



MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT
Citizens' Bond Oversight Committee

Monday, August 29, 2016
3:00 PM – Regular Meeting
Sam Karas Room, Library and Technology Center
Monterey Peninsula College
980 Fremont Street, Monterey, California

MEETING AGENDA

1. **Call to Order**
2. **Public Comment**
Members of the audience wishing to address the Citizens' Bond Oversight Committee may do so during the public comment period. Under provisions of the Brown Act, the Committee is prohibited from discussing or taking action on oral requests that are not part of the agenda. Comments are limited to three minutes per person or as determined by the Committee.
3. **Approval of June 13, 2016 Minutes** ACTION
4. **Bond Refinancing Follow-Up** INFORMATION
5. **Accept Bills and Warrants Report** ACTION
The list of payments from bond funds expended through June 30, 2016 will be reviewed for acceptance by the committee.
6. **Bond Expenditure Status Report** INFORMATION
The June 30, 2016 bond expenditure status report will be reviewed with the committee.
7. **Monterey County Treasurer's Investment Report** INFORMATION
The bonds issued by the district have been invested with the Monterey County Treasurer's office. The Treasurer's Report of Investments, for the quarter ending June 30, 2016, provides a review of asset allocation and investment performance.
8. **Membership Update** INFORMATION

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|---|-------------|
| 9. Facilities Needs and New Bond Measure | INFORMATION |
| 10. Meeting Schedule
Future meetings of the Committee are scheduled for: <ul style="list-style-type: none">• Monday, November 7, 2016 (Annual Organizational Meeting) | INFORMATION |
| 11. Suggestions for Future Agenda Topics and Announcements <ul style="list-style-type: none">• Facilities Planning Update | INFORMATION |
| 12. Adjournment | |

Public records provided to the Committee for the items listed on this agenda may be viewed online at the College's website <http://www.mpc.edu/about-mpc/campus-information/mpc-bond-measure/citizen-s-bond-oversight-committee/meeting-agenda-minutes>, at the Superintendent/President's office, Monterey Peninsula College, 980 Fremont Street, Monterey, California during normal business hours, or at the Committee meeting.

Posted: August 24, 2016



MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT
Citizens' Bond Oversight Committee

Monday, June 13, 2016
3:00 PM – Regular Meeting
Sam Karas Room, Library and Technology Center
Monterey Peninsula College
980 Fremont Street, Monterey, California

Meeting Minutes

MEMBERS PRESENT: Mr. Thomas Gaspich
Mr. Rick Heuer
Mr. Birt Johnson, Jr.
Mr. Stephen Lambert
Ms. Sharon Larson
Mr. Rob Lee
Mr. James Panetta, Chair

ABSENT: Mr. Wayne Cruzan, Vice Chair
Mr. Hunter Harvath

STAFF PRESENT: Ms. Rosemary Barrios, Controller
Dr. Steve Crow, Vice President for Administrative Services
Ms. Vicki Nakamura, Assistant to the President
Dr. Walter Tribley, Superintendent/President

OTHERS PRESENT: Ms. Ivory Li, Piper Jaffray

1. Call to Order

The regular meeting of the Citizens' Bond Oversight Committee of Monterey Peninsula College was called to order at 3:00 PM by Chair Panetta.

2. Public Comment

Dr. Tribley recognized Mr. Johnson for his role as the keynote speaker at the Coalition of Scholarship Organizations' annual scholarship breakfast held in early June.

3. Approval of February 29, 2016 Minutes

Ms. Nakamura reported that Mr. Johnson had informed her of an error in the draft minutes regarding the number of members listed as absent during the votes taken at the meeting. A corrected copy of the minutes was distributed.

Motion made by Mr. Johnson, seconded by Mr. Lee, to approve the minutes of the February 29, 2016 meeting, with the corrections noted. Motion carried, with two abstentions.

AYES:	5 MEMBERS:	Gaspich, Johnson, Lambert, Larson, Lee
NOES:	0 MEMBERS:	None
ABSENT:	2 MEMBERS:	Cruzan, Harvath
ABSTAIN:	2 MEMBERS:	Heuer, Panetta

4. Accept Bills and Warrants Report

Chair Panetta advised the report would be reviewed by page and invited questions. There were no questions on page 1.

