

CITY OF PACIFICA

Audit Report

SPECIAL GAS TAX STREET IMPROVEMENT FUND

July 1, 2007, through June 30, 2014

TRAFFIC CONGESTION RELIEF FUND ALLOCATIONS

July 1, 2007, through June 30, 2014

PROPOSITION 1B FUND ALLOCATIONS

July 1, 2007, through June 30, 2014



BETTY T. YEE
California State Controller

June 2016



BETTY T. YEE
California State Controller

June 3, 2016

The Honorable Sue Digre
Mayor of the City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044

Dear Mayor Digre:

The State Controller's Office audited the City of Pacifica's Special Gas Tax Street Improvement Fund for the period of July 1, 2007, through June 30, 2014. We also audited the Traffic Congestion Relief Fund allocations recorded in its Special Gas Tax Street Improvement Fund for the period of July 1, 2007, through June 30, 2014, and the Proposition 1B Fund allocations recorded in its Street Construction Fund, for the period of July 1, 2007, through June 30, 2014.

Our audit found that although the city accounted for and expended its Special Gas Tax Street Improvement Fund, Traffic Congestion Relief Fund allocations, and Proposition 1B Fund allocations in compliance with requirements, the city understated the fund balance in its Special Gas Tax Street Improvement Fund by \$372,823 as of June 30, 2014, because it had a deficit fund balance of \$201,218, and incurred unallowable expenditures of \$153,633 for debt service payments and \$17,972 for negative interest.

If you have any questions, please contact Christopher Lek, Interim Chief, Local Government Audits Bureau, by telephone at (916) 284-0120

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/as

cc: Lorenzo Hines, Assistant City Manager
City of Pacifica

Contents

Audit Report

Summary	1
Background	1
Objectives, Scope, and Methodology	2
Conclusion	3
Follow-Up on Prior Audit Findings	4
Views of Responsible Officials.....	4
Restricted Use	4
Schedule 1—Reconciliation of Fund Balance	5
Findings and Recommendations.....	6
Attachment—City of Pacifica’s Response to Draft Audit Report	

Audit Report

Summary

The State Controller's Office (SCO) audited the City of Pacifica's:

- Special Gas Tax Street Improvement Fund for the period of July 1, 2007, through June 30, 2014;
- Traffic Congestion Relief Fund allocations recorded in its Special Gas Tax Street Improvement Fund for the period of July 1, 2007, through June 30, 2014; and
- Proposition 1B Fund allocations recorded in its Street Construction Fund for the period of July 1, 2007, through June 30, 2014.

Our audit found that although the city accounted for and expended its Special Gas Tax Street Improvement Fund, Traffic Congestion Relief Fund allocations, and Proposition 1B Fund allocations in compliance with requirements, the city understated the fund balance in its Special Gas Tax Street Improvement Fund by \$372,823 as of June 30, 2014, because it had a deficit fund balance of \$201,218, and incurred unallowable expenditures of \$153,633 for debt service payments and \$17,972 for negative interest.

Background

The State apportions funds monthly from the Highway Users Tax Account in the Transportation Tax Fund to cities and counties for the construction, maintenance, and operation of local streets and roads. The highway users taxes derive from State taxes on the sale of motor vehicle fuels. In accordance with Article XIX of the California Constitution and Streets and Highways Code section 2101, a city must deposit all apportionments of highway users taxes in its Special Gas Tax Street Improvement Fund. A city must expend gas tax funds only for street-related purposes. We conducted our audit of the city's Special Gas Tax Street Improvement Fund under the authority of Government Code section 12410.

Chapter 91, Statutes of 2000, (Assembly Bill 2928) as amended by Chapter 636, Statutes of 2000, (Senate Bill 1662) and Government Code section 14556.5, created a Traffic Congestion Relief Fund in the State Treasury for allocating funds quarterly to cities and counties for street or road maintenance, reconstruction, and storm damage repair. Cities must deposit funds received into the city account designated for the receipt of State funds allocated for transportation purposes. The city recorded its Traffic Congestion Relief Fund allocations in its Special Gas Tax Street Improvement Fund. We conducted our audit of the city's Traffic Congestion Relief Fund allocations under the authority of Revenue and Taxation Code section 7104.

Senate Bill 1266, Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, was introduced as Proposition 1B and approved by the voters on November 7, 2006, for a variety of transportation priorities, including the maintenance and improvement of local transportation facilities. Proposition 1B funds transferred to cities

and counties must be deposited into an account that is designated for the receipt of State funds allocated for streets and roads. The city recorded its Proposition 1B Fund allocations in its Street Construction Fund. A city also must expend its allocations within four years following the end of the fiscal year in which the allocation was made and to expend the funds in compliance with Government Code section 8879.23. We conducted our audit of the city's Proposition 1B Fund allocations under the authority of Government Code section 12410.

Objectives, Scope, and Methodology

Our audit objective was to determine whether the city accounted for and expended its Special Gas Tax Street Improvement Fund, Traffic Congestion Relief Fund allocations, and Proposition 1B Fund allocations in compliance with Article XIX of the California Constitution, the Streets and Highways Code, Revenue and Taxation Code section 7104, and Government Code section 8879.23.

