

Hello to All, Here's a copy of a letter I sent to City Council today. Looks like the City should get reimbursed for Traffic Mitigation Impact Fee expenses. Leo

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Subject: FW: Comments & Suggested Action\_Budget Item\_AB 1600 Mitigation Fee Act Report\_ Action by City Council

Date: Thu, 31 Dec 2015 09:16:39 -0800

Dear Mayor and City Council Members, I was unable to attend the City Council meeting on December 14, 2015. Therefore, I could not provide comments in person. However, I did watch the AB1600 agenda item by video recording of the Agenda item.

Based on comments from Staff. I recommend that City Council and Staff seek an adjustment to the Traffic Impact Mitigation Fund from the unspent excess San Pedro Creek Bridge grant money. I have included more detail at the end of this message.

Overall, I was very encouraged by the comments made by City Council on the Fund 12 - AB 1600 Report. And that City Council asked for more detail in next year's AB 1600 Report. I would like to refer to the a few of the comments on the AB 1600 agenda item by City Council, Staff & Public comments that I viewed on the video:

City Council comments

(1) Council member O'Neill acknowledged that we should not hold current staff accountable for mistakes, errors and possible incompetence made by previous staff on the AB 1600 Report.

(2) Council member Keener pointed out the lack of transparency in tracking the Traffic Impact Mitigation Fee balances. That unauthorized Traffic Impact Mitigation Fee expenses had been previously charged to the San Pedro Creek Bridge. And that the Fund 12 Mitigation Fee accounting balances were commingled on the AB1600 Report, making Mitigation fund balances not transparent. He also noted that regulations prohibit commingling Impact Fees with other Revenues & Funds

(3) Council Member Nihart made a suggestion to Staff to add a line, to make it clear in the Report what is left of the Impact Fee, to get everybody back to the basics. And later supported looking at the "proportionality" issue of the Mitigation Fees.

(4) Council member Digre requested future discussion of the Mitigation Fee Act intent. And she wanted to hear that Fees were being collected and spent properly.

(5) Mayor Ervin was appreciative of the conversation and questions on Fees and how they are spent. The Mayor added that there could be another added level of clarity. We are responsible for our Yes or No votes. And that we have to ask the tough questions.

#### Public comments

(6) Mr. Blackman stated during public comments that he is concerned over the commingling of funds, it's a very important issue. And the proportion of Fees he pays for Highway 1. He said that the amount of money he pays in fees is painful.

#### Staff comments

(7) Van Ocampo, stated that 17 million dollars in Grant money exceeded the 15 million dollar cost of the construction of the San Pedro Creek Bridge.

(8) Lorenzo Hines, stated, there was no carry over in the Fund 12 Traffic Impact Mitigation Fee Balance last year. What this tells me is we spent funds to move projects along. And that next year there will be more detail in the AB1600 report.

(9) Lorie Tinfow, stated that the way we are accounting is legal and handling similar to other cities. Respectfully disagree with making a change, we are doing it properly.

(10) Michelle Kenyon, stated that accounting requirements for the Traffic Mitigation Impact fee do not mix with other Impact Fees.

#### Recommended Action:

Based on comments from Van Ocampo, 17 million dollars in Grant money exceeded the 15 million dollar cost of the construction of the San Pedro Creek Bridge. I recommend that City Council and Staff seek an adjustment to the Traffic Impact Mitigation Fund from the unspent excess San Pedro Creek Bridge grant money.

The San Pedro Creek Bridge project appears on previous AB 1600 Reports as being paid Hundreds of Thousands of dollars in Traffic Impact Mitigation fees over a ten year period. I recommend that these Traffic Impact Mitigation funds be paid back by the unspent Grant funds. Justification exists because Traffic Impact expense are not authorized by our Municipal code for the San Pedro Creek Bridge.

Staff stated there is an excess in the Grant Funds available for the San Pedro Creek Bridge and the unspent amount will to be returned. Therefore, we should recover the unauthorized San Pedro Creek Bridge expenses now.

The San Pedro Creek Bridge project appears on previous AB 1600 Reports as being paid Hundreds of Thousands of dollars in Traffic Impact Mitigation fees over a ten year period. I recommend that these Traffic Impact Mitigation funds be paid back by the Grant funds, as the Bridge expense are not authorized by our Municipal code. Staff stated there is an excess in the Grant Funds available for the San Pedro Creek

Bridge. 17million dollars in grants and 15 million dollars in construction cost. I understand the the unspent amount will to be returned.

