

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

AS



FROM: TLMA-Administrative 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

Katherine Gifford
Director of TLMA Administrative 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	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Tina Grande*
Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Benoit, seconded by Supervisor Buster and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: February 9, 2010
xc: TLMA/Admin. Serv., WRCOG, Appellant

Kecia Harper-Ihem
Clerk of the Board
By: *[Signature]*
Deputy

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

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.54

Departmental Concurrence

Dep't Recomm.: ☒ Policy ☐ Consent
Per Exec. Ofc.: ☐ Policy ☐ Consent

The Honorable Board of Supervisors

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

January 27, 2010

Page 2 of 2

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.



Board of Supervisors

District 1	Bob Buster 951-955-1010
District 2	John F. Tavaglione 951-955-1020
District 3	Jeff Stone 951-955-1030
District 4	John Benoit 951-955-1040
District 5	Marion Ashley 951-955-1050

February 9, 2010

Brian Berkson
Project Manager
Far West Industries
2922 Daimler Street
Santa Ana, CA 92705

RE: Request for Review by the Board of Supervisors of Transportation Uniform Mitigation Fee Program Ordinance No. 824 (TUMF) Appeal from Far West Industries for Tract No. 31875

Dear Mr. Berkson:

This correspondence is in response to your request for our review of the appeal you have submitted regarding your protest that the payments totaling \$37,066.00 made in 2009 pursuant to TUMF for lots 1-14 of Tract No. 31875 should be determined as an overpayment and refunded accordingly. In accordance with Ordinance No. 824 and the TUMF Administrative Plan, the Board of Supervisors for the County of Riverside (Board) shall consider the appeal and a written decision shall be forward to the Western Riverside Council of Governments (WRCOG). The following decision made regarding this appeal is based on the information provided by Transportation and Land Management Agency staff (TLMA) and correspondence exchanged between your organization and TLMA.

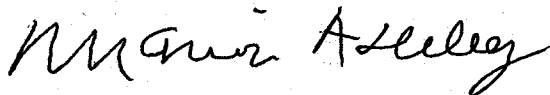
We have reviewed the matter including your protest letters submitted and TLMA's response thereto. Based on our review, we find the actions and determinations previously made by TLMA on December 8, 2009 were in accordance and consistent with the Riverside County ordinances and policies adopted by this Board as well as the TUMF Administration Plan. Copies are attached for your reference. The fees paid on June 3, August 20 and September 16 of 2009 by Far West Industries was not an overpayment and a refund is not warranted. Development mitigation fees such as the Western Riverside County TUMF are applied to all new development within the program boundaries as provided in the ordinance. The Building

Page 2,
February 9, 2010 to Brian Berkson of Far West Industries

We have reviewed the matter including your protest letters submitted and TLMA's response thereto. Based on our review, we find the actions and determinations previously made by TLMA on December 8, 2009 were in accordance and consistent with the Riverside County ordinances and policies adopted by this Board as well as the TUMF Administration Plan. Copies are attached for your reference. The fees paid on June 3, August 20 and September 16 of 2009 by Far West Industries was not an overpayment and a refund is not warranted. Development mitigation fees such as the Western Riverside County TUMF are applied to all new development within the program boundaries as provided in the ordinance. The Building and Safety Department is authorized to levy, calculate the fees as provided in the TUMF Fee Calculation Handbook and collect in accordance with Ordinance No. 824.

In accordance with the TUMF Administrative Plan, we shall forward this written decision to the WRCOG for review and concurrence. If WRCOG Executive Committee disagrees with this decision, the WRCOG Executive Committee shall determine a proper course of action and notify the County of its findings.

Sincerely,



Marion Ashley, Chairman
Riverside County Board of Supervisors

Attachments: Ordinance 824.7
WRCOG TUMF Administrative plan revised 8/4/08

CERTIFICATE OF MAILING

(Original copy, duly executed, must be attached to
the original document at the time of filing)

I, Sandi Schlemmer, Deputy Clerk, for the County of Riverside,
(NAME and TITLE)

do hereby certify that I am not a party to the within action or proceeding; that

on February 11, 2010, I certified mailed a copy of the following document:

Board of Supervisors Agenda February 9, 2010, Item 3.54 (with all
attachments) to:

Far West Industries

ATTN: Brian Berkson, Project Manager

2922 Daimler Street

Santa Ana, CA 92705

to the parties listed in the attached labels, by depositing said copy with postage
thereon fully prepaid, in the United States Post Office, 3890 Orange St., Riverside,
California, 92501.

SIGNATURE: 

Sandi Schlemmer

DATE: February 11, 2010

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



3.33

On motion of Supervisor Ashley, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED the reading being waived, that an ordinance bearing the following title, is adopted:

ORDINANCE NO. 824.7

AN ORDINANCE OF THE COUNTY OF RIVERSIDE, AMENDING
ORDINANCE NO. 824, AUTHORIZING PARTICIPATION IN THE WESTERN
RIVERSIDE COUNTY TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on December 1, 2009 of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors
Dated: December 1, 2009
Kecia Harper-Ihem, Clerk of the Board of Supervisors, in
and for the County of Riverside, State of California.

(seal)

By [Signature] Deputy

AGENDA NO.
3.33

xc: Transp., Co.Co., LMC, COB(2)

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

AMENDING ORDINANCE NO. 824
AUTHORIZING PARTICIPATION IN THE WESTERN RIVERSIDE COUNTY
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM

Section 1. Ordinance No. 824 is amended in its entirety to read as follows:

AN ORDINANCE OF THE COUNTY OF RIVERSIDE
AUTHORIZING PARTICIPATION IN THE WESTERN RIVERSIDE COUNTY
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM

Section 2. FINDINGS. The Board of Supervisors finds that:

- a. The County, as 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, must act in concert with the WRCOG Member Agencies to develop and update a plan whereby the shortfall in funds needed to enlarge the capacity of the Regional System of Highways and Arterials in Western Riverside County ("Regional System"), depicted in Exhibit "A", attached hereto and by this reference incorporated herein, could be made up in part by a Transportation Uniform Mitigation Fee ("TUMF") on future residential, commercial and industrial development.

WRCOG prepared a certain "Western Riverside County

1 Transportation Uniform Fee Nexus Study,” dated October 18, 2002
2 (“2002 Nexus Study”) in compliance with the Mitigation Fee Act
3 (Gov. Code §§ 66000 *et seq.*); whereby the County adopted and
4 implemented an ordinance, based on the 2002 Nexus Study,
5 authorizing the County’s participation in the TUMF Program.

6 c. As a TUMF Participating Jurisdiction, the County must follow the
7 recommendation made by the WRCOG Executive Committee and
8 amend its TUMF ordinance, based on the new nexus study entitled
9 “Transportation Uniform Mitigation Fee Nexus Study: 2009
10 Update” (“2009 Nexus Study”) to reflect changes in the TUMF
11 network and the cost of construction in order to update, among other
12 things, the TUMF Program Fee schedules.

13 d. It has considered the 2009 Nexus Study, including its Addendum
14 regarding temporary fee reduction, and its findings in adopting this
15 ordinance.

16 e. Continuation of a TUMF Program is essential because if the
17 capacity of the Regional System is not enlarged and unless
18 development contributes to the cost of improving the Regional
19 System, the result will be substantial traffic congestion in all parts of
20 Western Riverside County, with unacceptable Levels of Service.
21 Furthermore, the failure to mitigate growing traffic impacts on the
22 Regional System will substantially impair the ability of public safety
23 services (police and fire) to respond and, thus, adversely affect the
24 public health, safety and welfare.

25 f. There is a reasonable and rational relationship between the use of
26 the TUMF and the type of development projects on which the fees
27 are imposed because the Fees will be used to construct the
28

1 transportation improvements that are necessary for the safety, health
2 and welfare of the residential and non-residential users of the
3 development in which the TUMF will be levied.

4 g. There is a reasonable and rational relationship between the need for
5 the improvements to the Regional System and the type of
6 development projects on which the TUMF is imposed because it
7 will be necessary for the residential and non-residential users of
8 such projects to have access to the Regional system. Such
9 development will benefit from the Regional System improvements
10 and the burden of such developments will be mitigated in part by
11 payment of the TUMF.

12 h. The cost estimates set forth in the new 2009 Nexus Study are
13 reasonable cost estimates for constructing the Regional System
14 improvements and the facilities that compromise the Regional
15 System, and that the amount of the TUMF expected to be generated
16 by new development will not exceed the total fair share cost to such
17 development.

18 i. The impact of an economic recession on development and the
19 construction sector in Western Riverside County, as indicated in the
20 Addendum to the 2009 Nexus Study, has been substantial and a
21 temporary fifty percent (50%) reduction in TUMF through
22 December 31, 2010 will encourage economic development by
23 reducing the overall cost of development. An adjustment of the
24 entire TUMF Program will also assure that each development
25 continues to contribute a fair share of the total Program costs.

26 j. A minor decrease in TUMF revenues will not have a material effect
27 on the ability to fulfill the purposes of the TUMF Program or the
28

1 ability to make the findings recited herein pursuant to the Mitigation
2 Fee Act.

- 3 k. The Fees collected pursuant to this ordinance shall be used to help
4 pay for the design, planning, construction of and real acquisition for
5 the Regional System improvements and its facilities as identified in
6 the 2009 Nexus Study. The need for the improvements and
7 facilities is related to new development because such development
8 results in additional traffic and creates the demand for the
9 improvements.

10 Section 3. PURPOSE. The purpose of this ordinance is to authorize the
11 County's participation in the TUMF Program which establishes and sets forth policies,
12 regulations, and authorized uses of fees collected relating to the funding for the
13 construction of improvements and facilities to enlarge the capacity of the Regional System
14 of Highways and Arterials in Western Riverside County necessary to address the direct and
15 cumulative environmental effects generated by new development projects described and
16 defined in this ordinance.

17 Section 4. AUTHORITY. This ordinance is established under the authority of
18 Article 11, Section 7 of the California Constitution and Title 7, Division 1, Chapter 5 of the
19 Government Code, beginning with Section 66000 et seq., which provides that a local
20 agency may establish fees for the purpose of defraying all or a portion of the cost of public
21 facilities related to development projects.

22 Section 5. DEFINITIONS. As used in this ordinance, the following terms
23 shall have the following meanings:

- 24 a. Area Plan. The area plan as it is depicted in Exhibit "B" and noted
25 as the unincorporated areas of Riverside County as referenced and
26 attached to this ordinance.
- 27 b. Board of Supervisors or Board. The Board of Supervisors of the
28

1 County of Riverside.

2 c. Class "A" Office. An office building that is typically characterized
3 by high quality design, use of high end building materials, state of
4 the art technology for voice and data, on-site support
5 services/maintenance, and often includes full service ancillary uses
6 such as, but not limited to a bank, restaurant/office coffee shop,
7 health club, printing shop, and reserved parking. The minimum
8 requirements of an office building classified as Class "A" Office
9 shall be as follows: (1) minimum of three stories (exception will be
10 made for March JPA, where height requirements exist); (2)
11 minimum of 10,000 square feet per floor; (3) steel frame
12 construction; (4) central, interior lobby; and (5) access to suites shall
13 be from inside the building unless the building is located in a central
14 business district with major foot traffic, in which case the first floor
15 may be accessed from the street to provide entrances/ exits for
16 commercial uses within the building.

17 d. Class "B" Office. An office building that is typically characterized
18 by high quality design, use of high end building materials, state of
19 the art technology for voice and data, on-site support
20 services/maintenance, and often includes full service ancillary uses
21 such as, but not limited to a bank, restaurant/office coffee shop,
22 health club, printing shop, and reserved parking. The minimum
23 requirements of an office building classified as Class "B" Office
24 shall be as follows: (1) minimum of two stories; (2) minimum of
25 15,000 square feet per floor; (3) steel frame, concrete or masonry
26 shell construction; (4) central, interior lobby; and (5) access to suites
27 shall be from inside the building unless the building is located in a
28

1 central business district with major foot traffic, in which case the
2 first floor may be accessed from the street to provide entrances/exits
3 for commercial uses within the building.

4 e. County. The County of Riverside.

5 f. Development Project or Project. Any project undertaking for the
6 purposes of development including the issuance of a permit for
7 construction.