To meet the audit objective, we performed the following procedures:

Special Gas Tax Street Improvement Fund

- Reconciled the fund revenue recorded in the city ledger to the balance reported in the SCO's apportionment schedule to determine whether Highway Users Tax Account (HUTA) funds received by the city were completely accounted for.
- Judgmentally selected a sample of expenditure transactions and verified proper documentation and eligibility to determine whether HUTA funds were expended in accordance with the criteria above.
- Analyzed and tested sample transactions to determine whether recoveries of prior HUTA fund expenditures were identified and credited to the Special Gas Tax Street Improvement Fund.
- Reviewed the fund cash and liabilities accounts for unauthorized borrowing to determine whether unexpended HUTA funds were available for future street-related expenditures.
- Interviewed city employees and reviewed policies and procedures to gain an understanding of the city's internal controls and accounting systems related to this audit.

Traffic Congestion Relief Fund Allocations

- Reconciled the Traffic Congestion Relief Fund allocations recorded in the city ledger to confirm that the allocations received by the city agreed with the SCO's apportionment schedule.
- Judgmentally selected a sample of expenditure transactions and verified proper documentation and eligibility to determine the city's compliance with the criteria above.

- Reconciled the city's "Schedule of Expenditures as Reported in the Streets and Roads Annual Report" with the SCO's "Average Annual Expenditures Computation of Discretionary Funds" to determine compliance with the maintenance-of-effort requirement.

Proposition 1B Fund Allocations

- Reconciled the Proposition 1B Fund allocations recorded in the city ledger to confirm that the allocations received by the city agreed with the SCO's apportionment schedule.
- Judgmentally selected a sample of expenditure transactions and verified proper documentation and eligibility to determine the city's compliance with the criteria above.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We did not audit the city's financial statements. We limited our audit scope to planning and performing the audit procedures necessary to obtain reasonable assurance that the city accounted for and expended its Special Gas Tax Street Improvement Fund, Traffic Congestion Relief Fund allocations, and Proposition 1B Fund allocations in accordance with the requirements of the Streets and Highways Code, Revenue and Taxation Code section 7104, and Government Code section 8879.23. Accordingly, we examined transactions, on a test basis, to determine whether the city expended funds for street-related purposes. We considered the city's internal controls only to the extent necessary to plan the audit.

Conclusion

Our audit found that the City of Pacifica accounted for and expended its:

- Special Gas Tax Street Improvement Fund in compliance with Article XIX of the California Constitution and the Streets and Highways Code for the period of July 1, 2007, through June 30, 2014, except as noted in Schedule 1 and described in the Findings and Recommendations section of this report. The findings require an adjustment of \$372,823 to the city's accounting records.
- Traffic Congestion Relief Fund allocations recorded in its Special Gas Tax Street Improvement Fund, in compliance with Article XIX of the California Constitution, the Streets and Highways Code, and Revenue and Taxation Code section 7104 for the period of July 1, 2007, through June 30, 2014.
- Proposition 1B Fund allocations recorded in its Street Construction Fund in compliance with Government Code section 8879.23 for the period of July 1, 2007, through June 30, 2014.

Follow-Up on Prior Audit Findings

Our prior audit report, issued on April 30, 1999, disclosed no findings.

Views of Responsible Officials

We issued a draft audit report on March 16, 2016. Cindy Mosser, Financial Services Manager, responded by letter dated April 16, 2016, agreeing with the audit results with the exception of Finding 2. The city's response is included in this final audit report as an attachment.

Restricted Use

This report is intended for the information and use of the City of Pacifica and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

June 3, 2016

**Schedule 1—
Reconciliation of Fund Balance
July 1, 2013, through June 30, 2014**

	Special Gas Tax Street Improvement Fund ^{1, 2, 3}
Beginning fund balance per city	\$ 267,266
Revenues	1,422,996
Total funds available	1,690,262
Expenditures	(884,809)
Ending fund balance per city	805,453
SCO adjustments: ⁴	
Finding 1—Deficit fund balance at June 30, 2008	201,218
Finding 2—Unallowable debt service payments	153,633
Finding 3—Negative interest	17,972
Total SCO adjustments	372,823
Ending fund balance per audit	\$ 1,178,276

¹ The city receives apportionments from the State Highway Users Tax Account (HUTA), pursuant to Streets and Highways Code sections 2103, 2105, 2106, 2107, and 2107.5. The basis of the apportionments varies, but the money may be used for any street purpose. Streets and Highways Code section 2107.5 restricts apportionments to administration and engineering expenditures, except for cities with populations of fewer than 10,000 inhabitants. Those cities may use the funds for rights-of-way and for the construction of street systems. The city must deposit its HUTA apportionments in its Special Gas Tax Street Improvement Fund. The audit period was July 1, 2007, through June 30, 2014; however, this schedule includes only the period of July 1, 2013, through June 30, 2014.

² Government Code section 14556.5 created a Traffic Congestion Relief Fund in the State Treasury for allocating funds quarterly to cities and counties for street and road maintenance, reconstruction, and storm damage repair. The city recorded its Traffic Congestion Relief Fund allocations in its Special Gas Tax Street Improvement Fund. The audit period was July 1, 2007, through June 30, 2014. The city did not receive any Traffic Congestion Relief Fund revenues and did not incur any Traffic Congestion Relief Fund expenditures during FY 2013-14; therefore, it is not included in this schedule.

³ Senate Bill 1266, Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, introduced as Proposition 1B, provided funds for a variety of transportation priorities. The city recorded its Proposition 1B Fund in its Street Construction Fund. The audit period was July 1, 2007, through June 30, 2014. The city did not receive any Proposition 1B revenues and did not incur any Proposition 1B expenditures during FY 2013-14; therefore, it is not included in this schedule.

