

# Western Riverside Council of Governments Administration & Finance Committee

## Minutes

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### 1. CALL TO ORDER

The meeting of the Administration & Finance Committee was called to order by Chair Kevin Bash at 12:00 p.m., on June 9, 2021, in WRCOG's office, Citrus Conference Room.

### 2. PLEDGE OF ALLEGIANCE

Casey Dailey, WRCOG Director of Energy & Environmental Programs, led members and guests in the Pledge of Allegiance.

### 3. ROLL CALL

- City of Beaumont - Mike Lara
- City of Jurupa Valley - Chris Barajas
- City of Lake Elsinore - Brian Tisdale
- City of Moreno Valley - Victoria Baca
- City of Norco - Kevin Bash (Chair)
- City of Perris - Rita Rogers
- City of Wildomar - Ben Benoit
- County of Riverside, District 2 - Karen Spiegel
- County of Riverside, District 3 - Chuck Washington
- Western Municipal Water District (WMWD) - Brenda Dennstedt

### 4. PUBLIC COMMENTS

There were no public comments.

**5. CONSENT CALENDAR** – (Wildomar / Jurupa Valley) 9 yes; 0 no; 0 abstention. Items 5.A through 5.C were approved. The City of Lake Elsinore did not respond. The City of Perris abstained from Item 5.B only.

#### **A. Summary Minutes from the May 12, 2021, Administration & Finance Committee Meeting**

##### **Action:**

1. Approved the Summary Minutes from the May 12, 2021, Administration & Finance Committee meeting.

#### **B. Summary Minutes from the May 26, 2021, Administration & Finance Committee Special Meeting**

**Action:**

1. Approved the Summary Minutes from the May 26, 2021, Administration & Finance Committee Special meeting.

**C. Finance Department Activities Update**

**Action:**

1. Received and filed.

**6. REPORTS / DISCUSSION**

**A. VTTM 31620 TUMF Appeal – City of Hemet**

Cameron Brown, WRCOG Program Manager, reported that in the rare instance of a TUMF appeal, the matter is usually resolved at the staff level. In the event that is not possible, the matter is presented to this Committee, which makes a recommendation to the Executive Committee.

Today's appeal involves a Vesting Tentative Tract Map (VTTM) for a project within the City of Hemet. In 2017, WRCOG conducted a review of all Development Agreements and VTTMs and the results were sent to all member agency City Managers. A letter for VTTM 31620 was sent to the City of Hemet on November 26, 2018, and stated that WRCOG had determined a TUMF exemption existed, but had expired based on State law and City code. This was communicated again to the City and the developer, DR Horton, in September 2020. The developer has appealed the denial of exemption on VTTM 31620 and has paid its fee on protest. This item is now being presented to this Committee for discussion and recommendation to the Executive Committee.

Colin Pearce, representative for DR Horton, clarified that there are two tract maps – 31620 and 31620-1. DR Horton paid the TUMF fees on these two VTTMs in protest. The VTTMs were approved and finalized by the City on December 20, 2005, and recorded on December 30, 2005. DR Horton's position is that once the VTTMs were recorded, they became legal binding documents, therefore, any TUMF fees applied would remain in affect and cannot be changed by any later action.

DR Horton received a letter from WRCOG legal counsel denying the appeal, and cited Government Code Section 66452.6, which refers to the fact that an approved, or conditionally approved tentative map, expires 24 months after approved. That statute does apply to tentative maps, but not to recorded maps, so the statute no longer applies. The City of Hemet Municipal Code has a similar provision for the expiration of tentative maps after two years. Conditions and exemptions on the map, which were attached to the final maps, remain in affect irrespective of actions taken down the road.

Government Code Section 66498.1, Subsection B, states that when an agency approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinance policies standards described in Section 66474.2.

Government Code Section 64698.9, Subsection E, also states that the private sector should be able to rely upon an approved vested tentative map prior to expending resources and occurring liabilities without the risk of having the project frustrated by subsequent action by the approving local agency, provided the time periods established by this article have not elapsed.

This time period has not elapsed because the maps were approved and recorded before the expiration of a new time period. There are a number of cases that support DR Horton's position. In one instance with the City of Modesto, after the developer obtained approval of its subdivision map, the City amended its development impact fee ordinance to assess additional fees that were not included in the original ordinance that was in affect at the time the map was recorded. The developer sued and the Court determined that the fees were limited to those in affect when the vesting tentative map was deemed complete plus subsequent increases which were included within the building costs. So additional fees could not be imposed once the map was recorded.

Committee member Mike Lara asked if the noted VTTM numbers are the original numbers within the Development Agreement.

Chris Gray, WRCOG Interim Executive Director, responded that they are the original numbers. WRCOG concurred that the list of projects submitted by the City were TUMF exempt at the time. The maps were approved and recorded in 2005 and there was no subsequent development activity on those maps until one or two years ago.

Committee member Lara asked if this tract currently conditioned to pay TUMF.

Mr. Gray responded that at the time the tract was approved there was a condition that essentially stated that the project was exempt from TUMF.