Regarding the expenditure for an awning at the Student Center on page 2, Mr. Johnson asked if Bruce Kiddle was a new contractor. Ms. Barrios responded he has been used before. Dr. Crow explained the awning adds a safety factor.

There were no further questions regarding the report.

It was moved by Ms. Larson and seconded by Mr. Johnson to accept the March 31, 2016 bills and warrants report. Motion carried unanimously.

AYES:	7 MEMBERS:	Gaspich, Heuer, Johnson, Lambert, Larson, Lee, Panetta
NOES:	0 MEMBERS:	None
ABSENT:	2 MEMBERS:	Cruzan, Harvath
ABSTAIN:	0 MEMBERS:	None

5. Bond Expenditure Status Report

Dr. Crow commented the report reflects minor activity that occurred during the period. He asked for questions. Mr. Gaspich asked about the miscellaneous category year-to-date expenditures of \$4,919. Ms. Barrios responded that the awning expenditure of \$3,000 was part of the miscellaneous expense. She said she would research previous expenditures made under this category and report back. Mr. Lee checked prior meeting documents and noted the remaining miscellaneous expenditure of \$1,919 for fiber installation at the Art Gallery.

Mr. Heuer asked if the Arts Complex project was partially completed. It was explained that the Art Dimensional building was not renovated as decisions were needed about its future. The result was that \$1.1 million in funding was reserved in the project budget. Mr. Heuer observed those funds could be used for another project.

6. Bond Refinancing

Dr. Tribley noted Dr. Crow brought forward to the District the opportunity for this bond refinancing. The District's bond underwriter, Ms. Ivory Li, Managing Director, Piper Jaffray, was introduced to make the presentation on the recent refinancing.

Ms. Li reviewed the history of the District's \$145 million bond Measure I, noting there was 65% voter approval in 2002, 10% above Proposition 39 requirements. The estimated tax rate was \$23.89

per \$100,000 assessed valuation. She clarified this rate was a political promise and not a legal maximum. The \$145 million of bond funds have been entirely issued by the District.

She noted there were three bond refinancing issuances that have been completed. The amount of savings generated for the taxpayers was approximately \$500,000 from the first refinancing in December 2005, \$1.4 million in the second refinancing in May 2013, and \$28 million in the third financing completed in June 2016, for a total of \$30 million. Mr. Gaspich asked if there was insurance on the bonds. Ms. Li responded no, that the District's rating was better than the bond insurers.

Ms. Li reviewed the tax rate performance history of the bond. She commented the tax was underlevied in 2014 at \$15.77. The shortfall was made up in 2015 when the County set the tax rate at \$32.47. The average tax rate over the past 12 years has been \$22.09.

She explained a bond refinancing is similar to refinancing a home mortgage, where a higher interest rate is replaced by a lower rate. In the 2016 bond refinancing, the interest rate of 5.03% was lowered to 2.87%, resulting in a total savings to the taxpayers of \$28 million. In response to a question from Mr. Gaspich, Ms. Li indicated the total cost of the refinancing was \$800,000, which was subtracted from the refunding bond proceeds.

Ms. Li reviewed a summary chart showing municipal bond interest rates currently at historic lows. She stated the bonds will remain on the tax roll for 18 more years, until 2034. Ms. Li noted the savings will be distributed in the later years of the bond. Mr. Johnson asked what triggers a bond refunding. She explained that she monitors the term and interest rate of the bond to determine when a bond refunding might be fiscally appropriate.

Ms. Li closed her presentation with the press release on the bond refinancing that was shared with the community. Ms. Larson asked if the bonds are being paid down and what happens in 2034. Ms. Li explained the bonds will be paid off in 2034 and taxpayers will no longer have to pay taxes related to Measure I. Mr. Gaspich asked for the outstanding principal on the bonds. Ms. Li did not have the exact figure and said she would provide.

Mr. Heuer commented the voters only authorized a certain amount for Measure I bond projects in 2002. Referring to the 2005 bond refinancing where \$4.2 million of bond proceeds were allocated for college bond projects, he contended it would be illegal if these funds were actually spent.

Staff will report back to the Committee regarding the outstanding principal on the bonds and the refinancing issue raised by Mr. Heuer.