⁴ See the Findings and Recommendations section.

Findings and Recommendations

**FINDING 1—
Deficit fund balance**

On June 30, 2008, the city’s Special Gas Tax Street Improvement Fund had a deficit fund balance of \$201,218. The city inadvertently charged more street expenditures than there were funds available.

The practice of funding one fiscal year’s activities with Highway Users Tax apportionments of the following fiscal year is contrary to established municipal budgetary and accounting practices and in violation of Article 16, section 18, of the California Constitution, which states, in part:

(a) No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year.

As a result, the \$201,218 deficit fund balance is unallowable.

Recommendation

The city should transfer \$201,218 to the Special Gas Tax Street Improvement Fund to eliminate the deficit balance. In the future, the city should verify the existence of available funds prior to incurring expenditures against the fund.

City’s Response

The City agrees with Finding 1, as corrected, and its Recommendation. Although Finding 1 is not accurate in that on June 30, 2014, the City’s Gas Tax Fund had a fund balance of \$805,453, and therefore no deficit at that time, the individual fund – Gas Tax Fund (Fund 10) did have a deficit position of \$201,218 for fiscal year ending June 30, 2008.

SCO’s Comment

The city agreed with the finding and will implement our recommendation.

**FINDING 2—
Unallowable debt
services payments**

The Special Gas Tax Street Improvement Fund incurred unallowable expenditures for debt service payments during fiscal year (FY) 2012-13 and FY 2013-14 in the amounts of \$51,211 and \$102,422 respectively. The debt service payments were for a Certificate of Participation that was secured, in part, by future Gas Tax revenues.

The debt service payments, totaling \$153,633 during the audit period, are unallowable per Streets and Highways Code section 2107.4, which states:

Not more than one-quarter of the funds allocated to a city or county from the Highway Users Tax Account in the Transportation Tax Fund for the construction of Streets therein may be used to make principal and interest payments on bonds issued for such construction, if the issuance of such bonds is authorized by a proposition approved by a majority of the votes cast thereon. The term of any such bonds shall not exceed 25 years.

As the city did not obtain voter approval for the payments of principal and interest from the Gas Tax revenues, these debt service payments are unallowable expenditures.

Recommendation

The city must reimburse the Special Gas Tax Street Improvement Fund for the unallowable debt service payments of \$153,633. In the future, the city should ensure that all debt service payments charged to the fund are made in accordance with Streets and Highways Code section 2107.4.

City's Response

The City disagrees with Finding 2 and its Recommendation. Attached to this Response are the following: (i) Complaint for Validation (§860 *et seq.* of the Code of Civil Procedure) filed August 17, 1999, in San Mateo County Superior Court Case No. 410088 (the "Validation Action") (Exhibit "1" hereto); (ii) Proof of Service of the Summons and Complaint in the Validation Action on the State Controller and Attorney General (Exhibit "2" hereto); and (iii) Judgment filed October 18, 1999, in the Validation Action (Exhibit "3" hereto).

Based on the Judgment and the City's reliance thereon since 1999, the City disputes the SCO auditor's position that the debt service payments authorized by the Judgment and charged to the Special Gas Tax Street Improvement Fund constitute unallowable expenditures. The City respectfully requests that Finding 2 be removed.

SCO's Comment

There is no provision in the Streets and Highway Code that authorizes the use of the Gas Tax revenues to pay for debt service. Gas Tax revenues are used specifically for street related expenditures.

Subdivision (a) section 1 of Article 19 of the State Constitution restricts the use of gas tax funds to the following purposes:

The research, planning, construction, improvements, maintenance, and operation of public street and highways (and their related public facilities for non-motorized traffic), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, and the administrative costs necessarily incurred in the foregoing purposes.

Section 5 of Article 19 of the State Constitution states that:

The Legislature may authorize up to 25 percent of the revenue available for expenditure by any city or county, or by the State, for the purposes specified in subdivision (a) of Section 1 of this article to be pledged or used for the payment of principal and interest on voter-approved bonds issued for such purposes.

Under that constitutional authority, the Legislature enacted Streets and Highways Code section 2107.4, which provides that:

Not more than one-quarter of the funds allocated to a city or county from the Highways Users Tax Account in the Transportation Tax Fund for the construction of streets therein may be used to make principal and interest payment on bonds issued for such construction, if the issuance of such bonds is authorized by a majority of the votes cast thereon. The term of any such bonds shall not exceed 25 years.

Consequently, cities may only use up to 25% of their Gas Tax revenues to pay principal and interest on voter-approved bonds.

The State Constitution may not prohibit indirect road construction-related expenditures of the Gas Tax revenues, such as the use of an Installment Sale Agreement. However, according to *City of Costa Mesa v. Connell*, 87 Cal.Rptr. 2d 612, this does not grant cities:

carte blanche to disregard other restrictions. There still remains the prohibition against using state gas tax funds to service the debt on bonds not approved by voters. For that reason, the indirect expenditure here (to be rerouted to pay the debt on unapproved bonds) is an illegitimate use of the moneys.

Just as in the Costa Mesa case, the indirect expenditure of gas tax revenues (rerouted to pay the principal and interest on the non-voter approved bonds), is an illegitimate use of the money.

The SCO’s finding and recommendation remain unchanged.