8 g. Gross Acreage. The total property area as shown on a land division
9 of a map of record, or described through a recorded legal description
10 of the property. This area shall be bounded by road rights of way
11 and property lines.

12 h. Habitable Structure. Any structure or part thereof where persons
13 reside, congregate or work and which is legally occupied in whole
14 or part in accordance with applicable building codes, and state and
15 local laws.

16 i. Industrial Project. Any development project that proposes any
17 industrial or manufacturing use allowed in the following ordinance
18 No. 348 zoning classifications: I-P, M-S-C, M-M, M-H, M-R, M-R-
19 A, A-1, A-P, A-2, A-D, W-E, or SP with one of the aforementioned
20 zones used as the base zone.

21 j. Lower Income Residential Housing. Residential units in publicly
22 subsidized projects constructed as housing for lower income
23 households as such households are defined pursuant to section
24 50079.5 of the Health and Safety Code. "Publicly subsidized
25 projects," as the term is used herein, shall not include any project or
26 project applicant receiving a tax credit provided by the State of
27 California Franchise Tax Board.
28

- 1 k. Multi Family Residential Unit. A development project that has a
2 density of greater than eight (8) residential dwelling units per gross
3 acre.
- 4 l. Non-Residential Unit. A retail commercial, service commercial and
5 industrial development which is designed primarily for non-dwelling
6 use, but shall include hotels and motels.
- 7 m. Recognized Financing District. A Financing District as defined in
8 the TUMF Administrative Plan as may be amended from time to
9 time.
- 10 n. Residential Dwelling Unit. A building or portion thereof used by
11 one (1) family and containing but one (1) kitchen, which is designed
12 primarily for residential occupancy including single-family and
13 multi-family dwellings. "Residential Dwelling Unit" shall not
14 include hotels or motels.
- 15 o. Retail Commercial Project. Any development project that proposes
16 any commercial use which does not fall within the definition of a
17 service commercial project as it is defined within this ordinance that
18 are allowed in the following Ordinance No. 348 classifications: R-1,
19 R-R, R-R-O, R-1-A, R-A, R-2, R-2-A, R-3, R-3-A, R-T, R-T-R, R-
20 4, R-5, R-6, C-1/C-P, C-T, C-P-S, C-R, C-O, R-V-C, C-V, W-2, R-
21 D, N-A, W-2-M, W-1, or SP with one of the aforementioned zones
22 used as the base zone.
- 23 p. Service Commercial Project. Any development project that is
24 predominately dedicated to business activities associated with
25 professional or administrative services, and typically consists of
26 corporate offices, financial institutions, legal and medical offices,
27 except any development project which falls under the definitions of
28

a Class "A" or Class "B" Office defined above.

- q. Single Family Residential Unit. Each residential dwelling unit in a development that has a density of eight (8) units to the gross acre or less.
- r. Transportation Uniform Mitigation Fees or TUMF or Fees. The Fees imposed pursuant to the provisions of Ordinance No. 824.
- s. TUMF Participating Jurisdiction. A jurisdiction in Western Riverside County which has adopted and implemented an ordinance authorizing participation in the TUMF Program and complies with all regulations established in the TUMF Administrative Plan, as adopted and amended from time to time by the WRCOG.
- t. TUMF Program. The Process of collecting and expending Transportation Uniform Mitigation Fees.

Section 6. TRANSPORTATION UNIFORM MITIGATION FEE. The following fees collected pursuant to this ordinance shall provide revenue to pay for the design, planning, construction of and real property acquisition for the Regional System improvements and its facilities as identified in the 2009 Nexus Study. The Transportation Uniform Mitigation Fees shall be paid for each residential unit, development project or a portion thereof to be constructed, in the amounts specified for each category as defined herein and shown below commencing on the effective date of this ordinance:

- a. Adoption of TUMF Schedule. The following TUMF schedule is hereby adopted:
 - 1) \$8,873.00 per single family residential unit
 - 2) \$6,231.00 per multi-family residential unit
 - 3) \$ 1.73 per square foot of an industrial project
 - 4) \$ 10.49 per square foot of a retail commercial project
 - 5) \$ 4.19 per square foot of a service commercial project

6) \$ 2.19 per square foot of a service Class A and B Office

- b. Fee Calculation. The fees shall be calculated according to the calculation methodology fee set forth in the Fee Calculation Handbook adopted July 14, 2003, as amended from time to time. The following shall be observed for purposes of calculating the fee:
- 1) For non-residential projects, the fee rate utilized shall be based upon the predominant use of the building or structure identified in the building permit and as further specified in the TUMF Administrative Plan.
 - 2) For non residential projects, the fee shall be calculated on the total square footage of the building or structure identified in the building permit and as further specified in the TUMF Administrative Plan.
- c. Fee Adjustment. The fee schedule may be periodically reviewed and the amounts adjusted by the WRCOG Executive Committee. By amendment to the ordinance, the fees may be increased or decreased to reflect the changes in actual and estimated costs of the Regional System including, but not limited to, debt service, lease payments and construction costs. The adjustment of the fees may also reflect changes in the facilities required to be constructed, in estimated revenues received pursuant to this ordinance, as well as the availability or lack thereof of other funds with which to construct the Regional System. WRCOG shall review the TUMF Program no less than every four (4) years after the effective date of this ordinance.
- d. Applicability. The TUMF, including during the temporary reduction period, shall apply to all new development within the

1 WRCOG Boundary of County, as identified by Exhibit "B",
2 attached hereto and by this reference incorporated herein, unless
3 otherwise exempt hereunder.

4 Section 7. TEMPORARY FEE REDUCTION PERIOD. Pursuant to the fee
5 adjustment authority set forth in Section 6.c. and notwithstanding Section 6.a. above, or
6 any other provision of this ordinance, the following TUMF fee schedule shall apply for the
7 period commencing on January 1, 2010 and ending on December 31, 2010.

8 a. Temporary Fee Schedule.

- 9 1) \$4,437.00 per single family residential unit
10 2) \$3,115.00 per multi-family residential unit
11 3) \$ 0.86 per square foot of an industrial project
12 4) \$ 5.24 per square foot of a retail commercial project
13 5) \$ 2.10 per square foot of a service commercial project
14 6) \$ 1.10 per square foot of a service Class A and B Office

15 b. Application. The temporary fee reduction described in this
16 section shall not apply to or affect fees owed under any
17 development agreement or other contractual arrangement in
18 effect on or before the effective date of Ordinance No. 824.7. If
19 reduced fees are paid pursuant to this Section 7. at issuance of a
20 building permit and either the application or the building permit
21 issued on the application expires, subsequent building permit
22 applications on the same parcel shall be subject to the full
23 TUMF amount, unless the temporary fee reduction is still in
24 effect at the time of the subsequent application.

25 b. Effect. No provision of this section shall entitle any person
26 who has already paid the Transportation Uniform Mitigation
27 Fees to receive a refund, credit or reimbursement of such
28

1 payment. This section only effects a temporary change in the
2 County's Transportation Uniform Mitigation Fees.

- 3 c. Expiration. As of December 31, 2010, this section is
4 repealed without further action by the Board of Supervisors,
5 unless the Board of Supervisors repeals or modifies this section
6 prior to that date. The repeal of this section shall not affect the
7 validity of actions taken or Transportation Uniform Mitigation
8 Fees paid under the authority of this section.

9 Section 8. EXEMPTIONS. The following types of new development shall be
10 exempt from the provisions of this ordinance:

- 11 a. Lower income residential housing.
12 b. Government/public buildings, public schools and public facilities.
13 c. The rehabilitation and/or reconstruction of any habitable structure in
14 use on or after January 1, 2000, provided that the same or fewer
15 traffic trips are generated as a result thereof.
16 d. Development Projects which are the subject of a Public Facilities
17 Development Agreement ("Development Agreement") entered into
18 pursuant to Government Code section 65864 *et seq*, prior to the
19 effective date of Ordinance No. 824, wherein the imposition of new
20 fees are expressly prohibited provided that if the term of such a
21 Development Agreement is extended by amendment or by any other
22 manner after the effective date of Ordinance No. 824, the TUMF
23 shall be imposed.
24 e. Guest Dwellings, as defined in Section 21.31 of Ordinance No. 348.
25 f. Additional single family residential units located on the same parcel
26 pursuant to the provisions of any agricultural zoning classifications
27 set forth in Ordinance No. 348.
28

- g. Kennels and Catteries established in connection with an existing single family residential unit and as defined in Sections 21.40a and 21.20 of Ordinance No. 348.
- h. Detached Second Units pursuant to Section 18.28a of Ordinance No. 348.
- i. The sanctuary building of a church or other house of worship, eligible for a property tax exemption.
- j. Any nonprofit corporation or nonprofit organization offering and conducting full-time day school at the elementary, middle school or high school level for students between the ages of five and eighteen years.

Section 9. CREDIT. Regional System improvements may be credited toward the TUMF in accordance with the TUMF Administrative Plan and the following:

a. Regional Tier.

- 1) Arterial Credits. If a developer constructs arterial improvements identified in the Regional System, the developer shall receive credit for all costs associated with the arterial component based on approved the Nexus Study for the Regional System effective at the time the parties enter the credit agreement. WRCOG staff must pre-approve any credit agreements that deviate from the standard WRCOG approved format.
- 2) Other Credits. In special circumstances, when a developer constructs off-site improvements such as an interchange, bridge, or railroad grade separation, credits shall be determined by WRCOG and the County in consultation with

1 the developer. All such credits must have prior written
2 approval by WRCOG.

- 3 3) The amount of the Fee credit shall not exceed the maximum
4 amount determined by the 2009 Nexus Study for the
5 Regional System at the time the credit agreement is entered
6 into or actual costs, whichever is less.

7 b. Local Tier.

- 8 1) The local jurisdictions shall compare facilities in local fee
9 programs against the Regional System and eliminate any
10 overlap in its local fee program except where there is a
11 Recognized Financing District has been established.
12 2) If there is a Recognized Financing District established, the
13 local agency may credit that portion of the facility identified
14 in both programs against the TUMF in accordance with the
15 TUMF Administrative Plan.

16 Section 10. REIMBURSEMENTS. Should the developer construct Regional
17 System improvements in excess of the TUMF obligation, the developer may be reimbursed
18 based on actual costs or the approved Nexus Study, including Addendum 1, effective at the
19 time the agreement was entered into, whichever is less. Reimbursements shall be enacted
20 through an agreement between the developer and the County, contingent on funds being
21 available and approved by WRCOG. In all cases, however, reimbursements under such
22 special agreements must coincide with construction of the transportation improvements as
23 scheduled in the five-year Capital Improvements Program adopted annually by WRCOG.

24 Section 11. PROCEDURES FOR THE LEVY, COLLECTION AND
25 DISPOSITION OF FEES.
26
27
28

1 a. Authority of the Building Department. The Director of Building &
2 Safety, or his/her designee, is hereby authorized to levy and collect the
3 TUMF and make all determinations required by this ordinance.

4 b. Payment. Payment of the fees shall be as follows:

- 5 1) The fees shall be paid at the time a certificate of occupancy
6 is issued for the Development Project or upon final
7 inspection, whichever comes first ("Payment Date").
8 However, this section should not be construed to prevent
9 payment of the fees prior to issuance of an occupancy permit
10 or final inspection. Fees may be paid at the issuance of a
11 building permit and the fee payment shall be calculated
12 based on the fee in effect at that time, provided the developer
13 tenders the full amount of his/her TUMF obligation. If the
14 developer makes only a partial payment pursuant to a
15 WRCOG-Developer Deferral Agreement prior to the
16 Payment Date, the amount of the fee due shall be based on
17 the TUMF schedule in place on the Payment Date. The fees
18 shall be calculated according to fee schedule set forth in the
19 ordinance and the calculation methodology set forth in the
20 Fee Calculation Handbook adopted July 14, 2003, as
21 amended from time to time.
- 22 2) The fees required to be paid shall be the fee amounts in
23 effect at the time of payment is due under this ordinance, not
24 the date the ordinance is initially adopted. The County shall
25 not enter into a development agreement which freezes future
26 adjustments of the TUMF.