7. Monterey County Treasurer's Investment Reports

Dr. Crow reported interest rates remain low as shown in the December 31, 2015 and March 31, 2016 quarterly investment reports issued by the Monterey County Treasurer. There were no questions.

8. Facilities Planning Update

Dr. Crow distributed an outline for a facilities master plan for the District, to cover the period 2016-2030. He stated the outline has been through the Facilities Committee and will be used as a basis for

gathering data. He reviewed the outline, noting MPC is an aging campus which will cost more to retrofit. Ms. Larson asked when the plan would be completed. Dr. Crow said the plan would be presented to the Board of Trustees in the next few months. Mr. Johnson asked about prioritization of upgrades to facilities. Dr. Crow agreed a prioritization would need to be done. He said he would also put together phases for the plan, to be determined by the availability of state and local bond funding.

9. Superintendent/President's Update

Dr. Tribley stated Dr. Crow's work on facilities planning will provide the basis for a future bond measure. He continued with his update. Dr. Tribley noted the college would be hosting an accreditation team in October for a site evaluation. He said MPC had completed a self-study describing the college's efforts to fulfill accreditation standards. The site evaluation and self-study will result in a decision by the Accrediting Commission regarding the college's continued accreditation.

Dr. Tribley also reported a consultant team from the Collaborative Brain Trust was hired to assist MPC with an external review, which was completed in May. The team consisted of retired community college administrators who were experts in finance, academic scheduling, etc. Dr. Tribley discussed the college's recent financial problems and the causes. He said the consultant team reported on three areas: fiscal, enrollment management, and governance processes. The team recommended a number of changes, including more efficiency in enrollment management and course scheduling, and changes in participatory governance processes.

10. Meeting Schedule

Chair Panetta reviewed future meeting dates:

- Monday, August 29, 2016
- Monday, November 7, 2016 (Annual Organizational Meeting)

11. Suggestions for Future Agenda Topics and Announcements

Mr. Johnson requested a facilities planning update.

12. Adjournment

Motion made by Mr. Johnson and seconded by Ms. Larson to adjourn the meeting at 3:59 PM. Motion carried unanimously.

AYES:	7 MEMBERS:	Gaspich, Heuer, Johnson, Lambert, Larson, Lee, Panetta
NOES:	0 MEMBERS:	None
ABSENT:	2 MEMBERS:	Cruzan, Harvath
ABSTAIN:	0 MEMBERS:	None

Bond Refinancing Follow-Up

At the June 13, 2016 meeting, the committee requested follow-up on two items related to bond refinancing:

- the outstanding bond principal, and
- the allocation of 2005 bond refunding proceeds to projects.

Regarding the first item, information on the outstanding bond principal will be provided at the meeting.

With respect to the second item, the allocation of 2005 bond refunding proceeds to projects, information from the June 2009 CBOC meeting on the topic is attached for the committee's review, including the "Cash-out Refundings Update" from District bond counsel and the January 2009 Attorney General's opinion. Also, Mr. David Casnocha, District bond counsel, will be present at the meeting to address this issue.



MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT
Citizens' Bond Oversight Committee

Monday, June 8, 2009
2:00 PM – Committee Tour of College Facilities Projects
3:00 PM – Regular Meeting
Sam Karas Room, Library and Technology Center
Monterey Peninsula College
980 Fremont Street
Monterey, California

MEETING AGENDA

1. Call to Order

2. Public Comment

Members of the audience wishing to address the Citizens' Bond Oversight Committee may do so during the public comment period. Under provisions of the Brown Act, the Committee is prohibited from discussing or taking action on oral requests that are not part of the agenda. Comments are limited to three minutes per person or as determined by the committee.

3. Issuance of Cash-Out Refunding Bonds

INFORMATION

The district's bond counsel, David Casnocha, will report on a recent Attorney General's opinion concerning the issuance of cash-out refunding bonds.

4. Approval of March 2, 2009 Minutes

ACTION

5. Accept Bills and Warrants Report

ACTION

The list of payments from bond funds expended through March 31, 2009 will be reviewed for acceptance by the committee.

6. Bond Expenditure Status Report

INFORMATION

The March 31, 2009 bond expenditure status report will be reviewed with the committee. The May 2009 cost control report will also be presented.