**FINDING 3—
Negative interest**

The Special Gas Tax Street Improvement Fund incurred negative interest income totaling \$17,972 as follows:

Fiscal Year	Amount
2005-06	\$ 8,038
2007-08	5,570
2008-09	4,364
Total	\$ 17,972

Streets and Highways Code section 2101 specifies that Highway User’s Tax apportionments are to be expended for the construction, maintenance, and operating of public streets and roads, construction of exclusive public mass transit guideways, and related administrative costs. It does not identify negative interest charges as an allowable use of Gas Tax revenues.

Recommendation

The city should reimburse \$17,972 to the Special Gas Tax Street Improvement Fund for the negative interest charged.

City's Response

The City agrees with Finding 3 and its Recommendation. Formerly, the City's practice was to allocate interest on a quarterly basis among all cash accounts even if at that time there was a negative cash amount. Usually the negative cash occurred if a receivable was booked in the general ledger; therefore cash was not received. The City's current practice is to make sure any negative cash account is not considered for interest allocation. The City will reimburse the Special Gas Tax Street Improvement Fund the negative interest amount of \$17,972.

SCO's Comment

The city agreed with the finding and will implement our recommendation.

**Attachment—
City of Pacifica’s Response to
Draft Audit Report**



Scenic Pacifica
Incorporated Nov. 22, 1957

CITY OF PACIFICA

170 Santa Maria Avenue • Pacifica, California 94044-2506
www.cityofpacifica.org

MAYOR
Sue Digre

MAYOR PRO TEM
Mike O'Neill

COUNCIL
Mary Ann Nihart
John Keener
Karen Ervin

April 6, 2016

Mr. Christopher Lek,
Interim Chief – Local Government Audits Bureau
State Controller's Office-Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

RE: City of Pacifica's Response to State Controller's Office DRAFT Audit of the City of Pacifica's Special Gas Tax Street Improvement Fund (July 1, 2007, through June 30, 2014); Traffic Congestion Relief Fund Allocations (July 1, 2007, through June 30, 2014); and Proposition 1B Fund Allocations (July 1, 2007, through June 30, 2014)

Dear Mr. Lek,

Thank you for the opportunity to respond to the State Controller's DRAFT audit report dated March 2016, which was received by the City on March 22, 2016.

Finding 1 – Deficit fund balance

Finding 1 states that "On June 30, 2014, the city's Special Gas Tax Street Improvement Fund had a deficit fund balance of \$201,218." The Recommendation is: "The city should transfer \$201,218 to the Special Gas Tax Street Improvement Fund to eliminate the deficit Balance. In the future, the city should verify the existence of available funds prior to incurring expenditures against the fund."

The City agrees with Finding 1, as corrected, and its Recommendation. Although Finding 1 is not accurate in that on June 30, 2014, the City's Gas Tax Fund had a fund balance of \$805,453, and therefore no deficit at that time, the individual fund – Gas Tax Fund (Fund 10) did have a deficit position of \$201,218 for fiscal year ending June 30, 2008.

We informed the auditor, Jason Fong, that the City's previous financial statements has never shown a deficit balance as the City had a previous practice of combining the City's Street Construction Fund and Gas Tax Special Revenue Fund as the "Gas Tax Fund." Due to the auditor's concerns, this practice of combining street related funds stopped for the financial statement for the year ended June 30, 2015. Even with the separation of funds, the City did not have a deficit fund balance for the year ended June 30, 2014. Please note that if the expenditures in either fund were overextended, it was all allowable street related expenditures. These expenditures could have been reclassified and still allowable. Unfortunately, due to the passage of time, the City does not have the ability to move expenditures from the Special Gas Tax Street Improvement Fund (Fund 10) to the Street Construction Fund (Fund 9) for fiscal year ending June 30, 2008, therefore, the City will

transfer funds to the Gas Tax Fund in the amount of \$201,218. The fund is currently not in a deficit position and once again all expenditures were allowable street expenditures.

Finding 2 – Unallowable debt service payments

Finding 2 states that “The Special Gas Tax Street Improvement Fund incurred unallowable expenditures for debt service payment...” Finding 2 continues “As the city did not obtain voter approval for the payments of principal and interest from the gas tax revenues, these debt service payments are unallowable expenditures.” The Recommendation is: “The city must reimburse the Special Gas Tax Street Improvement Fund for the unallowable debt service payments of \$153,633. In the future, the city should ensure that all debt service payments charged to the fund are made in accordance with Streets and Highways Code section 2107.4.”

The City disagrees with Finding 2 and its Recommendation. Attached to this Response are the following: (i) Complaint For Validation (§860 *et seq.* of the Code of Civil Procedure) filed August 17, 1999, in San Mateo County Superior Court Case No. 410088 (the “Validation Action”) (Exhibit “1” hereto); (ii) Proof of Service of the Summons and Complaint in the Validation Action on the State Controller and Attorney General (Exhibit “2” hereto); and (iii) Judgment filed October 18, 1999, in the Validation Action (Exhibit “3” hereto).

The auditor, Jason Fong, was advised that the City had obtained the Judgment which adjudicated the legality of the debt service payments and Mr. Fong was supplied with a copy of the City’s brief to the Superior Court which resulted in the Judgment and which specifically addressed Streets and Highways Code section 2107.4. No request for additional documentation or additional time to provide further documentation from the Validation Action was given to the City. Exhibits 1-3 are provided herewith.