1 3) If all or part of any development project is sold prior to
2 payment of the fee, the property shall continue to be subject
3 to the requirement for payment of the fee. The obligation to
4 pay the fee shall run with the land and be binding on all the
5 successors in interest to the property.

6 4) Fees shall not be waived.

7 c. Disposition of Fees. All fees collected hereunder shall be
8 transmitted to the Executive Director of WRCOG within thirty (30)
9 days for deposit, investment, accounting and expenditure in
10 accordance with the provisions of this ordinance and the Mitigation
11 Fee Act.

12 d. Appeals. Appeals shall be filed with WRCOG in accordance with
13 the provisions of the TUMF Administrative Plan. Appealable issues
14 shall be the application of the fee, application of credits, application
15 of reimbursement, application of the legal action stay and
16 application of exemption.

17 e. Reports to WRCOG. The Director of Building and Safety, or his/her
18 designee, shall prepare and deliver to the Executive Director of
19 WRCOG, periodic reports as will be established under Section 12.
20 of this ordinance.

21 Section 12. APPOINTMENT OF THE TUMF ADMINISTRATOR. WRCOG
22 is hereby appointed as the Administrator of the Transportation Uniform Mitigation Fee
23 Program. WRCOG is hereby authorized to receive all fees generated from the TUMF
24 within the County, and to invest, account for and expend such fees in accordance with the
25 provisions of this ordinance and the Mitigation Fee Act. The detailed administrative
26 procedures concerning the implementation of this ordinance shall be contained in the
27 TUMF Administrative Plan adopted May 5, 2003 and as may be amended from time to
28

1 time. Furthermore, the TUMF Administrator shall use the Fee Calculation Handbook
2 adopted July 14, 2003, as amended from time to time, for the purpose of calculating a
3 developer's TUMF obligation. In addition to detailing the methodology for calculating all
4 TUMF obligations of different categories of new development, the purpose of the Fee
5 Calculation Handbook is to clarify for the TUMF Administrator, where necessary, the
6 definition and calculation methodology for uses not otherwise clearly defined in the
7 ordinance. WRCOG shall expend only that amount of the funds generated from the TUMF
8 for staff support, audit, administrative expenses, and contract services that are necessary
9 and reasonable to carry out its responsibilities and in no case shall the funds expended for
10 salaries and benefits exceed one percent (1%) of the revenue raised by the TUMF Program.
11 The TUMF Administrative Plan further outlines the fiscal responsibilities and limitations
12 of the Administrator.

13 Section 13. VIOLATIONS AND PENALTIES. A violation of any provision of
14 this ordinance is an infraction as hereinafter specified. A person is guilty of a separate
15 offense for each and every day or portion thereof during which any violation of any of the
16 provisions of this ordinance is committed or continued. Any violation of this ordinance
17 may be prosecuted by county authorities in the name of the people of the State of
18 California, or redressed by civil action. Every violation determined to be an infraction is
19 punishable by (1) a fine not exceeding one hundred dollars (\$100) for a first violation; (2)
20 a fine not exceeding two hundred dollars (\$200) for a second violation within one year; (3)
21 a fine not exceeding five hundred dollars (\$500) for each additional violation within one
22 year. The penalties herein are in addition to any other remedies provided by law and the
23 payment of any penalty herein shall not relieve a person of the obligation to correct the
24 violation.

25 Section 14. SEVERABILITY. If any of the terms, provisions or sections of this
26 ordinance or the application thereof to any person or circumstances shall to any extent be
27 judged invalid, unenforceable and/or voidable for any reason whatsoever by a court of
28

1 competent jurisdiction, such invalidity or determination shall not affect the other
2 provisions of this ordinance which can be given effect without the invalid provision or
3 application, and to this end, the provisions of this ordinance are hereby declared to be
4 severable.

5 Section 15. JUDICIAL REVIEW. In accordance with State law, any judicial
6 action or proceeding to attack, review, set aside, void or annul this ordinance shall be
7 commenced within ninety (90) days of the date of adoption of this ordinance.

8 Section 16. SUPERSESSION OF OTHER FEES. The Fees established by this
9 ordinance shall supersede and replace those fees previously established and applicable
10 under Riverside County Ordinance No. 824 and shall apply to the issuance of any
11 development permit or entitlement made on and after the date that this ordinance takes
12 effect.

13 Section 17. EFFECTIVE DATE. This ordinance shall take effect thirty (30)
14 days after its adoption except that Section 6. subsection a.(4) shall take effect sixty (60)
15 days after its adoption.

16
17 BOARD OF SUPERVISORS OF THE COUNTY
OF RIVERSIDE, STATE OF CALIFORNIA

18 By: Jeff Stone
Chairman, Jeff Stone

19 ATTEST:
20 CLERK OF THE BOARD:

21 By: Phil Ellis
Deputy

22
23 (SEAL)

24 APPROVED AS TO FORM

11-11, 2009

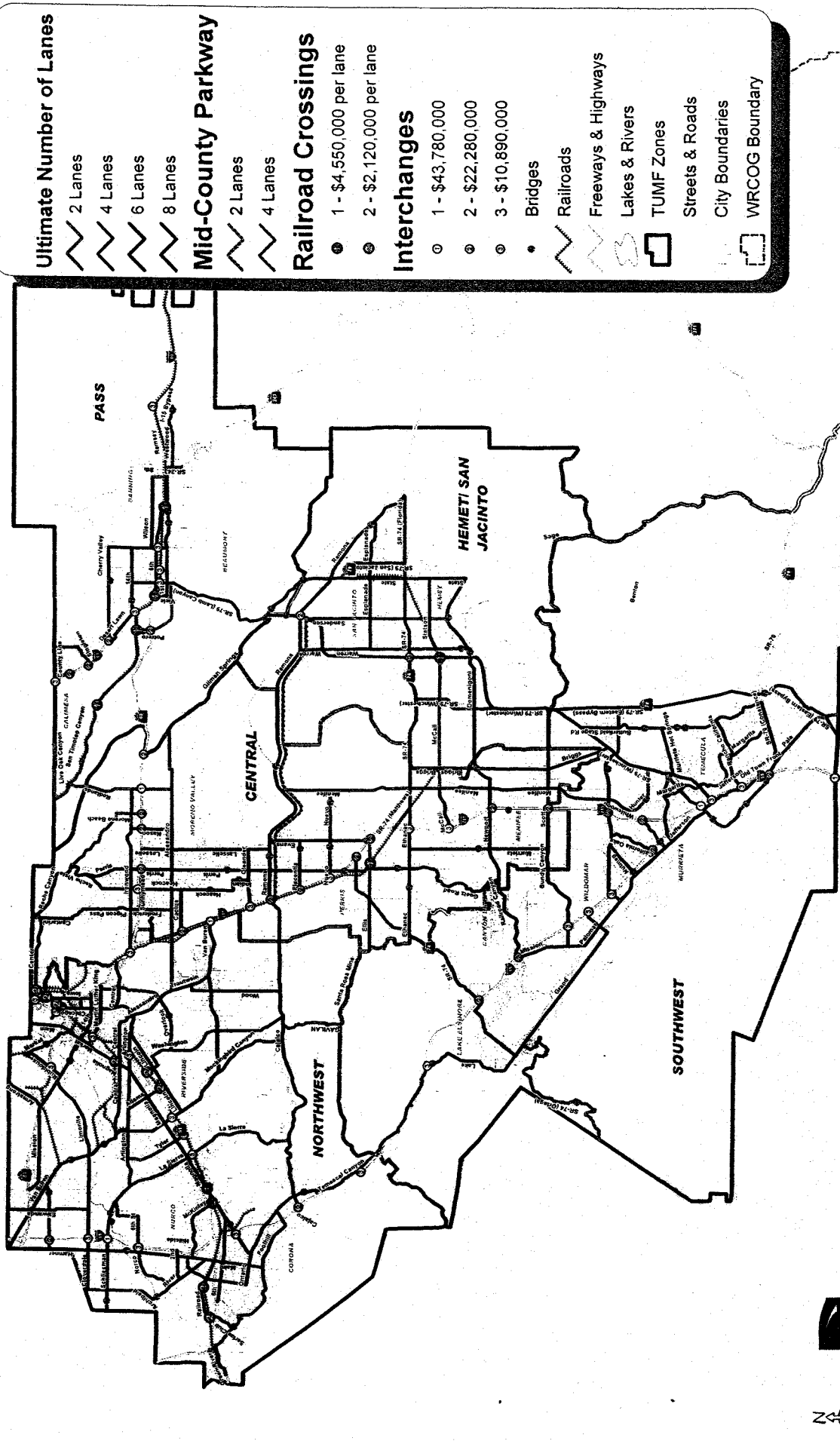
25
26 By: Synthia M. Gunzel
27 Cynthia M. Gunzel
Deputy County Counsel
28

EXHIBIT "A"

MAP OF WESTERN RIVERSIDE COUNTY & REGIONAL SYSTEM

The Regional System of Highways & Arterials - TUMF Network Improvements

Figure ES.2

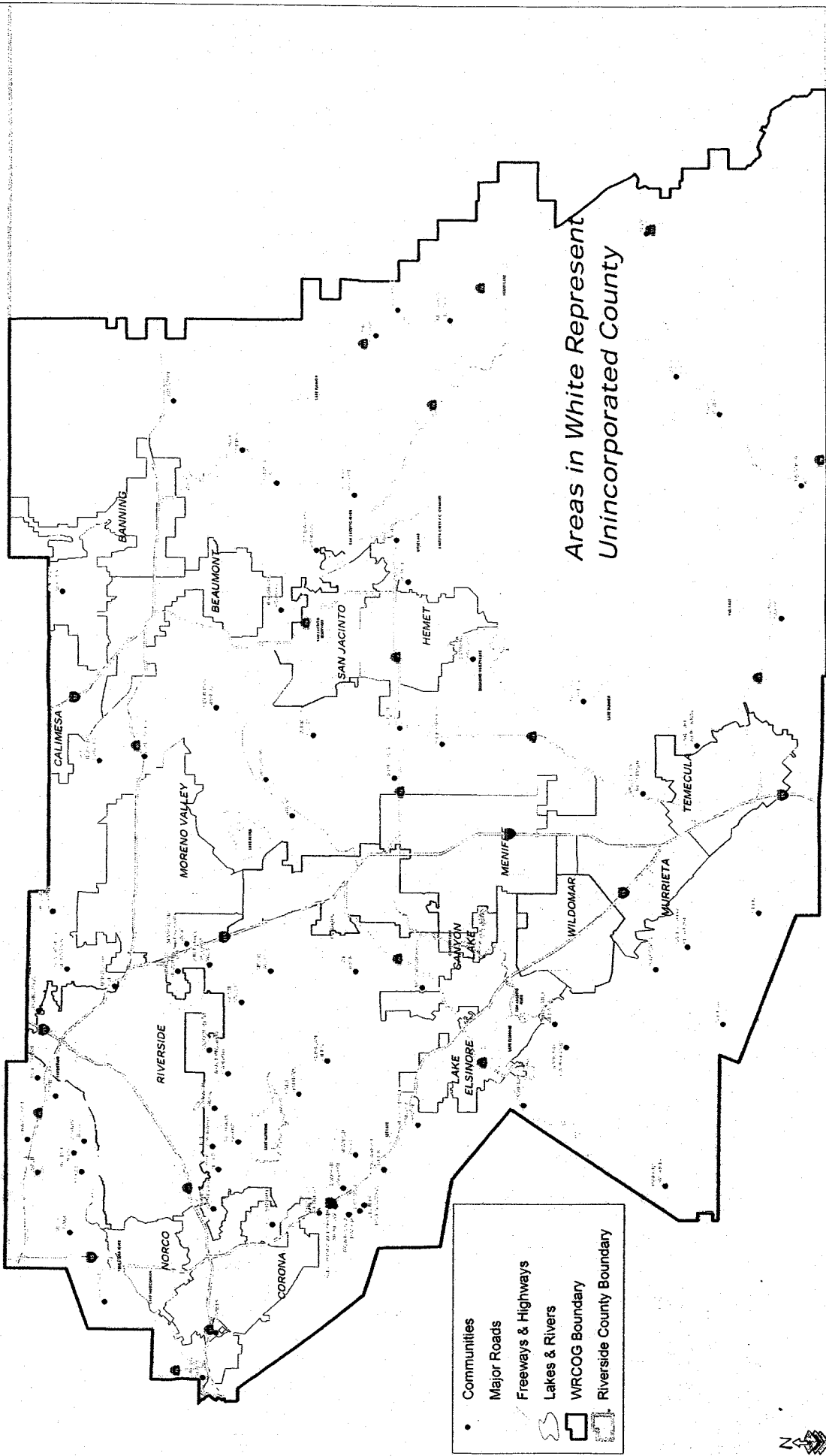


0 2 4 8 Miles

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "B"