“CASH-OUT REFUNDINGS” UPDATE

On January 9, 2009, the Attorney General issued his advisory opinion concerning cash-out refundings. While different bond counsel firms used alternative approaches to cash-out refundings -- direct issuance (our approach) versus issuance by a joint powers authority -- each approach was addressed by the Attorney General and determined to violate the California Constitution for two reasons: 1) when cash-out refunding proceeds are not used to retire the designated outstanding bonds, they “result in the creation of new indebtedness for purposes of the constitutional debt limit, and therefore require new voter approvals before they may be issued,” and 2) a “district would lack the authority to levy taxes to support this additional debt without further voter approval.”

It is important to recognize that this opinion did not examine any specific bond issuance, but rather addressed a hypothetical set of bond issuance assumptions. We suspect that many bond lawyers remain puzzled by some aspects of the Attorney General’s legal analysis.

We note that to our knowledge, at least seven of the top bond counsel firms in California have issued approving opinions on cash-out refundings, that over one year ago many of those law firms submitted to the Attorney General written comments regarding the validity of such financings, and that in releasing Opinion No. 06-1102 the Attorney General was not persuaded by the views of the bond counsel community. However, because Attorney General opinions, while they are non-binding and do not have the force of law, are considered by courts to be “persuasive,” we are advising our school and community college district clients to not use cash-out refundings to finance bond projects until the concerns raised by the Attorney General are addressed by the courts or the Legislature.

As to districts which have issued cash-out refunding bonds and have concerns regarding the validity of their bonds and expenditures, it is important to stress that the Attorney General’s opinion also concludes that cash-out refunding bonds approved by districts more than 60 days ago (which we suspect includes all previous financings of all districts) are valid and immune from successful challenge because the 60-day statute of limitations to challenge the validity of bonds and bond expenditures has long since elapsed. The Attorney General notes that the primary remedy to prevent the expenditure of cash-out refunding proceeds is an action to invalidate the bond issuance under Education Code section 15110 and Code of Civil Procedure section 860 *et seq.* The Attorney General notes, however, that such a challenge “is available only if the challenge is filed within 60 days after the bonds were authorized to be issued.” Consequently, all of the cash-out refunding bonds are valid, the tax levy that secured the bonds are valid, and the expenditure of the “cash” on voter-approved projects is valid.

The Attorney General further notes that a legal action may be brought under Education Code section 15284 to restrain or prevent expenditures of bond proceeds in excess of the authority given by the voters in approving the issuance of the bonds. However, this “remedy may also be available only if the action is filed within 60 days after the bonds were authorized.”

A third remedy described by the Attorney General is an action under Code of Civil Procedure section 526a to enjoin any illegal expenditure or waste of district funds. Based on the Attorney General’s citation to the decision in *McLeod v. Vista Unified School Dist.* (2008) 158 Cal.App.4th 1156, 1164-1170, such a lawsuit would have the same 60-day statute of limitation as an action to



invalidate the bond issuance or enjoin unauthorized bonds proceeds under Education Code section 15284. Thus, a taxpayer's lawsuit for waste is barred.

Finally, the Attorney General notes that he has broad power to bring an action to enforce state law. We believe, however, that any action filed by the Attorney General on behalf of an interested person, including the State, would likewise be subject to the validation statute and the 60-day statute of limitation to challenge the validity of cash-out refundings or unauthorized expenditures.

In conclusion, due to the Attorney General's underscoring of the limited remedies available against completed cash-out refundings, his recognition that bond transactions done to date have been validated, the Attorney General's opinion appears to reflect a going-forward policy statement with his warning that refundings which do not account for his policy preferences might be subject to Attorney General intervention.

For further information concerning cash-out refundings and the Attorney General opinion, please contact David G. Casnocha at dcasnocha@sycr.com or at (415) 283-2240.

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

EDMUND G. BROWN JR.
Attorney General

OPINION	:	No. 06-1102
	:	
of	:	January 9, 2009
	:	
EDMUND G. BROWN JR.	:	
Attorney General	:	
	:	
CONSTANCE L. LeLOUIS	:	
Supervising Deputy Attorney General	:	
	:	
DANIEL G. STONE	:	
Deputy Attorney General	:	

THE HONORABLE S. JOSEPH SIMITIAN, MEMBER OF THE STATE SENATE,
has requested an opinion on the following questions:

1. When a school district has outstanding voter-approved general obligation bonds, may the district issue refunding general obligation bonds without further voter approval at a price or an interest rate that will generate proceeds in excess of the amount needed to retire the outstanding bonds?