The Judgment includes at page 2, lines 21-24, the ruling that “Further, among other things, the use of motor vehicle fuel taxes, as described in the Complaint, or contemplated by the attachments thereto, is valid, legal and irrevocable....” The Judgment also states at page 3, lines 16-19 (¶17) as follows:

“7. Pursuant to Section 870 of the Code of Civil Procedure, this Court permanently enjoins the institution by any person of any action or proceeding raising any issue as to which this judgment is binding and conclusive.”

Based on the Judgment and the City’s reliance thereon since 1999, the City disputes the SCO auditor’s position that the debt service payments authorized by the Judgment and charged to the Special Gas Tax Street Improvement Fund constitute unallowable expenditures. The City respectfully requests that Finding 2 be removed.

Finding 3 – Negative Interest

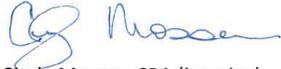
Finding 3 states that “The Special Gas Tax Street Improvement Fund incurred negative interest income totaling \$17,972 [from FY 2005-06, 2007-08, and 2008-09].” The Recommendation is: “The city should reimburse \$17,972 to the Special Gas Tax Street Improvement Fund for the negative interest charged.”

The City agrees with Finding 3 and its Recommendation. Formerly, the City’s practice was to allocate interest on a quarterly basis among all cash accounts even if at that time there was a negative cash amount. Usually the negative cash occurred if a receivable was booked in the general ledger; therefore cash was not received. The City’s current practice is to make sure any negative cash account is not considered for interest allocation. The City will reimburse the Special Gas Tax Street Improvement Fund the negative interest amount of \$17,972.

Response to Findings and Recommendations to the Gas Tax Audit
April 6, 2016
Page 3 of 3

We appreciate the opportunity to respond to the findings and hope that our Response will result in the removal of Finding 2. If you have any questions or concerns, please contact Lorenzo Hines, Assistant City Manager at (650) 738-7401.

Best regards,

A handwritten signature in blue ink, appearing to read "Cindy Mosser".

Cindy Mosser, CPA (inactive)
Financial Services Manager

Enclosures

cc:

COPY

**ENDORSED FILED
SAN MATEO COUNTY**

AUG 17 1999

**Clerk of the Superior Court
By SARAH OLMEDA
DEPUTY CLERK**

1 CECILIA M. QUICK, STATE BAR #120988
CITY OF PACIFICA
2 170 Santa Maria Ave.
Pacifica, CA 94044
3 Phone: 650-738-7308

4 CHARLES F. ADAMS, STATE BAR # 69952
COURTNEY L. JONES, STATE BAR # 178686
5 JONES HALL, A PROFESSIONAL LAW CORPORATION
650 California Street, 18th Floor
6 San Francisco, CA 94108
Phone: 415-391-5780

7
8 Attorneys for Plaintiff
City of Pacifica
9

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF SAN MATEO

12 CITY OF PACIFICA,

13 Plaintiff,

14 v.

15 ALL PERSONS INTERESTED IN THE
16 MATTER of the Approval and
Confirmation of a Lease Agreement
17 for the Financing of a Street
Improvement Project and the Use of
18 Gas Tax Revenues for the Financing
Thereof, and all Proceedings
19 Leading Thereto, Including the
Adoption of a Resolution
20 Authorizing Such Financing,

21 Defendants.
22

) Case No. **410088**

) COMPLAINT FOR VALIDATION
) (\$860 *et seq.* of the
) Code of Civil Procedure)

23 Plaintiff, the City of Pacifica (the "City"), for its
24 complaint to validate proceedings against all interested persons
25 under the provisions of Article 5 (commencing with Section 53510)
26 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California
27 Government Code and Chapter 9 (commencing with Section 860) of
28

1 Title 10 of Part 2 of the California Code of Civil Procedure,
2 alleges:

3 1. The City is and was at all times mentioned herein a
4 municipal corporation and general law city duly organized and
5 existing under the laws of the State of California.

6 2. The governing body of the City is the "City Council"
7 thereof with its principal place of business located in the City
8 of Pacifica, California.

9 3. On July 26, 1999, the City Council adopted Resolution No.
10 42-99 entitled "Resolution of the City Council of the City of
11 Pacifica Authorizing Delivery and Sale of Certificates of
12 Participation in the Maximum Principal Amount of \$5,000,000 to
13 Finance Construction of Public Street Improvements, and Approving
14 Related Documents and Actions" (the "Resolution"). A certified
15 copy of the Resolution is attached hereto as Exhibit A and
16 incorporated herein by reference as though fully set forth herein.

17 4. The Resolution authorizes the City to enter into a site
18 lease (the "Site Lease") with the City of Pacifica Financing
19 Authority (the "Authority") whereby the City will lease certain
20 real property which constitutes a part of the public street system
21 of the City (the "Leased Property") to the Authority for a payment
22 (the "Site Lease Payment") which the City will use to finance
23 improvements to public streets and related facilities (the "Street
24 Improvement Project"). A form of the Site Lease is attached
25 hereto as Exhibit B and incorporated herein by reference as though
26 fully set forth herein.

27 5. The City will simultaneously lease the Leased Property
28 back from the Authority pursuant to a lease agreement by and

1 between the Authority and the City (the "Lease Agreement"),
2 whereby the City will make semiannual lease payments (the "Lease
3 Payments") to the Authority or its assigns. A form of the Lease
4 Agreement is attached hereto as Exhibit C and incorporated herein
5 by reference as though fully set forth herein.

