

BD22-0634 1711-1755 Eastshore Boulevard Self-Storage STMP Fee Appeal

Appeal to the Board of the West Contra Costa
Transportation Advisory Committee (WCCTAC)

December 8, 2023

1711-1755 Eastshore Boulevard Project Location



1711-1755 Eastshore Boulevard Project Summary

- Existing building is one-story, 50,905 sf, former Orchard Supply Hardware building
- Project would convert building into two-story, 103,298 sf self-storage facility consisting of 664 storage units and a 1,227 square foot retail/rental office with two employees.

Project Traffic Impacts

Table 1 – Trip Generation Summary

Land Use	Units	Daily		AM Peak Hour				PM Peak Hour			
		Rate	Trips	Rate	Trips	In	Out	Rate	Trips	In	Out
Existing											
Home Improvement Superstore	50.905 ksf	30.74	-1,565	1.57	-80	-46	-34	2.33	-119	-58	-61
Proposed											
Mini-Warehouse	103.298 ksf	1.51	156	0.10	10	6	4	0.17	18	8	10
Shopping	1.227 ksf	37.75	46	0.94	1	1	0	3.81	5	2	3
Total			-1,363		-69	-39	-30		-96	-48	-48

Note: ksf = 1,000 square feet

Conclusions and Recommendations

- Compared to the previous land use, the proposed project is expected to generate 1,363 fewer weekday daily trips, 69 fewer trips during the weekday a.m. peak hour and 96 fewer trips during the p.m. peak hour.
- The proposed project would be presumed to have a less-than-significant transportation impact on vehicle miles traveled.
- Nearby pedestrian, bicycle, and transit facilities are adequate to serve the project.
- Sight distances at the project driveway are adequate.
- The proposed parking supply of 13 spaces would accommodate the anticipated peak parking demand of 11 spaces.

WCCTAC's Subregional Transportation Mitigation Program (STMP)

Fee

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B. DEVELOPMENT PROJECTS

Agencies shall apply the STMP Fee to building permits associated with all Development Projects as defined in this section, unless exempt under Section D.9 of the Coop Agreement.

1. New Construction

Includes construction of new building space for either residential or non-residential use(s), including the addition of building space to existing developed property.

2. Intensification of Use

Includes the intensification of use of all or part of an existing building, whether vacant or not. An intensification of use occurs when a Development Project would pay a higher fee under the proposed use compared to the existing permitted use based on the current STMP Fee schedule. Accessory dwelling units added within the existing habitable living area footprint are not considered an intensification of use and no STMP Fee would be applied.

In the case of the *re-use of a vacant building, the building's current use shall be the use when the building was occupied if the vacancy had occurred within three years prior to the date of the building permit application. If the vacancy had occurred greater than three years prior to the date of the building permit application, then the STMP Fee shall be applied as if the project was New Construction.* The building permit applicant bears the burden of demonstrating that the building was in use within this time period through submittal of documents acceptable to the Agency such as executed lease agreements or lease payment records.

The Mitigation Fee Act requires a reasonable relationship between impacts and fees

- “The Mitigation Fee Act (“MFA”) authorizes local agencies to impose fees on a development project in order to defray the cost of public facilities needed to serve the growth caused by the project, as long as the fees are reasonably related to the burden caused by the development.” (*Boatworks, LLC. v. City of Alameda* (2019) 35 Cal.App.5th 290, 294;
- Impact fees must have a rough proportionality both in nature and extent to the impact of the proposed development. (*Dolan v. City of Tigard* (1995) 512 U.S. 374, 391.)
- Courts will overturn an agency’s decision to impose fees if that decision was “arbitrary, capricious or entirely lacking in evidentiary support.” (*Sheetz v. County of El Dorado* (2022) 84 Cal.App.5th 394, 415.)
 - Fees were upheld, but now being reviewed by U.S. Supreme Court

The \$94,241.70 STMP fee on the Project violates the “reasonable relationship” standard

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- STMP fees arise from the participating local municipalities’ desire for new development to pay “fair share” toward transit improvements that are “proportional to the traffic impact the new development will generate.”
- The Nexus Study focuses on the impacts of new development by estimating the growth between existing and future conditions.
- WCCTAC has acknowledged that the Project will result in fewer trips than the previous use of the site
- Thus, there is no new “growth” or new “impact” being generated by the Project beyond what already existed and was accommodated by existing transit facilities.

The \$94,241.70 STMP fee on the Project violates the “reasonable relationship” standard

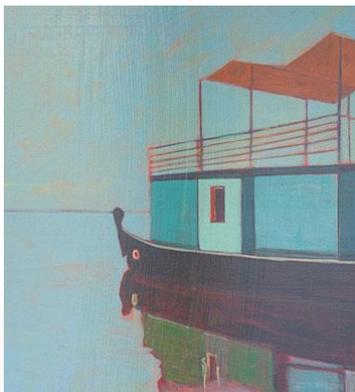
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- Per Gov. Code section 66001(g), a “fee shall not include the costs attributable to existing deficiencies in public facilities, but may include the costs attributable to the increased demand for public facilities reasonably related to the development project in order to (1) refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted level of service that is consistent with the general plan.”
- Because the Project will result in fewer trips than the previous use, there is no “increased demand.”
- Thus, the fee calculations do not reflect a reasonable relationship to the Project’s reduced traffic burdens.
- *Home Builders Assn. of Tulare/Kings Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554, 572 [impact fees found invalid because existing facilities were already adequate to continue to provide the same level of service, and new development would not burden the current facilities].)

The \$94,241.70 STMP fee on the Project violates the “reasonable relationship” standard

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- The Project is being assessed as “New Construction” per WCCTAC’s Administrative Guidelines because the Site has been vacant longer than three years.
- But the Administrative Guidelines and Nexus Study fail to provide any evidentiary support for this arbitrary three-year cut-off for vacant properties.
- Thus, the three-year cut-off is arbitrary and capricious, lacks any rational connection, and violates the “reasonable relationship” standard.
- Three-year cut-off ignores practical realities of developing a project.
- Previous use would have paid for necessary transportation infrastructure.
- That other agencies use similar cut-off is not the correct focus.
- Only relevant question is whether there is a reasonable relationship between the impact and the fees. Here, there is not.



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Thank You

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