Here's a copy of what City of Pacifica reported on its AB 1600 Reports. Revenue and \$ Expense on the San Pedro Creek Bridge 2004-2015:

|  | 2004      | 2005      | 2006     | 2007      | 2008     | 2009      | 2010      | 2011     | 2012      | 2013    |
|--|-----------|-----------|----------|-----------|----------|-----------|-----------|----------|-----------|---------|
| 2014   | 2015      | Comments  |          |           |          |           |           |          |           |         |
| Fund12 Impact Fee Totl Revenue                       |           |           |          |           | \$67,205 |           | \$42,414  |          | \$52,712  |         |
|  | \$100,894 | \$44,878  |          | \$14,006  |          | \$24,852  |           | \$14,230 |           | \$7,529 |
|  | \$9,609   | \$34,913  |          | \$27,778  |          | \$441,020 |           |          |           |         |
| Fund 12 Dollars - Hwy1 Fees: @ 7% Calera Parkway (3) |           |           |          |           |          |           |           |          | \$30,574  |         |
|  | \$9,445   | \$0       | \$0      | \$0       | \$0      | \$0       | \$0       | \$0      | \$0       | \$0     |
|  | \$40,019  |           |          |           |          |           |           |          |           |         |
| @ 20% San Pedro Cr.Br. 4)                            |           |           |          |           |          |           |           |          |           |         |
|  | \$11,344  | \$15,240  |          | \$8,941   | \$9,673  | \$17,524  |           | \$3,402  | \$26,683  |         |
|  | \$19,904  | \$202,634 |          | \$192,685 |          | \$123,538 |           | \$0      | \$631,568 |         |
| @ 15% San Pedro Terrace Bike Trail (5)               |           |           |          |           |          | \$0       | \$0       | \$0      | \$0       | \$0     |
|  | \$12,252  | \$76,953  |          | \$0       | \$0      | \$0       | \$0       | \$0      | \$89,205  |         |
| @ 4% Pacifica State Beach Pedestrian Bike Trail (7)  |           |           |          |           |          |           |           |          |           |         |
|  | \$13,760  | \$1       | \$0      | \$0       | \$0      | \$0       | \$0       | \$0      | \$0       | \$0     |
|  | \$0       | \$13,761  |          |           |          |           |           |          |           |         |
| @ 59% Engineering Services (1)                       |           |           |          |           | \$0      | \$0       | \$0       | \$0      | \$0       | \$0     |
|  | \$0       | \$0       | \$0      | \$0       | \$0      | \$8,227   | \$8,227   |          |           |         |
| Total Expenditures from Hwy 1 Fees - Fund 12         |           |           |          |           |          |           | \$55,678  |          | \$24,686  |         |
|  | \$8,941   | \$9,673   | \$17,524 |           | \$15,654 |           | \$103,636 |          | \$19,904  |         |
|  | \$202,634 | \$192,685 |          | \$123,538 |          | \$8,227   | \$782,780 |          |           |         |

In closing, I recommend that the City Council also review the basis of the Traffic Impact Mitigation Fee. The Pacifica Municipal Code identifies the construction of two Highway 1 Frontage Roads. I have previously written the City Manager on this issue. And It needs to be addressed by City Council in 2016.

Best Wishes, Happy New Year, Leo

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Subject: Budget Item\_AB 1600 Mitigation Fee Act Report\_ Action by City Council  
Date: Mon, 14 Dec 2015 13:08:33 -0800

Dear Mayor and City Council members, I took a very close look at this year's AB 1600 document: MITIGATION FEE ACT ANNUAL REPORT OF DEVELOPMENT FEES AND EXPENDITURES FOR THE YEAR ENDED JUNE 13, 2015. (attachment 1. page 12a, packet page 141.) - see attached file

It is apparent that the City of Pacifica Municipal Code and the Government Code 66000 - 66006 is not being followed. And as a result the City of Pacifica accounting balances and charges on the report are incorrect and are not in compliance with our PMC and Government Code sections. I will provide you with an explanation and the reasons for my concerns.

I. The 2014-2015 AB1600 Report does not conform to the California Code Sections 66000-66006. (See III. Annual Accounting for Fees Below.)

a. Annual Accounting for Fees excerpt: "both general law and charter cities account for every fee that they collect under its terms. Funds collected for each capital facility or service shall be deposited in separate accounts and not commingled with any other funds for other impact fees(Gov. Code § 66006(a)."

(1) The City of Pacifica , Report for 2014-2015, Beginning and Ending Balances and Adjustment for prior year contain commingled revenues and expenses in the Fund 12 Balance . Both the California code and Pacifica Municipal Code section 08-15 prohibit the commingling of Funds..