6 6. In order the obtain the moneys to make the Site Lease
7 Payment which the City will use to finance the Street Improvement
8 Project and in order to pay related financing costs, the Authority
9 will assign its right to receive Lease Payments to U.S. Bank Trust
10 National Association (the "Trustee"), and the Trustee will execute
11 and deliver Certificates of Participation ("Certificates")
12 pursuant to a trust agreement by and among the City, the Authority
13 and the Trustee (the "Trust Agreement"). A form of the Trust
14 Agreement is attached hereto as Exhibit D and a form of the
15 Certificates is attached hereto as Exhibit E and both are
16 incorporated herein by reference as though fully set forth herein.

17 7. The Certificates will represent direct, undivided
18 ownership interests of the holder thereof in the Lease Payments to
19 be made by the City pursuant to the Lease Agreement.

20 8. Pursuant to the Lease Agreement, the City is obligated to
21 make the Lease Payments from any source of available funds of the
22 City, subject to certain terms set forth in the Lease Agreement.
23 In addition, pursuant to the Lease Agreement, the City has pledged
24 all amounts received by it from the State of California in
25 accordance with Streets and Highways Code Section 2105, 2106 and
26 2107, and all other revenues (except revenues received by the City
27 in accordance with Section 2107.5 of said Code), if any, received
28 by the City from taxes imposed on the purchase of motor vehicle

1 fuels and any payments from the State of California in lieu of
2 such revenues (collectively, the "Gas Tax Revenues").

3 9. The Gas Tax Revenues will be deposited in a special
4 segregated fund maintained by the City, and amounts therein will
5 be withdrawn by the City to pay the Trustee the Lease Payments
6 when due and payable. The Gas Tax Revenues are pledged under the
7 Lease Agreement to the City's obligation to pay the Lease
8 Payments.

9 10. The Street Improvement Project is part of the City's
10 Capital Improvement Program and consists of street improvements in
11 the City including but not limited to the resurfacing of various
12 City streets and the acquisition, construction and improvement of
13 streets, curbs, gutters, sidewalks and other street and traffic
14 improvements, for an aggregate cost of approximately 4.5 million
15 dollars. The Street Improvement Project is necessary to reduce
16 annual maintenance funding needs and raise the service level of
17 the City street network. The amount of Gas Tax Revenues collected
18 by the City are expected to be sufficient to finance the Street
19 Improvement Project over time through payment of the schedule of
20 Lease Payments due under the Lease Agreement.

21 11. If the City did not enter into the Lease Agreement and
22 the Certificates were not issued, the City would not be able to
23 currently finance the Street Improvement Project with Gas Tax
24 Revenues because the amount of Gas Tax Revenues which are
25 currently available to the City are insufficient for such purpose.
26 No other funding source for the Street Improvement Project is
27 reasonably available to the City.

28 14. Defendants herein (the "Defendants") are All Persons

1 Interested in the Matter as set forth in the caption. Defendants,
2 and each of them, are named in this Complaint as directed in
3 Section 861, 861.1 and 862 of the Code of Civil Procedure.

4 15. Pursuant to the Resolution, the City (i) approved the
5 forms of and authorized the execution and delivery of the Site
6 Lease, the Lease Agreement and the Trust Agreement, (ii) approved
7 the sale of the Certificates to Stone & Youngberg LLC by
8 negotiation, (iii) authorized the filing of the validation action
9 herein and (iv) authorized and directed the proper officers of
10 the City, for and in the name of the City, to make any and all
11 assignments, certificates, requisitions, agreements, notices,
12 consents, leases and other instruments of conveyance, warrants and
13 other documents, which they or any of them might deem necessary or
14 appropriate in order to consummate any of the transactions
15 contemplated by the agreements and documents approved pursuant to
16 the Resolution.

17 15. The *Pacifica Tribune* is a newspaper published and of
18 general circulation in the City of Pacifica and is the newspaper
19 most likely to give notice to persons interested in these
20 proceedings. Publication of the Summons in said newspaper should
21 be ordered by the Court pursuant to Code of Civil Procedure
22 Section 861 and Government Code Section 6063. The City is
23 informed and believes, and thereon alleges, that the proceedings
24 held thereunder and the Resolution are of general knowledge to the
25 persons affected thereby or interested therein. The only other
26 notice reasonably practicable is notice given by (1) posting a
27 copy of the Summons in each of three locations within the
28 boundaries of the City and (2) mailing copies of the Summons and

1 Complaint to those persons, if any, or their attorneys of record,
2 who either have expressly notified one or more of the attorneys of
3 record herein of their interest in this matter or have filed and
4 served legal actions against the City challenging, inter alia, the
5 validity of the Resolution or of the Site Lease, the Lease
6 Agreement or the Trust Agreement.

7 16. This action is brought in this Court under Code of Civil
8 Procedure Section 860 as a special in rem proceeding for the
9 judicial examination, approval and confirmation of the proceedings
10 leading up to and including the adoption of the Resolution
11 authorizing the execution of the Site Lease, the Lease Agreement
12 and the Trust Agreement by the City.

13 17. All such proceedings by and for the City and the
14 provisions of the Resolution were and are in the best interests of
15 the City and all interested parties, and were and are in
16 conformity with the provisions of all laws and enactments at any
17 time in force or controlling upon said proceedings, whether of
18 law, statute or ordinance, and whether federal, state or municipal
19 and were and are in conformity with all requirements of all
20 regulatory bodies, agencies or officials having authority over or
21 asserting authority over said proceedings or any part thereof.