WRCOG BOUNDARY OF COUNTY



*Areas in White Represent
Unincorporated County*

•

Communities

—

Major Roads

—

Freeways & Highways

—

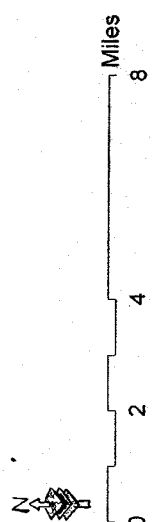
Lakes & Rivers

▬

WRCOG Boundary

▬

Riverside County Boundary



The Western Riverside Council Of Governments Boundary & Jurisdiction Boundaries

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE OF CALIFORNIA)
)
COUNTY OF RIVERSIDE) ss

I HEREBY CERTIFY that at a regular meeting of the Board of Supervisors of said county held on December 1, 2009, the foregoing ordinance consisting of 17 Sections was adopted by the following vote:

AYES: Buster, Tavaglione, Stone, Benoit and Ashley
NAYS: None
ABSENT: None

DATE: December 1, 2009

KECIA HARPER-IHEM
Clerk of the Board

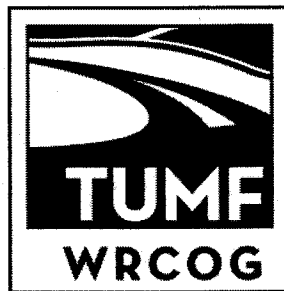
BY: 
Deputy

SEAL

Transportation Uniform Mitigation Fee

ADMINISTRATIVE PLAN

Revised August 4, 2008



**PREPARED BY THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
RIVERSIDE COUNTY ADMINISTRATIVE CENTER ANNEX
4080 LEMON STREET, 3RD FLOOR, MS 1032
RIVERSIDE, CALIFORNIA, 92501-3609
PHONE (951) 955-7985
FAX (951) 787-7991**

Western Riverside Council of Governments (WRCOG)

Administrative Plan for the

***Western Riverside County Transportation Uniform Mitigation Fee
(TUMF) Program***

Table of Contents

Preamble

- I. Purpose**
- II. Authority**
- III. Imposition of and Participation in the TUMF Program**
- IV. Allocation of Funds**
- V. Administration of Plans**
- VI. Administration of Credits**
- VII. Administration of Reimbursements**
- VIII. Administrative Responsibilities**
- IX. Administrative Costs**
- X. Appeals**
- XI. Arbitration**
- XII. TUMF Program Amendments**
- XIII. CEQA**

Exhibits:

- A. Decision Making Process**
- B. TUMF Credit/Reimbursement Eligibility Process**
- C. Guidelines for the Administration of the Programming projects for the Zone
Five Year Transportation Improvement Programs**

**Administrative Plan for the
Western Riverside County Transportation Uniform Mitigation Fee
(TUMF) Program**

Preamble

Future development within Western Riverside County will result in traffic volumes exceeding the capacity of the Regional System of Highways and Arterials (RSA or Regional System) as it presently exists. The Regional System needs to be expanded to accommodate anticipated future growth; current funds are inadequate to construct the Regional System needed to avoid the unacceptable levels of traffic congestion and related adverse impacts.

The TUMF Program will provide significant additional funds from new development to make improvements to the Regional System, complementing funds generated by Measure A and the Reauthorized Measure A, local transportation fee programs, and other potential funding sources. By establishing a fee on new development in the sub-region, local agencies can establish a mechanism by which developers will effectively contribute their "fair share" toward sustaining the regional transportation system. This is a twenty-year program and will be influenced by a variety of market factors that could cause a shortfall or surplus in the revenue projections. The TUMF Program shall be reviewed at fewer than five-year intervals to ensure the integrity of the program with the first review occurring in June of 2005. The program is not designed to be the only source of revenue to construct the identified facilities, and it will be necessary for matching funds from a variety of available sources to be provided.

It is the intent that TUMF requirements may be met by paying cash, building eligible facilities or through public financing, such as Community Facility Districts and Assessment Districts, or private financing vehicles consistent with local jurisdiction policies.

General TUMF Program parameters, definitions and procedures are described in the TUMF Program Ordinance adopted by participating Western Riverside County jurisdictions. The Western Riverside Council of Governments (WRCOG) is designated as the TUMF Program Administrator, and as such will work closely with member jurisdictions, the Riverside County Transportation Commission, and the Riverside Transit Agency to coordinate transportation expenditure programs to maximize the effectiveness of future transportation investments. The Program Administrator, WRCOG, agrees to indemnify, defend and hold harmless any TUMF Program participant, and its respective agents, officers, members, officials, employees, and attorneys, whose TUMF Ordinance is challenged in court, from and against all claims, liabilities, damages, or costs of any kind whatsoever, including attorneys' fees and court costs; provided, however, that such indemnity and defense shall not extend or apply to challenges alleging procedural defects in the adoption of the TUMF Ordinance.

"TUMF Administrative Plan" means the Administrative Plan for the Western Riverside County TUMF Program prepared by WRCOG dated March 24, 2003, in substantially the form approved by the WRCOG Executive Committee on April 7, 2003, as may be amended from time to time, provided that, any material amendments to the TUMF Administrative Plan shall be approved by WRCOG Executive Committee."

This Administrative Plan serves as the guideline to implement the TUMF Program and will be amended as needed to address changing conditions over the life of the program.

- I. **Purpose** - The Purpose of this Administrative Plan is to provide those jurisdictions and agencies that are participants in TUMF Program with guidelines and policies for implementation of the TUMF Program. This Administrative Plan specifies implementation and responsibilities for the TUMF Program.

TUMF Program funds may only be used for capital expenditures associated with the Regional System of Highways and Arterials and for capital expenditures for transit system improvements consistent with the TUMF Nexus Study. These purposes include expenditures for the planning, environmental review, engineering and design costs, right of way acquisition, and administrative costs.

- II. **Authority** - The TUMF Program applies to those jurisdictions in Western Riverside County (County of Riverside and the Cities of Banning, Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto, Temecula, Wildomar and the March JPA) that have adopted and are implementing the TUMF Program Ordinance. The TUMF Program has been developed pursuant to and consistent with authority provided in the requirements of California Government Code Chapter 5 Section 66000-66008 Fees for Development Projects (also known as California Assembly Bill 1600 (AB 1600 or the Mitigation Fee Act) which governs the assessment of development impact fees in California. The Mitigation Fee Act requires that all local agencies in California, including cities, counties, and special districts follow two basic rules when instituting impact fees as follows:

- A. Establish a nexus or reasonable relationship between the development impact fee's use and the type of project for which the fee is required;
- B. The fee must not exceed the project's proportional "fair share" of the proposed improvement and cannot be used to correct current problems or to make improvements for existing development.

- III. **Imposition of and Participation in the TUMF Program** - Participating jurisdictions in Western Riverside County are responsible for collecting the fees on new development within their jurisdictions. To be considered a participant in the TUMF Program a jurisdiction must have an effective date for the TUMF Ordinance of no later than June 1, 2003 and adopt any amendment of the TUMF Ordinance within ninety (90) days of approval by the WRCOG Executive Committee unless otherwise directed by the WRCOG Executive Committee. The local jurisdictions must adopt the Model TUMF Ordinance and any amendments as prepared by WRCOG staff and approved by the WRCOG Executive Committee. Participating jurisdictions shall not modify the Model TUMF Ordinance, except to meet local municipal codes and references. Further, in order to be considered a participating jurisdiction, local jurisdictions shall collect the full TUMF and transmit the fee to WRCOG as provided herein.

Those jurisdictions that have ordinances with an effective date after June 1, 2003 or opt out of the TUMF Program and decide to participate at a later date must remit to WRCOG the amount of TUMF Program fees for new development that were not collected by the jurisdiction. In order to verify the amount of revenue that would have been collected during the period in which a jurisdiction did not participate, said jurisdiction shall provide WRCOG with an annual report of building permit activity by the land uses identified in the Nexus Study. The remittance of the fee can be accomplished either in a lump sum or through a separate MOU with WRCOG with a repayment schedule. Those jurisdictions that are not considered participants in the TUMF Program

shall not be eligible to participate in the TUMF Program or the decision-making processes as more fully described in this document.

Non-participating jurisdictions will be ineligible to vote on any TUMF Program item and to receive their share of an estimated \$970 million in local streets and roads funds that will be allocated from the Reauthorized Measure A.

- A. Expiration Of Building Permits** - If a building permit should expire, is revoked, or is voluntarily surrendered and is, therefore voided and no construction or improvement of land or construction has commenced, then the applicant is entitled to a refund of the TUMF (Fee) collected which was paid as a condition of approval, less administration. The fee payer shall submit an application for a refund to the local jurisdiction who will forward it to WRCOG for processing.

The applicant must pay the appropriate TUMF in full if he reapplies for the permit.

If a development project is partially under construction at the time of the effective date of the TUMF Ordinance, the TUMF shall be paid only on that portion of the development for which a building permit is next issued.

- B. Calculation of the TUMF** - Each participating jurisdiction shall calculate and collect the TUMF for projects as outlined in the Fee Calculation Handbook. For residential, the fee is based on the number of units and for non-residential the fee is based on the square footage. This method of calculation may be different from how the local development impact fee is determined.

The TUMF shall be calculated using the most current fee schedule in effect at the time the fee is due. Participating jurisdictions are prohibited from freezing TUMF by such means as "locking" a fee rate by paying a deposit or a portion of the fee prior to the date the fee is due or by entering into a Development Agreement or other agreement with a developer that freezes the fee at a certain level

Partial Payments or Deposits: WRCOG discourages the use of deposits and partial payments as it will create additional reporting requirements for the jurisdictions and may give the developer the impression that the fees are not subject to change. However, if a jurisdiction allows for deposits or partial payments, it will transmit the partial payment/deposit to WRCOG in accordance with the TUMF ordinance along with a remittance report. In the variance column of the Remittance report, the jurisdiction shall indicate that the fee collected is a portion of the total due. When the balance is paid, the jurisdiction will calculate the total fee for the project based on the TUMF fee schedule in place at the time the balance is paid and deduct the partial payment against the total. The balance will be transmitted in accordance with the TUMF ordinance and this Administrative Plan. The variance column of the Remittance report shall indicate that the balance is paid. If there is a fee adjustment between the deposit/partial payment and the payment of the balance, the fee which is required to be paid will be based on the most current TUMF fee schedule.

- C. March Joint Powers Authority** - The March Joint Powers Authority (JPA) has land use authority and will need to adopt the TUMF Program in the same manner as the cities and county. The March JPA will not have a separate vote at the WRCOG Executive Committee as it has representation by elected officials from the County of Riverside and cities of Riverside, Moreno Valley and Perris. The

Executive Director of the March JPA shall be a voting member of the WRCOG TAC for TUMF Program items only.

IV. Allocation of Funds – After administrative costs are allocated as specified in Section IX herein, TUMF funds shall be distributed in accordance with WRCOG Executive Committee actions, the Nexus Study, this Administrative Plan and any future amendments thereto

A. Allocation to Regional Transit Improvements - Of the TUMF funds received by WRCOG, 2.6% shall be allocated to the Riverside Transit Agency for making regional transit improvements.

B. Allocation to Regionally Significant Transportation Improvements - Of the TUMF funds received by WRCOG, 48.7% shall be allocated to the Riverside County Transportation Commission (RCTC) for programming improvements to the arterials of regional significance on the Regional System of Highways and Arterials.

C. Allocation to Zones - Of the TUMF funds received by WRCOG, 48.7% shall be allocated to the five Zones for programming improvements to the Regional System of Highways and Arterials as determined by the respective Zone Committees. The amount of TUMF funds allocated to each Zone shall be proportionate to the amount of TUMF revenue generated from the zone.