(2) The City of Pacifica , Report for 2014-2015, has improper accounting of the Beginning and Ending Balances and Adjustment for current and prior years.. The City of Pacifica Report does not account for Traffic Impact Mitigation Fees in the FY Beginning and Ending Balances. The accounting for the Traffic Impact Mitigation Fee is not shown. Instead the FY 2014-15 balances contain a mix of Fund 12 Impact Fee and Other Revenue Balances. Both the California code and Pacifica Municipal Code section 08-15 prohibit the commingling of Funds.

(3) The net result of the 2014-2015 Report is a lack of Accounting for the Traffic Impact Mitigation Fees as required. The City of Pacifica Fund 12 Report has commingled Begin Year and End Year balances.

(4) A review of the Annual Report of City of Pacifica for prior years 2004-2014 show the same accounting practices of commingled balances. As a result FY 2004-2014 Reports are also inconsistent and non compliant.

(5) Cindy Mosser told me that Fund 12 Traffic Impact Mitigation Fee Revenues are not kept in a separate bank account. The Traffic Impact Mitigation Fees are accounted for by account number. And the Fees are deposited with other City of Pacifica funds. .

II. Analysis of Fund 12 Traffic Impact Mitigation Fee and other Revenue from City of Pacifica 2004-2015. (see the attached Excel Spreadsheet).

|   | 2004       | 2005      | 2006      | 2007     | 2008     | 2009     | 2010     | 2011      | 2012     | 2013    |
|---|------------|-----------|-----------|----------|----------|----------|----------|-----------|----------|---------|
| (a) Fund12 Impact Fee Totl Revenue                  |            |           |           |          |          | \$67,205 |          | \$42,414  |          |         |
|   | \$52,712   | \$100,894 |           | \$44,878 |          | \$14,006 |          | \$24,852  |          |         |
|   | \$14,230   | \$7,529   | \$9,609   | \$34,913 |          | \$27,778 |          | \$441,020 |          |         |
| Fund 12 Dollars - Hwy1 Fees:                        |            |           |           |          |          |          |          |           | \$0      | \$0     |
| @ 7% Calera Parkway (3)                             | \$0        | \$0       | \$0       | \$0      | \$0      | \$0      | \$0      | \$0       | \$0      | \$0     |
| @ 20% San Pedro Cr.Br. (4)                          |            |           |           | \$11,136 |          | \$4,937  | \$1,788  | \$1,935   | \$3,505  | \$3,131 |
|   | \$20,727   | \$3,981   | \$40,527  |          | \$38,537 |          | \$24,708 |           | \$0      |         |
|   | \$154,911* |           |           |          |          |          |          |           |          |         |
| @15% San Pedro Terrace Bike Trl(5)                  |            |           |           |          |          | \$0      | \$0      | \$0       | \$0      | \$0     |
|   | \$0        | \$0       | \$0       | \$0      | \$0      | \$0      | \$0      |           |          |         |
| @ 4% Pacifica State Beach Pedestrian Bike Trail (7) |            |           |           |          |          |          |          | \$0       | \$0      | \$0     |
|   | \$0        | \$0       | \$0       | \$0      | \$0      | \$0      | \$0      | \$0       | \$0      |         |
| @ 59% Engineering Services (1)                      |            |           |           |          | \$0      | \$0      | \$0      | \$0       | \$0      | \$0     |
|   | \$0        | \$0       | \$0       | \$0      | \$8,227  | \$8,227  |          |           |          |         |
| (b)Total Expenditures from Hwy 1 Fees - Fund 12     |            |           |           |          |          |          |          | \$11,136  |          | \$4,937 |
|   | \$1,788    | \$1,935   | \$3,505   | \$3,131  | \$20,727 | \$3,981  | \$40,527 |           | \$38,537 |         |
|   | \$24,708   | \$8,227   | \$163,138 |          |          |          |          |           |          |         |

(c)Total Revenue for Hwy1 -

|                       |           |             |             |             |
|-----------------------|-----------|-------------|-------------|-------------|
| Fund 12 - All sources |           | \$1,453,702 | \$297,931   | \$180,588   |
|                       | \$142,105 | \$117,271   | \$44,353    | \$529,758   |
|                       | \$788,173 | \$780,347   | \$1,556,951 | \$2,903,097 |

|                                |             |             |           |             |
|--------------------------------|-------------|-------------|-----------|-------------|
| (d) Total of Itemized Expenses |             | \$1,087,633 | \$268,363 | \$72,585    |
|                                | \$82,608    | \$104,722   | \$137,925 | \$675,219   |
|                                | \$1,044,375 | \$991,565   | \$631,263 | \$2,889,417 |