22 WHEREFORE, Plaintiff prays:

23 1. That the Court find that this action is properly
24 brought under Code of Civil Procedure Section 860 *et seq.* and
25 Government Code Section 53510 *et seq.*;

26 2. That the Court examine and inquire into the
27 proceedings leading up to and including the adoption of the
28 Resolution and the execution and delivery of the Site Lease, the

1 Lease Agreement and the Trust Agreement by the City;

2 3. That the Court find that all conditions, things and
3 acts required by law to exist, happen or be performed precedent to
4 and including the adoption of the Resolution and the execution and
5 delivery of the Site Lease, the Lease Agreement and the Trust
6 Agreement by the City, have existed, happened and been performed
7 in the time, form and manner required by law;

8 4. That the Court find that the provisions of the
9 Resolution are valid and binding and that the Site Lease, the
10 Lease Agreement and the Trust Agreement are valid and binding
11 obligations in accordance with their terms;

12 5. That the Court find that the City is authorized to
13 enter into the Site Lease and the Lease Agreement, and to perform
14 its obligations and covenants thereunder, pursuant to the laws of
15 the State of California, including the provisions of Government
16 Code Section 37350;

17 6. That all such proceedings by and for the City and
18 the provisions of the Resolution were and are in the best
19 interests of the City and all interested parties, and were and are
20 in conformity with the provisions of all laws and enactments at
21 any time in force or controlling upon said proceedings, whether of
22 law, statute or ordinance, and whether federal, state or
23 municipal, and were and are in conformity with all requirements of
24 all regulatory bodies, agencies or officials having authority over
25 or asserting authority over said proceedings or any part hereof;

26 7. That the Court include in its decree an appropriate
27 injunction as provided for in Section 870 of the Code of Civil
28 Procedure;

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

VERIFICATION

I, David N. Carmany, am the City Manager of the City of Pacifica, Plaintiff herein, and am authorized to make this verification on its behalf.

I have read the foregoing complaint and know its contents, which are true of my own knowledge, except as to those matters stated on information and belief and, as to those matters, I believe them to be true.

Executed this 16th day of August, 1999, Pacifica, California,

I declare under penalty of perjury that the foregoing is true and correct.



David N. Carmany
City Manager

COPY

**ENDORSED FILED
SAN MATEO COUNTY**

OCT 06 1999

Clerk of the Superior Court
By LEA JONES
DEPUTY CLERK

1 CECILIA M. QUICK, STATE BAR #120988
CITY OF PACIFICA
2 170 Santa Maria Ave.
Pacifica, CA 94044
3 Phone: 650-738-7308

4 CHARLES F. ADAMS, STATE BAR # 69952
COURTNEY L. JONES, STATE BAR # 178686
5 JONES HALL, A PROFESSIONAL LAW CORPORATION
650 California Street, 18th Floor
6 San Francisco, CA 94108
7 Phone: 415-391-5780

8 Attorneys for Plaintiff
City of Pacifica

9
10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

11 CITY OF PACIFICA,)	No. 410088
)	
12 Plaintiff,)	
)	
13 v.)	DECLARATION OF MAILING
)	IN SUPPORT OF
14 ALL PERSONS INTERESTED IN THE)	PLAINTIFFS' APPLICATION
15 MATTER of the Approval and)	FOR DEFAULT JUDGMENT
Confirmation of a Lease Agreement)	
16 for the Financing of a Street)	
Improvement Project and the Use of)	
17 Gas Tax Revenues for the Financing)	
Thereof, and all Proceedings)	
18 Leading Thereto, Including the)	
Adoption of a Resolution)	
19 Authorizing Such Financing,)	
)	
20 Defendants.)	
)	
21)	

22
23
24 I, Courtney L. Jones, declare:

- 25 1. I have personal knowledge of the following:
- 26 2. I am a resident of the City and County of San Francisco
- 27 and am an associate at Jones Hall, A Professional Law Corporation,
- 28 located at 650 California Street, 18th Floor, San Francisco,

1 California, and our firm represents the Plaintiff in this action.

2 3. Pursuant to the Order of Publication of Summons (CCP
3 §§860-870) herein, on August 30, 1999 I mailed a copy of the
4 Complaint and the Summons by certified mail, postage prepaid to
5 the attention of Richard Chivaro, Chief Counsel, California State
6 Controller's Office, 300 Capital Mall, Suite 1850, Sacramento, CA
7 95814, with a copy to Keith Yamanaka, Esq., Deputy Attorney
8 General, Attorney General's Office, P.O. Box 944255, Sacramento,
9 CA 94244-2550. On September 21, 1999, I sent an additional copy
10 to Richard Chivaro via UPS overnight delivery to the same address
11 set forth in the previous sentence.

12 I declare under penalty of perjury that the foregoing is true
13 and correct and that this declaration was executed in San
14 Francisco, California on October 5, 1999.

15
16 By: Courtney L. Jones
17

18 Name: Courtney L. Jones
19
20
21
22
23
24
25
26
27
28

MAILING OFFICE: Postmark if Return Receipt was paid for at time of mailing.



Attach fee as shown in DMN if return receipt was not paid for at time of mailing.