2. May a school district that has issued refunding general obligation bonds without a vote of the electorate spend proceeds from that bond sale to supplement funding for the original voter-authorized projects; to fund additional capital projects; or for other purposes unrelated to paying off the outstanding bonded indebtedness?

3. May a school district issue refunding general obligation bonds to refund previously issued bonds without obtaining voter approval if doing so will result in: (a) an increase in the district's ad valorem property tax rates; or (b) a maintaining of the district's ad valorem property tax rates at their previous levels when a reduced rate would suffice to refund the original voter-approved bonds?

4. If a school district applies the proceeds from the sale of refunding general obligation bonds to purposes not authorized by law, what are the possible consequences to the district?

5. May a school district, acting without voter approval, sell refunding general obligation bonds to a joint powers authority at par value but with an above-market interest rate in exchange for the joint powers authority's agreement to issue its own revenue bonds and to use the resulting proceeds both to purchase the school district's refunding bonds and to fund the construction of additional school facilities?

CONCLUSIONS

1. Absent specific approval from the district's electors, a school district may not issue refunding general obligation bonds at a price or an interest rate that will generate proceeds in excess of the amount needed to retire the designated outstanding bonds.

2. Without voter approval, a district may not use proceeds from a refunding general obligation bond to provide supplemental funding for unfinished projects, even if the projects were previously approved by the electorate, or for any other purpose except to pay off the designated outstanding bonds.

3. Because a school district lacking voter approval may not issue refunding general obligation bonds to generate more proceeds than are necessary to refinance the district's targeted debt, the district is likewise prohibited from setting or maintaining ad valorem property tax rates at a level higher than necessary to refinance that targeted debt.

4. A school district's application of proceeds from the sale of refunding general obligation bonds to purposes not authorized by law may result in litigation to invalidate the bond issue or to restrain unauthorized expenditures, if timely filed; taxpayer lawsuits; or actions by the Attorney General.

5. Because the proposed arrangement between a school district and a joint powers authority would result in a refunding bond issuance in excess of that needed to merely refund the district's designated outstanding bonded indebtedness, both the refunding bond issuance

and the higher tax required to support it are constitutionally impermissible without specific voter approval.

ANALYSIS

The most common means by which California school districts finance new school construction is the issuance of “general obligation bonds.”¹ These serve much the same function as home loans obtained by homeowners to finance the purchase, construction, or improvement of their homes. Bond buyers supply the issuing school district with immediate funds to apply to construction projects, and the district then repays the bonds over time, with interest, “by an annual levy of an *ad valorem* tax on real (and certain personal) property located within the area of the district.”² *Ad valorem* taxes are based on the appraised value of the property.³

School district bonds are subject to a number of constitutional and statutory conditions and restrictions, the foremost of which is the constitutional requirement of voter approval. Traditionally, school construction bonds have required approval by two-thirds of the district’s voters.⁴ Under a 2000 amendment to the state constitution, however, approval by 55 percent of the voters suffices if specified conditions are met.⁵

The questions presented here pertain to a school district’s issuing, without voter approval, “refunding general obligation bonds” (also referred to here as refunding bonds)

¹ *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified Sch. Dist.*, 139 Cal. App. 4th 1356, 1395 (2006) (citing 62 Ops.Cal.Atty.Gen. 209, 210 (1979)).

Black’s Law Dictionary 191 (8th ed. 2004), defines “general obligation bond” as a “municipal bond payable from general revenue rather than from a special fund. . . . Such a bond has no collateral to back it other than the issuer’s taxing power.”

² *San Lorenzo Valley Community Advocates*, 139 Cal. App. 4th at 1395.

³ See *Black’s Law Dictionary* 1496 (“Tax. *Ad valorem tax*”).

⁴ Cal. Const. art. XIII A, § 1(b)(2); art. XVI, § 18(a).