V. Administration of the Plan - WRCOG shall administer the TUMF Program as described in the enabling Ordinance adopted by participating jurisdictions and further defined in this Administrative Plan.

VI. Administration of Credits - Each jurisdiction shall be responsible for the administration of TUMF credit agreements. Each jurisdiction shall transmit all TUMF credit agreements to WRCOG within 60 days of execution by that jurisdiction. WRCOG may administer credit agreements upon written request from that jurisdiction. The credit agreements shall be in accordance with the following:

A. Developer Credits - If a developer constructs improvements identified on the RSHA, the developer shall receive credit for all costs associated with the improvements based on approved unit cost assumptions for the RSHA. Typically, major infrastructure, such as rail grade separations, interchanges, transit projects, etc., is constructed by the local jurisdiction rather than the developer, and involves multiple parties, as such; this section makes the distinction between credit agreements for major infrastructure and the standard arterial improvements.

The amount of the development fee credit shall not exceed the maximum amount determined by the most current unit cost assumptions for the RSHA, or actual costs, whichever is less. This shall be known as the maximum TUMF credit. The maximum TUMF credit shall be determined based on approved Improvement Plans and after Conditions of Approval have been determined. The maximum TUMF credit shall identify, at a minimum, the facility, the dimensions of the facility, the number of lanes, and applicable unit costs components as identified in Appendix F in the adopted Nexus Study. The credit /reimbursement eligibility process is outlined in Exhibit "B" of this document.

Any improvement made to the RSHA that is obligated through an existing fee district (prior to June 1, 2003) shall not be eligible for TUMF credit.

Should it be determined that a jurisdiction granted credits exceeding the maximum TUMF credit, that jurisdiction shall provide WRCOG payment in the amount equal to the excess credit amount.

1. **Credits** - Prior to receiving any credit, a written credit agreement shall be executed between the jurisdiction or and the developer.
2. **Credit for Right of Way (ROW) Dedication** – A developer may receive credit for dedication of ROW for RSHA improvements. This section addresses the crediting of ROW dedications which are not part of construction projects. The ROW component in the current Nexus Study determines the maximum share of credit available. An appraisal is required to determine the value of the ROW being dedicated. The appraisal of the ROW is determined by one of the following methods:
 - a. The developer provides to the jurisdiction a current appraisal (no more than two years old), of the ROW to be dedicated. The jurisdiction reviews it and determines if the appraisal is valid and acceptable. or
 - b. The developer accepts the appraisal of the jurisdiction.

B. Local Development Impact Fees and other funding programs - The local jurisdiction shall compare facilities in local fee programs against the RSHA and eliminate any overlap in its local fee program.

1. New Financing Districts and Bond Issues:

For a financing district created or bonds or other evidence of indebtedness issued on or after June 1, 2003, the local jurisdiction may allow a property owner, in lieu of the payment of the TUMF, to participate in such a financing district for the following facilities: (i) a Regionally Significant Transportation Improvement, as defined as those facilities that typically are proposed to have six lanes at build out and extend between multiple jurisdictions, or discrete useable segment thereof, as determined by WRCOG, (ii) any interchange on an interstate or state highway with an estimated construction cost of fifteen million dollars (\$15,000,000) or more, (iii) any railroad crossing with an estimated construction cost of more than ten million dollars (\$10,000,000), and (iv) any bridge located on a regionally significant arterial as defined in (i) of this section.

1. Prior to excusing payment under this Section VI.B. the local jurisdiction must do both of the following:
 - (a) Sell bonds in an amount sufficient to construct the improvement for which the financing district is created; and
 - (b) Receive written approval from the WRCOG Executive Director, or designee.
 - (c) In the event that a local jurisdiction is unable to satisfy the

requirements of section I (a), above, the local jurisdiction may still excuse the payment of bonds if the local jurisdiction enters into an agreement with WRCOG in which it commits to pay the full amount of any excused Fee, plus interest at the average rate earned by WRCOG over the past twelve months, in the event that the bonds maybe extended up to an additional 5 years with the approval of the WRCOG Executive Committee.

2. If a local jurisdiction proposes to excuse payment of the TUMF as provided in this Section VI.B, then the jurisdiction shall provide WRCOG reasonable information to account for the credit.
3. If payment is excused as provided in this Section VI.B, then the jurisdiction shall be responsible for construction of the improvements and those improvements shall not be eligible for TUMF Program prioritization or funding.
4. As used in this section, a financing district means a community facilities district, a local road and bridge district, or an assessment district.
5. Where there is an existing financing district or an existing fee program established prior to June 1, 2003, with bonded indebtedness, then the local jurisdiction may excuse payment of the TUMF for that portion of the facility identified in both programs. Notwithstanding the previous sentence, a local jurisdiction shall not excuse fee payment for any facilities for which bonds have been issued after February 4, 2008, regardless of when the financing district was first created.
6. Any dispute regarding this implementation of this Section VI.B. may be appealed by the local jurisdiction to the WRCOG Executive Committee for a final determination.
7. This Section VI.B is not intended to impact the administration of credits under Section VI.A. of the Administrative Plan.

C. Use of Credit by Developer – Any TUMF credit shall be used first by the developer to offset any obligation of the developer to pay TUMF impact fees of the same development project.

- Credits may not be transferred or sold to other development projects.
- Developers must exhaust all credits before they are eligible for reimbursements.
- Credits shall run with the sale of the land.

VII. Administration of Reimbursements - Local jurisdictions/agencies and developers are eligible for reimbursement for construction of TUMF facilities. The processes for both are different and are described below.

1. **Developer Reimbursements:** Each jurisdiction shall be responsible for the administration of reimbursement agreements. WRCOG may administer reimbursement agreements upon written request from the jurisdiction.

Should the developer construct RSHA improvements in excess of the TUMF obligation the developer may be reimbursed based on actual costs or the approved unit cost assumptions, whichever is less at the time of the agreement. A development that is exempt from paying the TUMF is not eligible for a reimbursement. Reimbursements shall be made through an agreement between the developer, and the local jurisdiction, and contingent upon funds being available. In all cases reimbursements under such agreements must coincide with construction of the transportation improvements as scheduled in the five year Transportation Improvement Program (TIP) adopted annually by WRCOG.

The developer may enter into a reimbursement agreement with the jurisdiction to reimburse the developer/owner for the direct and verifiable costs of constructing improvements to the RSHA when all of the following conditions are met:

- a. All available credits are exhausted;
- b. The improvements received prior approval from the jurisdiction and WRCOG based on the review of the TUMF project priority list;
- c. The jurisdiction and WRCOG have reviewed and approved the scope of the project to be constructed.

In no event shall the developer be reimbursed for improvements to the RSHA in excess of the most current approved unit cost assumptions for the TUMF at the time of the agreement.

2. **Local Jurisdictions/Agencies:** Local jurisdictions are exempt from paying TUMF as such there are no credits given for projects constructed by a local jurisdiction, however the contribution to the RSHA maybe considerable. In such cases where a local jurisdiction constructs TUMF facilities it is eligible for reimbursement up to the maximum share identified in the Nexus Study or actual cost whichever is less, in accordance with the prioritization schedule in the adopted Transportation Improvement Plan.

Local jurisdictions are required to enter into a reimbursement agreement with WRCOG in order to be eligible to receive TUMF revenue.

VIII. Administrative Responsibilities

- A. **Program Administration** - As set forth in Section II above, WRCOG is designated as the TUMF Program Administrator. As Administrator, WRCOG will receive all fees generated from the TUMF as collected by local jurisdictions. WRCOG shall invest, account for and expend such fees in accordance with the TUMF Ordinance and applicable state laws.

For jurisdictions that are not participating in the TUMF Program, the representative for that jurisdiction shall not be eligible to vote on any matter related to the TUMF Program that goes before the WRCOG TAC and WRCOG Executive Committee.

1. **The WRCOG Executive Director** - Reporting to the WRCOG Executive Committee, the Executive Director shall be responsible for the following TUMF Program activities:

- a. Administration of the TUMF Program, including development of credit and reimbursement agreements, fee collection process and processing Program appeals;
- b. An independent fiscal audit conducted to report on the evidence that the expenditure of funds collected is in accordance with the Mitigation Fee Act. The audit shall be presented to the WRCOG Executive Committee and made available to the public.
- c. Establishment and management of the "TUMF Program Trust Fund" for the purposes of depositing TUMF revenues and income interest earned on Trust Fund deposits;
- d. Preparation of an Annual Report for consideration by the WRCOG Executive Committee detailing the status of the TUMF Program including but not limited to fees collected and disseminated, capital projects planned for, prioritized, and built, reimbursement and credit agreements, appeals, and recommendations for TUMF Program adjustments;
- e. Preparation of periodic comprehensive TUMF program review reports that provide, in concert with requirements of the California Mitigation Fee Act, an analysis of the TUMF Program, including review of the various Nexus Study inputs and assumptions, and preparation of recommendations on potential TUMF Program revisions for consideration by the WRCOG Executive Committee. Such reports may include, but are not limited to recommended fee adjustments based on changes in the facilities required to be constructed, and revenues received pursuant to the Ordinance;
- f. Preparation of technical studies/analysis required to select and prioritize Regionally Significant Arterial projects;
- g. Development of a 10-year Strategic Plan that identifies long term planning goals and objectives for implementation of the TUMF Program;
- h. Development of a five year TIP that identifies projects that are scheduled and funded for construction over a specified period of time and is reviewed on an annual basis;
- i. Staff support to and coordination with each of the TUMF Zone Committees as necessary;
- j. Other related activities as directed by the WRCOG Executive Committee.
- k. Approve Zone and RTA TIP Administrative Amendments;
- l. Execute all Amendments to TUMF reimbursement agreements.

- 2. The WRCOG Executive Committee** - The WRCOG Executive Committee shall be responsible for reviewing and acting on recommendations for project selection and prioritization of the Regionally Significant Arterials, 10-year Strategic Plan, and the TIP. The WRCOG Executive Committee shall review and consider recommendations on projects from the Public Works Committee and WRCOG TAC. The WRCOG Executive Committee shall also be responsible for approval of the TUMF Program Administrative Plan and any subsequent amendments thereto. From time to time, the WRCOG Executive Committee shall recommend changes to the Ordinance for consideration by participating jurisdictions.

In developing recommendations on Regionally Significant Arterials for consideration by the WRCOG Executive Committee, WRCOG staff and the Committee structure shall work with RCTC to coordinate compatibility with Measure A project priorities and schedules of area transportation improvements. WRCOG staff and the WRCOG Executive Committee shall also work with WRCOG jurisdictions and each Zone Committee for the same purposes.

For jurisdictions that are not participating in the TUMF Program, the WRCOG Executive Committee representative for that jurisdiction shall not be eligible to vote on any matter related to the TUMF that goes before the WRCOG Executive Committee.

3. **The WRCOG Technical Advisory Committee (TAC)** - The WRCOG TAC shall review the technical documents and recommendations for Regionally Significant Arterials developed by the Public Works Committee and other committees that may be convened by the WRCOG Executive Committee. The WRCOG TAC shall forward any recommendations to the WRCOG Executive Committee for its consideration. The WRCOG TAC shall also provide additional assistance to the TUMF Program as requested by the WRCOG Executive Committee. For jurisdictions that are not participating in the TUMF Program, the WRCOG TAC representative for that jurisdiction shall not be eligible to vote on any matter related to the TUMF Program that goes before the WRCOG Executive Committee.
4. **The Public Works Committee/TUMF PWC (PWC)** - The PWC shall be comprised of the Public Works Director or designee from each participating jurisdiction of WRCOG, RCTC, RTA and WRCOG and shall be responsible for the following:
 - a. Developing objective criteria for project selection and prioritization including but not limited to the following factors: traffic safety issues potentially created by growth, regional significance, availability of matching funds, mitigation of congestion created by new development, system continuity, geographic balance, project readiness, and completed projects with reimbursement agreements;
 - b. Providing additional assistance to the TUMF Program as requested by the WRCOG Executive Committee, RCTC and/or the WRCOG TAC;
 - c. Preparing the 10 year Strategic Plan;
 - d. Preparing the five year TIP which will be reviewed annually and amended every two years;
 - e. Review and recommend the RCTC Regional Arterial TUMF Program of Projects; to the WRCOG TAC, WRCOG Executive Committee and RCTC;
 - f. Select a lead agency for each of the projects in the TIP;
 - g. Review Annual Report prepared by WRCOG;
 - h. Review and revise the RSHA as may be necessary (at a minimum every 5 years);
 - i. Review and revise Unit Cost Assumptions to the RSHA as may be necessary (at a minimum every 5 years);

- B. Regional Arterial Administration** - RCTC, through an MOU with WRCOG (effective October 1, 2008) is the responsible agency for programming and delivering the Regionally Significant Arterials as defined in the Nexus Study. WRCOG and RCTC have established a committee structure that incorporates the Public Works Directors, City Manager and WRCOG Executive Committee and the RCTC Board for the development, review and approval of the Regional Arterial TUMF Program of projects.

