The BIA indicated that they would notify members of this program and the enrollment period. At the request of the BIA, the County offered the development community additional time to file their agreements by extending the enrollment period to June 30, 2008. Far West, however, does not have on record an agreement on Lots 1-14 of Tract 31875.

After discussing the chronology of this project with staff at WRCOG, it was determined that County staff was obligated to require these fees on the new building permits for lots 1-14 of Tract 31875 and did not have the discretion to modify the fees. This determination is consistent with the Riverside County Board of Supervisors adopted ordinances and the TUMF Administrative Plan. All TUMF mitigation fees paid have been forwarded to WRCOG. Per WRCOG's TUMF Administrative Plan, you may request a further review of this item by the Riverside County Board of Supervisors by submitting a written request to the Riverside County Clerk of the Board within 5 days of receiving this letter. Action by the Board may then be referred to the WRCOG for final determination of your appeal.

Please feel free to contact me at (951) 955-1836 if you have any additional questions.

Sincerely,

Marshall Lee
Fee Administration Manager

Cc:
George Johnson, Agency Director of TLMA
Juan Perez, Director of Transportation Department
Kathy Gifford, Director of TLMA Administrative Service
Mike Lara, Director of Riverside County Building and Safety
Ruthanne Taylor-Berger, WRCOG Deputy Executive Director

Attachments:
Protest of Transportation Uniform Mitigation Fee – Tract 31875 letter dated October 19, 2009

From: Brian Berkson [mailto:brian@farwestindustries.com]
Sent: Tuesday, December 15, 2009 4:15 PM
To: Wagner, Lisa M.
Cc: Ira Glasky
Subject: Request for Board of Supervisors further review of TUMF appeal for Tract No. 31875

December 15, 2009

Ms. Keish Harper-Ihem
Clerk of the Board
County of Riverside
6020 Lemon St.
Riverside, CA

Re: request for Board of Supervisors review of TUMF fee appeal for Tract No. 31875.

Dear Ms. Harper-Ihem:

On October 19, 2009 we filed the attached written appeal with the County for the excess Transportation Uniform Mitigation Fees (TUMF) that we paid under protest for our 14 lot residential subdivision known as Tract No. 31875 in the unincorporated Jurupa area of the County of Riverside. On December 8, 2009 we received the attached written response from Mr. Marshall Lee, Fee Administration Manager. His response states that the County did not have the discretion to modify the fees they required us to pay but is allowing us to request a further review by the Board of Supervisors. We are requesting by this letter that the Board of Supervisors review and grant our TUMF appeal.

We appreciate the response from Mr. Lee, however we disagree with some of the facts in his response. We originally pre-paid the TUMF fees on June 9, 2006 for all the lots prior to a large TUMF fee increase. At the time we pre-paid the fees we understood that we would not be subject to any additional TUMF fee increases. During the recent slowdown of residential construction based on economic conditions, we temporary halted construction on the 14 houses after the slabs were poured. We were granted extensions for our building permits and when we were ready to continue construction in late 2008 we requested another extension so we would have adequate time to frame, and add rough electrical, plumbing and mechanical for our next building inspection. It was the County's recommendation that we "Renew" our existing permits **which had not yet expired.** At that time, it was never mentioned that we would be subject to paying the difference in our pre-paid TUMF fees. If we had been aware of this, we would have asked our sub-contractors to mobilize more quickly so we would have been able to construct and call for a building inspection prior to the expiration of our 14 building permits. We understood that by "Renewing" the existing permits we would not be subject to any plan check or building code updates. We did understand that we would have to pay "renewal fees" that were supposed to be for the purpose of covering the building inspections that were remaining, and our balances in the original building permits would be refunded to us.

We believe we complied with the intent of the June 11, 2007 WRCOG agreement Mr. Lee is referring to in his response which was to have developers commit to keeping the pre-paid TUMF fees with the County and forgoing any future opportunity to request a refund of those fees. In that regard, Far West Industries did just that, we never requested a refund and we were advised by Ms. Ruthanne Taylor-Berger of WRCOG that because we started construction, we would not have been entitled to have

requested a refund for those fees anyway. Mr. Lee states in his response that the developer's agreement was only for permits pulled from July 1, 2005 to June 30, 2006; our permits were pulled on June 27, 2007. While Mr. Lee appears to base his denial of our appeal due to the fact we did not enter into the TUMF Agreement, we would not have been eligible for that Agreement even if we were informed of its existence. The fact remains that we did pre-pay our TUMF fees and never sought a refund when construction slowed. We appreciate that the County worked with the Riverside BIA to notify its members of the agreement, but as we are not members of the Riverside BIA chapter we were not notified of the agreement. We also had 16 open permits for this project and did not receive any notification from the County about the agreement.

We believe that Far West Industries followed the intent of the agreement without ever knowing of its existence and that this is consistent with the Boards intent of creating the Developers agreement. We believe that the additional TUMF fees should not have been collected from us and we are asking the Board of Supervisors for the opportunity to review our appeal regarding the monies we paid under protest for supplemental TUMF fees.

We appreciate the opportunity for the Board of Supervisors to review this matter.

Brian Berkson
Project Manager
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