4. Article Number
2385 844 412

5. Mailing Date
08-30-99



6. Type of Service
 COD Certified Numbered Insured Return Receipt for Merchandise Express Mail Registered

8. Delivered to the following individual, company, or organization:
State Controller

9. Delivery Date
9-2-99

10. Address (Complete only if item 8 is checked)

CUSTOMER: Complete unshaded area (Items 1-6) and enter your name and address on the reverse.

- 1. Return receipt WAS NOT paid for at time of mailing.
- 2a. Return receipt WAS paid for at time of mailing.
- 2b. Return receipt showing addressee's address WAS paid for at time of mailing.

3. Article Addressed To:
 State Controller
 Attn. Richard Chivarro
 300-Capital Mall Ste. 1850
 Sacramento, CA. 95814

- 11. Postal Receipts Shown:
 Delivery was made
 Delivery was not made
- 12. Clerk's Initials

PS Form 3811-A, December 1994

Domestic Return Receipt (After Mailing)

PS Form 3811, July 1999
2 385 844 411
Article Number (Copy from service label)

1. Article Addressed to:
 Keith Yamataka
 Attorney General's Office
 PO Box 944255
 Sacramento, CA 94244-2550

2. Service Type
 Certified Mail Express Mail Registered Insured Mail COD

3. Restricted Delivery? (Extra Fee)
 Yes No

4. If YES, enter delivery address below:
 Yes No

5. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

6. OFFICE OF THE ATTORNEY GENERAL
 BLDENE PASCHE
 Agent Addressee

7. SENDER, COMPLETE THIS SECTION
 8. COMPLETE THIS SECTION ON DELIVERY

102599-99-M-1789

1
2
3 CECILIA M. QUICK, STATE BAR #120988
4 CITY OF PACIFICA
5 170 Santa Maria Ave.
6 Pacifica, CA 94044
7 Phone: 650-738-7308

COPY
ENDORSED FILED
SAN MATEO COUNTY

8 CHARLES F. ADAMS, STATE BAR # 69952
9 COURTNEY L. JONES, STATE BAR # 178686
10 JONES HALL, A PROFESSIONAL LAW CORPORATION
11 650 California Street, 18th Floor
12 San Francisco, CA 94108
13 Phone: 415-391-5780

OCT 18 1999

Clerk of the Superior Court
By LEA JONES
DEPUTY CLERK

RECEIVED

OCT 07 1999

14 Attorneys for Plaintiff
15 City of Pacifica

CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

16 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 IN AND FOR THE COUNTY OF SAN MATEO

18 CITY OF PACIFICA,) No. 410088

19 Plaintiff,)

20 v.)

21 ALL PERSONS INTERESTED IN THE) JUDGMENT

22 MATTER of the Approval and)

23 Confirmation of a Lease)

24 Agreement for the Financing of)

25 a Street Improvement Project)

26 and the Use of Gas Tax Revenues)

27 for the Financing Thereof, and)

28 all Proceedings Leading)

Such Proceedings, Including the Adoption)

of a Resolution Authorizing)

Such Financing,)

Defendants.)

29 This matter having come before the Court on the
30 application for judgment of Plaintiff City of Pacifica (herein
31 called "Plaintiff") and Plaintiff having presented a Memorandum
32 of Points and Authorities in support of said application, and
33 the Court having examined the proceedings of the Plaintiff

1
2
3 leading up to and including the adoption on July 26, 1999 of
4 Resolution No. 42-99 by the governing board of the Plaintiff
5 (the "Resolution"), and having examined the validity of each and
6 all of the terms and conditions of said Resolution, and the
7 cause having been submitted to the Court for its decision;

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

9 1. That this action is properly brought under
10 California Code of Civil Procedure Section 860 *et seq.* and
11 Government Code Section 53589.5.

12 2. That all conditions, things and acts required by
13 law to exist, happen or be performed precedent to and including
14 the adoption of the Resolution, and the terms and conditions
15 thereof, and for the Plaintiff to execute and deliver each of
16 the agreements described in the Resolution, and the execution
17 and delivery thereof, have existed, happened and been performed
18 in the time, form and manner required by law.

19 3. That the provisions of said Resolution are valid
20 and binding and that the Site Lease, Lease Agreement and Trust
21 Agreement are valid and binding obligations in accordance with
22 their terms. Further, among other things, the use of motor
23 vehicle fuel taxes, as described in the Complaint, or
24 contemplated by the attachments thereto, is valid, legal and
25 irrevocable, and the lease of City streets for the purpose of
26 financing the City's street improvement project is valid,
27 binding and lawful.

28 4. That the City is authorized to enter into the Site
Lease and the Lease Agreement, and to perform its obligations
and covenants thereunder, pursuant to the laws of the State of

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

California, including the provisions of Government Code Section 37350;

5. That all proceedings by and for the City and the provisions of the Resolution were and are in the best interests of the City and all interested parties, and were and are in conformity with the provisions of all laws and enactments at any time in force or controlling upon said proceedings, whether of law, statute or ordinance, and whether federal, state or municipal, and were and are in conformity with all requirements of all regulatory bodies, agencies or officials having authority over or asserting authority over said proceedings or any part hereof;

6. That jurisdiction of all persons interested in this matter has been obtained in accordance with law.

7. Pursuant to Section 870 of the Code of Civil Procedure, this Court permanently enjoins the institution by any person of any action or proceeding raising any issue as to which this judgment is binding and conclusive.

Judgment is hereby entered in favor of the Plaintiffs.

Dated:

OCT 18 1939

DREA.1939

Judge of the Superior Court

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>