⁵ Cal. Const. art. XIII A, § 1(b)(3); art. XVI, § 18(b); see *Committee for Responsible Sch. Expansion*, 142 Cal. App. 4th 1178, 1184-1185 (2006); 87 Ops.Cal.Atty.Gen. 157, 157-159 (2004).

which, generally speaking, refinance designated existing general obligation bonds by either immediately retiring those outstanding bonds or, if the terms of the bonds do not permit immediate retirement, by setting up an escrow account to retire them when appropriate.⁶ More specifically, the questions require us to explore what we view as a distinctly different process, often referred to as “cash-out refunding” or “refunding plus,” by which a district—again, without voter approval—not only obtains proceeds sufficient to retire existing valid outstanding bonds, but generates *additional* proceeds, or premium, for other purposes. Before addressing the specific questions posed, we provide an overview of the context in which refunding bonds arise, beginning with issuance of the district’s original, or “new money,” bonds.

“New-Money” Construction Bonds

It is well established that school districts have broad authority to conduct their affairs as they see fit.⁷ But a school district’s power is not unlimited. “[W]hile the powers of a school district are broad, they may not be exercised in a manner that is in conflict [with], inconsistent [with], or preempted by state law.”⁸ For example, a school district’s discretion with respect to a certain activity may be superseded by a comprehensive statutory plan governing that activity.⁹

School districts seeking to fund new construction are ordinarily subject to constraints found in two provisions of the California Constitution. Article XVI, section 18, requires either two-thirds or 55-percent voter approval before a school district may issue general obligation bonds.¹⁰ Under this provision, commonly known as the state’s “constitutional debt

⁶ See Govt. Code §§ 53551, 53555, 53558, 53580(c).

⁷ See Cal. Const., art. IX, § 14; Educ. Code §§ 35160, 35160.1.

⁸ Educ. Code § 35160; see *Hartzell v. Connell*, 35 Cal. 3d 899, 915 (1984).

⁹ See *Cumero v. Pub. Empl. Rel. Bd.*, 49 Cal. 3d 575, 591 (1989) (detailed Education Code provisions governing employment matters supersede district control over many terms of teachers’ employment).

¹⁰ Article XVI, section 18(a) provides, in pertinent part:

No . . . 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, without the assent of two-thirds of the voters . . . ; nor unless before or at the time of incurring such indebtedness provision shall be

limit” for local government,¹¹ a school district wishing to issue bonds must either obtain the requisite voter approval or qualify under some recognized exception to the debt-limit restriction.¹² The purpose of the constitutional debt limit is to make local agencies’ long-term expenditures subject to taxpayers’ oversight and approval.¹³

At the same time, article XIII A, section 1, functions as a tax cap, setting a one-percent ceiling on the *ad valorem* property tax rate that a local district may levy, with some exceptions. One exception, found in subdivisions (b)(2) and (b)(3) of article XIII A, section 1, authorizes the levying of additional *ad valorem* taxes on real property to pay the principal and interest on those voter-approved bonds satisfying the conditions of article XVI, section 18.

Thus, article XIII A, section 1, and article XVI, section 18, work in tandem. A school district may not levy *ad valorem* property taxes in excess of one percent except to support debt that existed prior to July 1, 1978¹⁴ or debt resulting from voter-approved bonds

made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and to provide for a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the indebtedness.

Section 18(b) then provides in pertinent part that, for school districts,

. . . any proposition for the incurrence of indebtedness in the form of general obligation bonds for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, shall be adopted upon the approval of 55 percent of the voters . . . if the proposition meets all of the accountability requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A.

¹¹ *State ex rel. Pen. Oblig. Bond Comm. v. All Persons Interested in Matter of Validity of Cal. Pen. Oblig. Bonds to Be Issued*, 152 Cal. App. 4th 1386, 1398 (2007) (hereafter “*All Persons Interested*”).

¹² *See, e.g., City of Long Beach v. Lisenby*, 180 Cal. 52 (1919) (voter approval not required where bond pays debt imposed by adverse court judgment).

¹³ *In re Co. of Orange*, 31 F. Supp. 2d 768, 776-777 (1998).

¹⁴ Cal. Const. art XIII A, §1(b)(1).

satisfying article XVI, section 18.¹⁵ Accordingly, the school district needs voter approval for both pieces of the construction-bond process—i.e., both to issue the bonds and to levy the tax to repay them.