1. **The RCTC Executive Director**- Reporting to the RCTC, the Executive Director shall be responsible for the following TUMF Program activities:
 - a. Establishment and management of the "TUMF Program Trust Fund" for the purposes of depositing TUMF revenues and income interest earned on Trust Fund deposits;
 - b. Development of the RCTC Regional Arterial TUMF Program that identifies projects that are scheduled and funded for construction over a specified period of time and is reviewed on an annual basis;
 - c. Staff support to and coordination with the TUMF Committees as necessary;
 - d. Other related activities as directed by the RCTC Board.
2. **The RCTC Board** - The RCTC Board shall be responsible for reviewing and acting on recommendations for project selection and prioritization of the RCTC Regional Arterial TUMF Program. The RCTC Board shall review and consider recommendations on projects from the TUMF Public Works Committee, WRCOG TAC and WRCOG Executive Committee.

- C. Zone Administration** - Each Zone shall establish a committee structure, similar to the one outlined in Exhibit A, for the purpose of developing a Transportation Improvement Plan (TIP) consistent with the Strategic Plan for the project prioritization scheduling, and construction of zonal RSHA projects using TUMF funds returned to each zone. Each zone shall also be responsible for selecting a lead agency for each project listed in the TIP. All zones shall approve their TIP by consensus and forward their recommendations to WRCOG for review and approval to ensure compatibility with the intent of the 10 year Strategic Plan. Zone dollars are to be allocated by the Zone Committee only and can not be utilized or borrowed for projects located outside the zone unless such projects are: 1) proposed and approved by the Zone Committee and 2) it is consistent with the Nexus Study. In furtherance of this Section VIII.B, each Zone shall abide by the Guidelines set forth in Exhibit "C".

The Riverside County Transportation Improvement Plan approved by Riverside County voters on November 5, 2002 states "Funding which is not allocated to a city or county because it is not a participant in the TUMF Program in the Coachella Valley area and the TUMF and MSHCP in the Western County area shall be allocated to the Regional Arterial Program in the geographic area in which the city or portion of the county is located".

Each City and a portion of the unincorporated area of Riverside County are assigned to each of the zones. The five Zones are as follows:

1. Northwest Zone – The Cities of Riverside, Corona, Norco and the County of Riverside, March JPA;
2. Southwest Zone – The Cities of Temecula, Lake Elsinore, Murrieta, Canyon Lake, Wildomar and the County of Riverside;
3. Central Zone – The Cities of Moreno Valley and Perris, and the County of Riverside, March JPA;
4. Pass Zone – The Cities of Banning, Beaumont, Calimesa, and the County of Riverside;
5. Hemet/San Jacinto Zone – The Cities of Hemet and San Jacinto and the County of Riverside.

D. Local Administration - As described in the TUMF Ordinance, participating jurisdictions are responsible for collecting the TUMF. Fees collected and a corresponding Remittance Report are required to be transmitted to the Executive Director of WRCOG. In accordance with the TUMF Ordinance and the Mitigation Fee Act, WRCOG will deposit, investment, account and expend the transmitted fees. Participating jurisdictions are required to transmit reports as set forth below to WRCOG which shall include, but not be limited to the following information regarding the TUMF Program status.

1. **Monthly Remittance Reports** – Participating jurisdictions are required to submit the standard Remittance Report to WRCOG by the close of the month for the previous month's activity, for example; June's Remittance report is due August 1. The report will contain information necessary for WRCOG to determine the total amount of fees collected within each fee category as it relates to the number of building permits, certificates of occupancy, or final inspections issued during the same period of time. Remittance reports are required even when no fees have been collected, provided building permits or certificates of occupancy have been issued. In addition the participating jurisdiction shall provide WRCOG the following information: the name of the developer or payee, project address, APN, total square feet, credits issued, and such other information as requested by WRCOG. This information will assist WRCOG in tracking new development, total revenue received and revenue projections for purposes of program audits and program updates.
2. **Remittance Delays** - If a participating jurisdiction does not transmit the fees along with a corresponding Remittance Report by the close of the month for the previous month in which fees were collected, the following fiscal policy shall be applied:

On the first working day after the close of the month WRCOG staff will notify, in writing, the delinquent jurisdiction of the delinquency and request that said jurisdiction remit by the fifteenth (15th), the fees and the required Remittance Report;

If fees and Remittance Report have not been received, by the forty-fifth (45th) day, WRCOG staff will invoice the jurisdiction for the approximate

amount owed plus interest and penalties from the first day of the month following the closing of the month being reported;

WRCOG staff will continue this notification until sixty (60) days after the close of the month. At which time, WRCOG will determine if an audit is necessary of the jurisdiction's TUMF account, general ledger and any other financial data. If an audit is conducted, WRCOG will investigate the amount owed and the cause of delay. Upon completion of the audit, WRCOG staff shall make any recommendations to resolve any outstanding issues;

If an audit is required due to reporting and remittance irregularities, the jurisdiction could incur the cost of the audit.

- E. Riverside Transit Agency (RTA)** – In accordance with the Nexus Study 2.6% of funds received will be made available to the RTA to make capital facilities improvements for transit purposes as identified in the Nexus Study. The RTA shall provide a report to the WRCOG Executive Committee each year, which has been reviewed by the City Managers/County Executives and the technical committees, detailing its expenditures of TUMF Program funds received, as well as future commitments for transit facilities using TUMF Program revenues as determined by the RTA Board of Directors.
- IX. Administrative Costs.** The TUMF Ordinance authorizes WRCOG to expend funds generated from TUMF that are necessary and reasonable to carry out its responsibilities. The WRCOG Executive Committee adopted a series of policies that clarify the expenditure and retention of program funds for the Administration of the Program and they are as follows:
1. WRCOG will budget no more than one percent (1%) of the TUMF Program revenue for administration salaries and benefits;
 2. Administration costs will be budgeted at whatever is reasonable and necessary, but not to exceed four percent (4%) of the TUMF revenues (inclusive of the one percent administrative salaries and benefit cap).
 3. Beginning July 1, 2006, WRCOG shall take the administrative component from the revenue collected based on the total fee obligation inclusive of executed credit agreements.
 4. Beginning July 1, 2006, all CFD's, SCIP and other financing mechanisms will pay the maximum (4%) administrative component in cash to WRCOG. When the administrative component is less than 4% then the surplus revenue will be allocated in accordance to their adopted percentages to the Multi-species Habitat Conservation Plan, RCTC, RTA and the Zones.
 5. For refunds, whether it is because the project is no longer going forward or expiration of building permits (where no construction has commenced), the applicant is entitled to a refund less the administrative component.
- X. Appeals.** Appeals shall only be made in accordance with the provisions of this Section X.
- A. Persons or Entities Who Having Standing to Appeal.** No person or entity shall have standing to avail themselves of this Section X, except those persons or individuals who are responsible for paying the TUMF and have an unresolved appealable issue or matter.

B. Appealable Issues and Matters. No issue or matter shall be heard or reviewed under this Section X unless the issue or matter is appealable. An issue or matter is appealable, if a qualified person or entity ("Appellant") has a good-faith dispute directly related to Appellant's Property ("TUMF Dispute") regarding (i) the amount of Appellant's TUMF obligation; (ii) the administration of TUMF Credits; (iii) exemption of Appellant's property from the TUMF Program; (iv) administration of TUMF reimbursements; or (v) TUMF refunds.

C. Appeal Process.

1. If a qualified person or entity has a TUMF Dispute, he or she shall first attempt to resolve the dispute informally with the staff of the local jurisdiction. If the TUMF Dispute remains unresolved after a reasonable attempt to address it at the local level, the qualified person or entity may submit a written appeal to the appropriate department of the local jurisdiction. The written appeal shall thoroughly identify the TUMF Dispute. If the staff of the local jurisdiction determines the issue or matter is not a TUMF Dispute, the written appeal shall be rejected. Staff's decision shall be provided in writing to the Appellant. In such cases, if the Appellant desires further review from the Board of Supervisors/City Council of the affected local jurisdiction, the Appellant must submit a written request for review to the Clerk of the Board/City Council within five (5) days of receiving staff's written decision. The decision of the Board/City Council shall be forwarded to the WRCOG Executive Committee in the same manner set forth in Paragraph 3 of this Section.
2. If the written appeal identifies a TUMF Dispute, the Appellant and staff from the local jurisdiction shall attempt to resolve the issue within thirty (30) days of the local jurisdiction's receipt of the appeal. At the request of the local jurisdiction, or on its own accord, WRCOG staff may also participate in such discussions. At the conclusion of the thirty (30) day period, staff of the local jurisdiction shall render a written decision on the appeal.
3. The issue or matter shall be heard by the Board of Supervisors/City Council of the affected local jurisdiction; provided, the Appellant submits a written request for further review to the Clerk of the Board/City Council within five (5) days of Appellant's receipt of the local jurisdiction's written decision regarding the Appellant's appeal. The Board/City Council shall forward its written decision to WRCOG for review and concurrence. If the WRCOG Executive Committee disagrees with the decision of the City Council/Board of Supervisors the WRCOG Executive Committee shall determine a proper course of action and notify the jurisdiction of its findings.

XI. Arbitration. When there is a dispute among the Zone members that can not be resolved and prevents the adoption of a project prioritization schedule, the matter shall be forwarded to the WRCOG TAC and WRCOG Executive Committee for a determination. Once the WRCOG Executive Committee takes action on the issue the decision is final.

If there is a dispute at the WRCOG Executive Committee level regarding project prioritization of a specific project(s) and a consensus cannot be reached, that project

shall be tabled until such time as new information is presented and the matter can be resolved.

XII. TUMF Program Amendments. WRCOG shall undertake a review of all components of the TUMF Program in accordance with AB 1600 and other applicable laws, and, if necessary, recommend Program amendments and/or adjustments. Amendments to the Administrative Plan will be subject to the approval of the WRCOG Executive Committee. Amendments required to the TUMF Program Ordinance shall be approved by each participating jurisdiction, acting on recommendations provided by the WRCOG Executive Committee. The review shall consider whether future administration costs to participating jurisdictions are needed.

XIII. CEQA. The TUMF Program currently is a financing mechanism dependent on future actions of the WRCOG Executive Committee for improvements to the RSHA. WRCOG and its associated committees will be prioritizing and scheduling improvements on the RSHA, as such, the appropriate environmental documentation, shall be completed before a project can commence construction.

The TUMF Program was developed to mitigate the cumulative impacts of future growth on the RSHA. It was not developed to mitigate project-specific traffic impacts. Accordingly the program does not relieve any development project of the responsibility to mitigate project-specific impacts identified in the environmental analysis prepared for the project. When a development project is required to construct RSHA facilities as project-specific mitigation, it shall be eligible for credit and or reimbursement.