(a) Fund 12 Impact Fee Revenue for years 2004-2015 shows a Total of: \$441,020  
 (b) Fund 12 Impact Fee Expenses for years 2004-2015 shows a Total of: \$163,138\*  
 (c) Fund 12 Impact Fee Balance for Years 2004-2015: \$277,882\*  
 San Pedro Creek Bridge is not listed in PMC 08-15.02 & .03 as eligible for Impact Fees

I suggest and request that each City Council member address all the issues I have raised, and not approve the 2014-2015 Report as presented. The 2014-2015 Report must include yet to be corrected information from prior years. This will require a thorough review of all the available Mitigation Fee Act Reports. The prior year reports show that Traffic Impact Mitigation Fees have been spent on the San Pedro Creek Bridge. The San Pedro Creek Bridge is NOT one of the projects approved for Impact Fee expenditures. I have attached City of Pacifica reports for years 2004-2015.

Thanks for your attention to this very important issue. Best wishes, Leo

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Attachments, Files

Pacifica Municipal Code Chapter 15 Title 8:  
 Sec. 8-15.02. – Findings (e) The City Engineer has investigated the needs as identified by the Highway One Committee and the Department of Transportation of the State and proposed improvements and finds the following highway needs have no identified source of funds for construction:

- (1) Realignment of the entry road to Pedro Point in that access is provided from the light at Linda Mar Boulevard and Highway One with a right-hand turn lane on Highway One at that intersection with the realigned road to Pedro Point;
- (2) Construction of a frontage road system between San Pedro Road and Rockaway Beach Boulevard and on the east side of the highway between Fassler Avenue and Reina del Mar;

- (3) Construction of a frontage road on the west side of Highway One between Rockaway Beach Boulevard and Westport Drive;
- (4) Construction of a bike and pedestrian path from San Pedro Road to Westport Drive on the west side of Highway One; and
- (5) Construction of appurtenances to the needed construction, including, but not limited to, lighting, landscaping, signing, and the like, and the administration and design of the project.

Sec. 8-15.03. - Definitions. (d) Highway One improvements. "Highway One improvements" shall mean those improvements described in subsection (e) of Section 8-15.02 of this chapter

Sec. 8-15.05. - Traffic impact mitigation improvements: Disposition of revenues. There is hereby created in the City a "Highway One Improvement Fund" into which all traffic impact mitigation fees collected pursuant to this chapter shall be deposited. The money in said fund shall be segregated from other City funds and shall be expended solely for the construction of Highway One improvements within the impacted area

Annual Accounting for Fees. both general law and charter cities account for every fee that they collect under its terms. Funds collected for each capital facility or service shall be deposited in separate accounts and not commingled with any other funds for other impact fees(Gov. Code § 66006(a).) While funds are accruing for individual capital facilities, the city must keep track of each fund and provide an annual report. (Gov. Code § 66006(b).) If the city fails to accurately account for the collected fees, the city can be required to refund the fees. (Gov. Code § 66001(d).) Within 180 days after the last day of the fiscal year, the city must make available the following information: • A brief description of the type of fee in each account or fund; • The amount of the fee; • The beginning and ending balance of the account or fund; • The amount of the fees collected and the interest earned; • An identification of each public improvement on which fees were expended and the amount of each expenditure; • An identification of the approximate date by which the construction of the public improvement will commence; SB 322494 v4:000009.0001 19 • A description of any inter-fund transfer or loan and the public improvement on which the transferred funds will be expended; • The amount of refunds made and any allocations of unexpended fees that are not refunded. (Gov. Code § 6606(b)(1).) At the next regularly scheduled public meeting not less than 15 days after making the above information available to the public, the city must review the information provided. (Gov. Code § 66006(b)(2).) Section 66001 contains some extremely important, additional, accounting requirements to which scrupulous compliance is required. Section 66001(d) provides that, for the 5th fiscal year following the first deposit into each public improvement account or fund, and every 5 years thereafter the agency must make the following findings for funds remaining in each development impact fee account: (1) Identify the purpose to which the fee is to be put. (2) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged. (3) Identify all sources and amounts of funding anticipated to

complete financing in incomplete improvements identified in paragraph (2) of subdivision (a). (4) Designate the approximate dates on which the funding referred to in paragraph (3) is expected to be deposited into the appropriate account or fund. If the agency fails to make the findings, it must refund any undisbursed monies to the owner of record of the project sites originally contributing to the funds. (Gov. Code § 66001(d).) Similarly, when sufficient funds have been collected to complete financing of the public improvements contained in the CIP, the public agency within 180 days of collection of the required funds shall identify "an approximate date by which the construction of the public improvement will be commenced." (Gov. Code § 66001(e).) Failure to comply with this requirement also mandates return of the collected funds, as stated above.