Steve DeBaun, WRCOG legal counsel, added that there is a Government Code Section and a Hemet Municipal Code provision applicable to this matter. Government Code Section 66498.5B indicates that the rights conferred by a vesting tentative map as provided by this chapter shall last for an initial period of time as provided by ordinance, but shall not be less than one year, or more than two years beyond the recording of the final map. The Hemet Municipal Code defines the initial time period as one year following the recordation of the final map.

It is our conclusion that under state law and local municipal code that the protections provided by the vesting map, particularly those conditions, expired after one year and does not allow for the fee exemption the developer is arguing for.

Mr. Gray indicated that the contention is the conditions of approval, which states the project is exempt from TUMF, expired. For every Development Agreement and every vesting map, there is an initial period of time in which a project is exempt from TUMF. Once that period expires, TUMF is then due.

Mr. Pearce indicated that some development occurred on the property in 2007 and the fees were not imposed on the original developer, so the condition was still in affect more than two years after the map was recorded. There are subdivision improvement agreements for the two tracts which were recorded on December 28, 2005, and January 4, 2006, and a copy of the conditions of approval were attached to each. Those agreements would have extended the conditions indefinitely.

Mr. DeBaun indicated that subdivision improvement agreements do not confer vested rights.

Mr. Gray indicated that while the developer may have been in contact with the City, there is no record that the developer contacted WRCOG until fall 2020 when DR Horton staff called and requested proof of exemption. No development occurred on either map for 12 to 13 years.

**Action:**

1. Recommended that the Executive Committee deny the appeal from DR Horton for the payment of fees for VTTM 31620.

(District 3 / Wildomar) 8 yes; 1 no; 0 abstention. Item 6.A was approved. The City of Beaumont representative voted no. The water district does not vote on TUMF matters.

**B. 2021 TUMF CCI Adjustment Update**

Ivana Medina, WRCOG Senior Analyst, reported that staff are required to present a TUMF Construction Cost Index (CCI) adjustment annually. No CCI was presented in 2020 due to COVID-19. An important aspect of a CCI adjustment is that it adjusts TUMF based upon the rise of construction costs and other market factors, which are evaluated during Nexus Study updates, which occur approximately every four years.

The Executive Committee adopted two indices in the 2016 Nexus Study as the basis for completing CCI adjustments to the TUMF schedule of fees; the Engineering News Record (ENR) CCI and the National Association of Realtors (NAR) median sales price of existing single-family homes.

Since the CCE was not implemented in 2020, the ENR CCI and NAR adjustment encompasses two years since the last CCI adoption. Since then, the ENR CCI increased 3.7% and the NAR increased 17.4%.

The WRCOG Public Works Committee has recommended implementing the 2021 CCI adjustment, including eliminating the current freeze on the Retail land use and adjusting it to the level it would be at without the freeze policy. It was determined that a reduction in Retail land use was not incentivizing development and was actually creating a revenue shortfall in the Program.

The WRCOG Technical Advisory Committee (TAC) recommended that each land use type not be adopted at the full 2021 CCI adjustment rate of approximately 9%, and instead increase by only 3%. Discussion emphasized the desire to continue incentivizing Retail development, but not to delay fee increases because of the repercussions of revenue shortfall, thereby underfunding projects.

The TUMF Program generates approximately \$50M in revenue annually; of that, Retail makes up 3% to 4% of collections. By not charging the full Retail fee, the Program has lost approximately \$6M.

Single-family makes up the large majority of TUMF collections, followed by multi-family.

If the Executive Committee approves a CCI adjustment, an increase in fees would not go into effect until January 1, 2022.

Staff is recommending approval of the TAC's increased fee structure at 3%.

Committee member Chuck Washington indicated that the talk throughout the County is problems with traffic congestion. There is too much housing and not enough infrastructure.

Chris Gray, WRCOG Interim Executive Director, indicated that WRCOG will be having discussions with the PWC on funding different types of projects to help alleviate traffic congestion.

**Action:**

1. Recommended that the Executive Committee approve the 2021 Construction Cost Index adjustment for each land use type.

(Jurupa Valley / Moreno Valley) 9 yes; 0 no; 0 abstention. Item 6.B was approved. The water district does not vote on TUMF matters.

**C. Energy Department Activities Update**

Due to time constraints this item was not heard.

**Action:**

1. None.

**7. REPORT FROM THE INTERIM EXECUTIVE DIRECTOR**

Chris Gray reported that WRCOG is hosting a Love Your Neighborhood community clean-up event on June 26, 2021. General Assembly will be held on June 24, 2021, and the speaker portion will be broadcast only once, per the contract.

**8. ITEMS FOR FUTURE AGENDAS**

There were no items for future agendas.

**9. GENERAL ANNOUNCEMENTS**

There were no general announcements.

**10. NEXT MEETING**

The next Administration & Finance Committee meeting is scheduled for Wednesday, July 14, 2021, at 12:00 p.m., on the Zoom platform. Committee members will have the option of attending this meeting in-person.

**11. ADJOURNMENT**

The meeting of the Administration & Finance Committee adjourned at 1:21 p.m.