EXHIBIT "A"

TUMF Decision Making

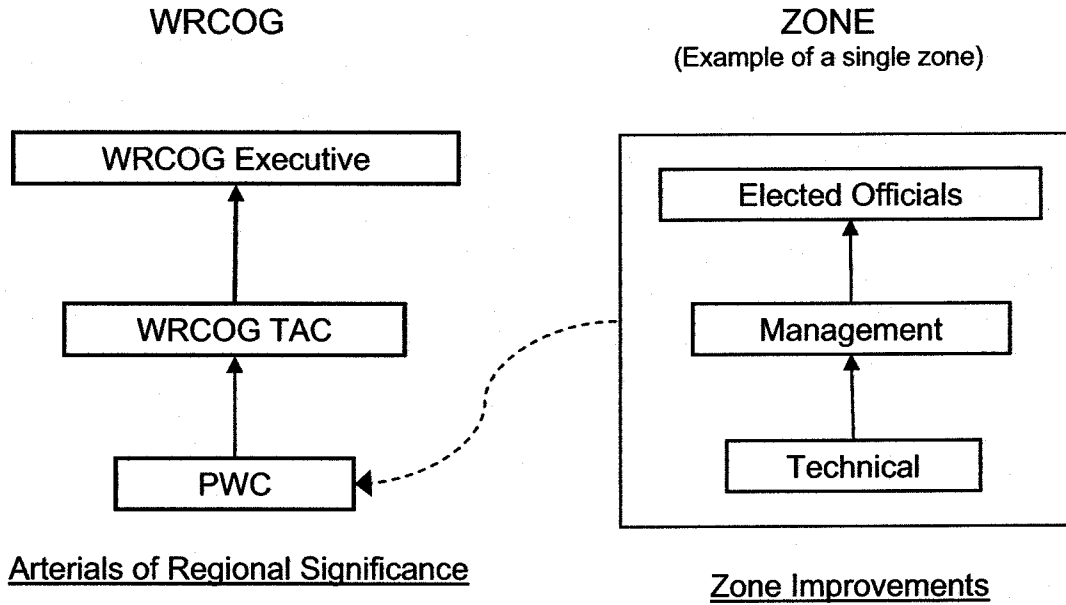


EXHIBIT "B"

TUMF Credit / Reimbursement Eligibility Process

1. Prior to the construction of any TUMF Improvement, Developer shall follow the steps listed below:
 - a. Prepare a separate bid package for the TUMF Improvements.
 - b. The plans, cost estimate, specifications and contract document shall require all contractors to pay prevailing wages and to comply with applicable provisions of the Labor Code, Government Code, and Public Contract Code relating to Public Works Projects.
 - c. Bids shall be obtained and processed in accordance with the formal public works bidding requirements of the City/County.
 - d. The contract(s) for the construction of TUMF Improvements shall be awarded to the lowest responsible bidder(s) for the construction of such facilities in accordance with the City's/County's requirements and guidelines.
 - e. Contractor(s) shall be required to provide proof of insurance coverage throughout the duration of the construction.
2. Prior to the determination and application of any Credit pursuant to a TUMF Improvement and Credit Agreement executed between City/County and Developer ("Agreement"), Developer shall provide the City/County and WRCOG with the following:
 - a. Copies of all information listed under Item 1 above.
 - b. Surety Bond, Letter of Credit, or other form of security permitted under the Agreement and acceptable to the City/County and WRCOG, guaranteeing the construction of all applicable TUMF Improvements.
3. Prior to the City's/County's acceptance of any completed TUMF Improvement, and in order to initiate the construction cost verification process, the Developer shall comply with the requirements as set forth in Sections 7, 14.3 and 14.4 of the Agreement, and the following conditions shall also be satisfied:
 - a. Developer shall have completed the construction of all TUMF Improvements in accordance with the approved Plans and Specifications.
 - b. Developer shall have satisfied the City's/County's inspection punch list.
 - c. After final inspection and approval of the completed TUMF Improvements, the City/County shall have provided the Developer a final inspection release letter.
 - d. City/County shall have filed a Notice of Completion with respect to the TUMF Improvements pursuant to Section 3093 of the Civil Code with the County Recorder's Office, and provided a copy of filed Notice of Completion to WRCOG.
 - e. Developer shall have provided City/County a copy of the As-Built plans for the TUMF Improvements.
 - f. Developer shall have provided City/County copies of all permits or agreements that may have been required by various resource/regulatory agencies for construction, operation and maintenance of any TUMF Improvements.
 - g. Developer shall have submitted a documentation package to the City/County to determine the final cost of the TUMF Improvements, which shall include at a minimum, the following documents related to the TUMF Improvements:

- i. Plans, specifications, and Developer's Civil Engineer's cost estimates; or Engineer's Report showing the cost estimates.
 - ii. Contracts/agreements, insurance certificates and change orders with each vendor or contractor.
 - iii. Invoices from all vendors and service providers.
 - iv. Copies of cancelled checks, front and back, for payments made to contractors, vendors and service providers.
 - v. Final lien releases from each contractor and vendor (unconditional waiver and release).
 - vi. Certified contract workers payroll for City/County verification of compliance with prevailing wages.
 - vii. A total cost summary, in spreadsheet format (MS Excel is preferred) and on disk, showing a breakdown of the total costs incurred. The summary should include for each item claimed the check number, cost, invoice numbers, and name of payee. See attached sample for details.
4. The amount of the development credit shall not exceed the maximum amount determined by the most current unit cost assumptions for the RSHA in the adopted Nexus Study, or actual costs whichever is less. This shall be known as the maximum credit. The maximum TUMF credit shall be determined based on an approved Improvement Plan and after the Conditions of Approval have been determined.

Exhibit "C"

Guidelines for Administration of Programmed Projects in Zone's Adopted 5-Year TIP

Once each Zone's 5-Year Transportation Improvement Program (TIP) is adopted by the WRCOG Executive Committee, said TIPs shall be incorporated into and governed by these guidelines, the Administrative Plan, and 10-Year Strategic Plan in accordance with AB 1600. Annually, WRCOG staff meets with the Zone Technical Advisory Committees to review the status of all programmed projects on the 5-Year TIPs and bring the subsequent project adjustment requests to the Zone Committees for approval. The goals of the annual review process are as follows: (i) to update project cost estimates; (ii) to review project status; (iii) to determine the continued viability of projects; (iv) review the backlog of reimbursement projects; (v) to address local jurisdiction issues; and (vi) address compliance with AB 1600.

Adjustments:

In accordance with the 10-Year Strategic Plan and the original reimbursement agreement entered into with the lead jurisdiction, all approved projects' funding and schedules are directly tied to critical milestones. As such, requests to change a project's funding or schedule shall necessitate an amendment to the original agreement and the adopted TIP. Annual 5-Year TIP adjustments could include, but are not limited to:

- Scope of work reductions or additions,
- project or phase delays,
- project or phase cancellations,
- new shelf-ready network projects being added as replacement projects,
- project or phase advances, and
- request to transfer funding beyond a programmed project's limits within a Zone

Levels of Approval:

A. Zone Committee/WRCOG Executive Committee

The following shall be approved by the Zone Committee and adopted by the WRCOG Executive Committee as required in the Administrative Plan:

- 1) Annual updates to the Zone TIP.
- 2) Requests to increase total TUMF funding allocations to projects in the Zone TIP. These requests may be made by the local jurisdiction administratively outside of the annual TIP update cycles if deemed necessary by one of the Zone participating jurisdictions and WRCOG management due to unforeseen circumstances that necessitate immediate action. Such unforeseen circumstances shall include, but not be limited to, higher than expected bid prices, Might want to give more examples] WRCOG staff will obtain action from the Zone Committee in these cases either by calling for a Special Zone Committee meeting or through individual consultation.

- 3) Administrative requests to advance funds or adjust project schedules on TIP approved projects, upon the recommendation of the Public Works Committee. Such advancements are subject to:

- Jurisdiction's proof of readiness to move forward with project,
- Zone's current cash flow can support the advancement or change.

B. WRCOG Executive Director

The WRCOG Executive Director shall be responsible for the review and approval of the following changes to an approved Zone TIP, including the review and approval of any agreements, for:

- 1) Change in Lead Jurisdiction, with the written consent of the transferring and accepting Lead Jurisdiction.
- 2) Cancellation of project upon request of the local jurisdiction. In the event of cancellation, all funds shall revert to the Zone TIP Trust account.
- 3) Approval of final completion of the project. Upon notification from the Jurisdiction that the Project has been completed, all unused funds programmed for that Project shall revert to the Zone TIP Trust account.
- 4) All other administrative requests, upon consultation with the Public Works Committee.

C. Public Works Committee

The Public Works Committee shall be responsible for the review and approval of the following:

- 1) Requests to move funds within project categories (environmental, design, etc.) administratively, contingent upon participating jurisdiction's certification of viability of all phases.
- 2) Provide recommendations to the WRCOG Executive Director on any other requests that are deemed administrative in nature by the Director.

All administrative adjustments will be submitted to the WRCOG Executive Committee as part of the next Annual Review Report for final adoption.

D. Obligor Programmed Funds

The TUMF Program has established the policy that construction projects take priority and therefore WRCOG limits the obligation of TUMF dollars. WRCOG has two options by which to obligate TUMF. In both options, steps 1, 2 and 3 (Option A) or 6 (Option B) must be completed by the local jurisdiction to ensure TUMF funding can be made available for use on an eligible project. Since TUMF project funds are generally obligated on a first come first served basis, failure to follow the prescribed steps for either option may preclude a project sponsor from receiving TUMF payments for completed work until sufficient funds are available to be obligated.

Option A:

Funding for a project programmed on Zone 5-Year TIPs is not considered obligated by WRCOG until certain steps outlined below have been accomplished by the local jurisdiction.

1. Ensure that funding for the project phase is **programmed in the current year** of an adopted 5-Year TIP.
2. Ensure that there is a **signed (executed) reimbursement agreement** that matches the funding amount with the funding amount of the project phase in the adopted TIP.
3. Submit **an invoice for TUMF eligible work** prior to the end of the fiscal year to obligate the project phase funding. At the time of submitting the first invoice, the project sponsor will be required to submit all necessary supporting documentation (not previously submitted) in accordance with the provisions of the reimbursement agreement.
4. WRCOG will obligate the entire phase of the project if there is available revenue at the time the invoice is submitted.

Option B:

Funding for a project programmed on Zone 5-Year TIPs is not considered obligated by WRCOG until the steps outlined below have been accomplished by the local jurisdiction.

1. Ensure that funding for the project phase is **programmed in the current year** of an adopted 5-Year TIP.
2. Ensure that there is a **signed (executed) reimbursement agreement** that matches the funding amount with the funding amount of the project phase in the adopted TIP.
3. Send WRCOG a letter of **notice of intent** to issue RFP, solicit bids, make offer to purchase ROW or other similar action to verify that sufficient funding is available and that funds are obligated and reserved exclusively for the particular project phase.
4. Receive a **notice of obligation** from WRCOG within fourteen working days of receipt of the notice of intent confirming the amount of funding that is obligated and reserved exclusively for the particular project phase. Alternatively, the project sponsor will receive a notice of deferred obligation if WRCOG determines that insufficient funds are currently available for the project phase to be obligated.
5. Award the project and execute a contract within four months of receipt of the notice of obligation from WRCOG and send a letter of **confirmation of award** to WRCOG including evidence of a Board/Council action relating to the project award and contract execution.
6. Commence project work and submit the **first invoice** for payment within nine months of receipt of letter of obligation by WRCOG to preserve fund obligation. At the time of submitting the first invoice, the project sponsor will be required to submit all necessary supporting documentation (not previously submitted) in accordance with the provisions of the reimbursement agreement.

If a contract has not been executed within four months of receipt of the notice of obligation from WRCOG (step 5), there will be a review of the project status. Based on the review of project status, WRCOG will either:

- i) extend the fund obligation for up to a total of nine months from the notice of obligation if the project sponsor can demonstrate a realistic expectation that the project will be awarded and a confirmation of award can be provided to WRCOG within that time frame; or
- ii) de-obligate the funds.

Similarly, if the first invoice has not been submitted to WRCOG within nine months of receipt of the letter of obligation (step 6), there will be a review of the project status. Based on the review of project status, WRCOG will either:

- i) extend the fund obligation for up to an additional nine months if the project sponsor can demonstrate a realistic expectation that the project work will commence and a first invoice is submitted within that time frame; or
- ii) de-obligate the funds.



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:		<u>\$37,066.00*</u> (*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
Director,
Administrative
Services Dept.

Ron Goldman
Director,
Planning
Department

Juan Perez
Director,
Transportation
Department

Mike Lara
Director,
Building & Safety
Department

John Boyd
Director,
Code Enforcement
Department

Carolyn Syms Luna
Director,
Environmental
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.

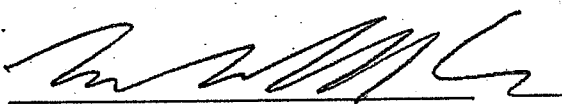
On June 11, 2007 WRCOG approved a TUMF Fee Agreement for expired building permits that would ensure that the prior TUMF mitigation fee payment would be considered a payment in full, regardless of any fee increases. This agreement was only available on lots in which building permits were issued between 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

Far West Industries | 2922 Daimler St. | Santa Ana, CA 92705

Tel: (949) 224-1970 | Fax: (949) 224-1963

Email: brian@farwestindustries.com | Web: www.farwestindustries.com



Building Homes for Tomorrow Not Just for Today

DISCLAIMER: This e-mail and any accompanying documents contain privileged and confidential information intended only for the sole use of the recipient named in this e-mail. If you are not the intended recipient, you are hereby notified that any retention, dissemination or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please contact the sender and delete all copies of it from your system. Please note that the sender accepts no responsibility for viruses and it is your responsibility to scan this e-mail and attachments (if any).

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.

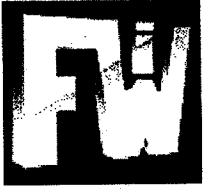
WITNESS my hand and the seal of the Board of Supervisors
Dated: January 26, 2010
Kecia Harper-Ihem, Clerk of the Board of Supervisors, in
and for the County of Riverside, State of California.

(seal)

By: Kallie Burton 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:		<u>\$37,066.00*</u> (*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

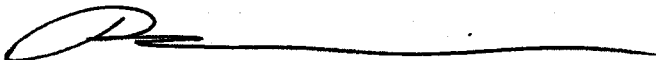
into such an agreement as it would have been in our best interest. In fact, our actions during this period were in compliance with the agreement.

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
Director,
Administrative
Services Dept.

Ron Goldman
Director,
Planning
Department

Juan Perez
Director,
Transportation
Department

Mike Lara
Director,
Building & Safety
Department

John Boyd
Director,
Code Enforcement
Department

Carolyn Syms Luna
Director,
Environmental
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.

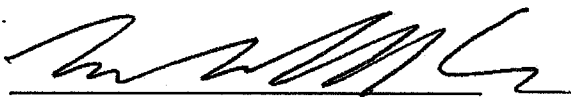
On June 11, 2007 WRCOG approved a TUMF Fee Agreement for expired building permits that would ensure that the prior TUMF mitigation fee payment would be considered a payment in full, regardless of any fee increases. This agreement was only available on lots in which building permits were issued between 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

Far West Industries | 2922 Daimler St. | Santa Ana, CA 92705

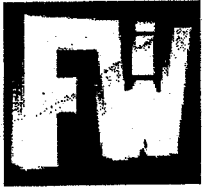
Tel: (949) 224-1970 | Fax: (949) 224-1963

Email: brian@farwestindustries.com | Web: www.farwestindustries.com



Building Homes for Tomorrow Not Just for Today

DISCLAIMER: This e-mail and any accompanying documents contain privileged and confidential information intended only for the sole use of the recipient named in this e-mail. If you are not the intended recipient, you are hereby notified that any retention, dissemination or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please contact the sender and delete all copies of it from your system. Please note that the sender accepts no responsibility for viruses and it is your responsibility to scan this e-mail and attachments (if any).



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:		<u>\$37,066.00*</u> (*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.

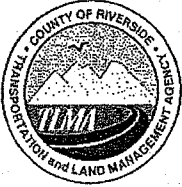
Thank you for your assistance in this matter and if you have any questions or comments on the above, please contact me.

Very truly yours,



Brian Berkson
Project Manager

Encs.



COUNTY OF RIVERSIDE TRANSPORTATION AND LAND MANAGEMENT AGENCY

George Johnson
Agency Director



Katherine Gifford
Director,
Administrative
Services Dept.

Ron Goldman
Director,
Planning
Department

Juan Perez
Director,
Transportation
Department

Mike Lara
Director,
Building & Safety
Department

John Boyd
Director,
Code Enforcement
Department

Carolyn Syms Luna
Director,
Environmental
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.

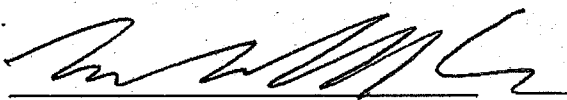
On June 11, 2007 WRCOG approved a TUMF Fee Agreement for expired building permits that would ensure that the prior TUMF mitigation fee payment would be considered a payment in full, regardless of any fee increases. This agreement was only available on lots in which building permits were issued between 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
Far West Industries | 2922 Daimler St. | Santa Ana, CA 92705
Tel: (949) 224-1970 | Fax: (949) 224-1963
Email: brian@farwestindustries.com | Web: www.farwestindustries.com



Building Homes for Tomorrow Not Just for Today

DISCLAIMER: This e-mail and any accompanying documents contain privileged and confidential information intended only for the sole use of the recipient named in this e-mail. If you are not the intended recipient, you are hereby notified that any retention, dissemination or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please contact the sender and delete all copies of it from your system. Please note that the sender accepts no responsibility for viruses and it is your responsibility to scan this e-mail and attachments (if any).

* Only want to speak if item
is pulled
from Policy Calendar *

Riverside County Board of Supervisors

Request to Speak

Submit request to Clerk of Board (right of podium),
Speakers are entitled to three (3) minutes, subject
Board Rules listed on the reverse side of this form.

SPEAKER'S NAME:

Brian Berkson

Address:

2922 Daimler St

(only if follow-up mail response requested)

City:

Santa Ana

Zip:

92705

Phone #:

949-224-1970

Date:

2-9-10

Agenda #

3, 54

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

5 **Support**

Oppose

Neutral

Note: If you are here for an agenda item that is filed
for "Appeal", please state separately your position on
the appeal below:

Support

Oppose

Neutral

I give my 3 minutes to:

BOARD RULES

Requests to Address Board on "Agenda" Items:

You may request to be heard on a published agenda item. Requests to be heard must be submitted to the Clerk of the Board before the scheduled meeting time.

Requests to Address Board on items that are "NOT" on the Agenda:

Notwithstanding any other provisions of these rules, member of the public shall have the right to address the Board during the mid-morning "Oral Communications" segment of the published agenda. Said purpose for address must pertain to issues which are under the direct jurisdiction of the Board of Supervisors. YOUR TIME WILL BE LIMITED TO THREE (3) MINUTES.

Power Point Presentations/Printed Material:

Speakers who intend to conduct a formalized Power Point presentation or provide printed material must notify the Clerk of the Board's Office by 12 noon on the Monday preceding the Tuesday Board meeting, insuring that the Clerk's Office has sufficient copies of all printed materials and at least one (1) copy of the Power Point CD. Copies of printed material given to the Clerk (by Monday noon deadline) will be provided to each Supervisor. If you have the need to use the overhead "Elmo" projector at the Board meeting, please insure your material is clear and with proper contrast, notifying the Clerk well ahead of the meeting, of your intent to use the Elmo.

Individual Speaker Limits:

Individual speakers are limited to a maximum of three (3) minutes. Please step up to the podium when the Chairman calls your name and begin speaking immediately. Pull the microphone to your mouth so that the Board, audience, and audio recording system hear you clearly. Once you start speaking, the "green" podium light will light. The "yellow" light will come on when you have one (1) minute remaining. When you have 30 seconds remaining, the "yellow" light will begin flash, indicating you must quickly wrap up your comments. Your time is up when the "red" light flashes. The Chairman adheres to a strict three (3) minutes per speaker. **Note: If you intend to give your time to a "Group/Organized Presentation", please state so clearly at the very bottom of the reverse side of this form.**

Group/Organized Presentations:

Group/organized presentations with more than one (1) speaker will be limited to nine (9) minutes at the Chairman's discretion. The organizer of the presentation will automatically receive the first three (3) minutes, with the remaining six (6) minutes relinquished by other speakers, as requested by them on a completed "Request to Speak" form, and clearly indicated at the front bottom of the form.

Addressing the Board & Acknowledgement by Chairman:

The Chairman will determine what order the speakers will address the Board, and will call on all speakers in pairs. The first speaker should immediately step to the podium and begin addressing the Board. The second speaker should take up a position in one of the chamber aisles in order to quickly step up to the podium after the preceding speaker. This is to afford an efficient and timely Board meeting, giving all attendees the opportunity to make their case. Speakers are prohibited from making personal attacks, and/or using coarse, crude, profane or vulgar language while speaking to the Board members, staff, the general public and/or meeting participants. Such behavior, at the discretion of the Board Chairman may result in removal from the Board Chambers by Sheriff Deputies.

**Riverside County Board of Supervisors
Request to Speak**

Submit request to Clerk of Board (right of podium),
Speakers are entitled to three (3) minutes, subject
Board Rules listed on the reverse side of this form.

SPEAKER'S NAME: Brian Berkson

Address: _____
(only if follow-up mail response requested)

City: Jurupa **Zip:** 92509

Phone #: 818-481-7230

Date: 1-26-10 **Agenda #** 3.40

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

☒ **Support** **Oppose** **Neutral**

Note: If you are here for an agenda item that is filed
for "Appeal", please state separately your position on
the appeal below:

 Support **Oppose** **Neutral**

I give my 3 minutes to: _____

** Only want to speak if
item pulled from Policy Calendar.*

BOARD RULES

Requests to Address Board on "Agenda" Items:

You may request to be heard on a published agenda item. Requests to be heard must be submitted to the Clerk of the Board before the scheduled meeting time.

Requests to Address Board on items that are "NOT" on the Agenda:

Notwithstanding any other provisions of these rules, member of the public shall have the right to address the Board during the mid-morning "Oral Communications" segment of the published agenda. Said purpose for address must pertain to issues which are under the direct jurisdiction of the Board of Supervisors. YOUR TIME WILL BE LIMITED TO THREE (3) MINUTES.

Power Point Presentations/Printed Material:

Speakers who intend to conduct a formalized Power Point presentation or provide printed material must notify the Clerk of the Board's Office by 12 noon on the Monday preceding the Tuesday Board meeting, insuring that the Clerk's Office has sufficient copies of all printed materials and at least one (1) copy of the Power Point CD. Copies of printed material given to the Clerk (by Monday noon deadline) will be provided to each Supervisor. If you have the need to use the overhead "Elmo" projector at the Board meeting, please insure your material is clear and with proper contrast, notifying the Clerk well ahead of the meeting, of your intent to use the Elmo.

Individual Speaker Limits:

Individual speakers are limited to a maximum of three (3) minutes. Please step up to the podium when the Chairman calls your name and begin speaking immediately. Pull the microphone to your mouth so that the Board, audience, and audio recording system hear you clearly. Once you start speaking, the "green" podium light will light. The "yellow" light will come on when you have one (1) minute remaining. When you have 30 seconds remaining, the "yellow" light will begin flash, indicating you must quickly wrap up your comments. Your time is up when the "red" light flashes. The Chairman adheres to a strict three (3) minutes per speaker. ***Note: If you intend to give your time to a "Group/Organized Presentation", please state so clearly at the very bottom of the reverse side of this form.***

Group/Organized Presentations:

Group/organized presentations with more than one (1) speaker will be limited to nine (9) minutes at the Chairman's discretion. The organizer of the presentation will automatically receive the first three (3) minutes, with the remaining six (6) minutes relinquished by other speakers, as requested by them on a completed "Request to Speak" form, and clearly indicated at the front bottom of the form.

Addressing the Board & Acknowledgement by Chairman:

The Chairman will determine what order the speakers will address the Board, and will call on all speakers in pairs. The first speaker should immediately step to the podium and begin addressing the Board. The second speaker should take up a position in one of the chamber aisles in order to quickly step up to the podium after the preceding speaker. This is to afford an efficient and timely Board meeting, giving all attendees the opportunity to make their case. Speakers are prohibited from making personal attacks, and/or using coarse, crude, profane or vulgar language while speaking to the Board members, staff, the general public and/or meeting participants. Such behavior, at the discretion of the Board Chairman may result in removal from the Board Chambers by Sheriff Deputies.