Proposition 39, adopted in the 2000 statewide general election, lowered the voter-approval threshold to 55 percent for school districts, community college districts, and county offices of education when certain conditions are met.¹⁶ This change was intended to make it easier to pass school bonds.¹⁷ Under Proposition 39, once a school district obtains 55 percent voter approval and satisfies all other applicable conditions, it may incur “bonded indebtedness . . . for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities”¹⁸ Proceeds from the sale of such bonds may not be used for any other purpose, including salaries or other operating expenses.¹⁹

In addition to these constitutional limitations, a school district must comply with applicable statutory conditions governing issuance of general obligation bonds.²⁰ The primary statutes controlling these matters are found in Education Code sections 15000 through 15425. These provisions contain detailed requirements relating to the bonds themselves and to the elections by which voter approval is to be sought.²¹ Voters authorize

¹⁵ Cal. Const. art. XIII A, §§1(b)(2) and (3).

¹⁶ Prop. 39, § 4, Gen. Elec. (Nov. 7, 2000); Cal. Const. art. XVI, § 18(b). *See* Cal. Const. art. XIII A, § 1(b)(3); *Foothill-De Anza Community College Dist. v. Emerich*, 158 Cal. App. 4th 11, 23 (2007).

¹⁷ *Foothill-De Anza*, 158 Cal. App. 4th at 23.

¹⁸ Cal. Const. art. XIII A, § 1(b)(3).

¹⁹ Cal. Const. art. XIII A, § 1(b)(3)(A). *See also San Lorenzo Valley Community Advocates*, 139 Cal. App. 4th at 1403 (costs of bond issuance, as itemized in Educ. Code § 15145(a), may be paid from bond proceeds); 87 Ops.Cal.Atty.Gen.157, 161-163 (2004) (employee salaries may be paid from bond proceeds only to extent that employees perform work on approved bond projects).

²⁰ *Sutro v. Petit*, 74 Cal. 332, 336-337 (1887).

²¹ *See* 66 Ops.Cal.Atty.Gen. 321, 323-324 (1983).

a maximum principal amount for bonds,²² approve the purposes for which bond proceeds may be spent,²³ and ratify the projects to which bond proceeds may be applied.²⁴ Voter materials must specify a maximum interest rate and a maximum duration for each bond.²⁵ These parameters have been likened to terms of a contract between the district and the voters.²⁶

Bonds may be sold by negotiated sale or by competitive bidding.²⁷ This means that a district may either negotiate a purchase price with a purchaser or underwriter, or put the bonds out to public bid. In either event, however, the sales are subject to statutory and other legal protections intended to ensure that bond sales are made on the best terms available to the district and its voters.²⁸

Refunding Bonds and “Cash-Out” Refunding

Interest rates in the bond market fluctuate over time, often declining significantly. Consequently, many currently outstanding bonds may have issued at a time when interest rates were substantially higher than current rates. When those bonds permit early redemption, some school districts consider issuing another set of bonds to refinance the earlier bonds at a lower interest rate—much as a homeowner might refinance a mortgage to obtain more favorable terms when interest rates have dropped. Such bonds issued for the

²² Educ. Code § 15122.

²³ *Id.*

²⁴ Cal. Const. art. XIII A, § 1(b)(3)(B); Educ. Code § 15122; *Comm. for Responsible Sch. Expansion*, 142 Cal. App. 4th at 1185-1191.

²⁵ Educ. Code §§ 15122, 15140(a), 15143, 15144.

²⁶ *See, e.g., Comm. for Responsible Sch. Expansion*, 142 Cal. App. 4th at 1191 (courts have “alternately described the relationship between the public entity and the electorate arising out of a bond election as either strictly contractual or analogous to a contract”); *Metro. Water Dist. v. Dorff*, 138 Cal. App. 3d 388, 398 (1982) (citing *Peery v. City of Los Angeles*, 187 Cal. 753, 769 (1922)).

²⁷ Educ. Code § 15146(a).

²⁸ Educ. Code § 15146; *see, e.g., Golden Gate Bridge v. Filmer*, 217 Cal. 754, 760-761 (1933) (public officials issuing bonds on behalf of local agency are presumed to act in good faith and to sell bonds on best terms obtainable).

purpose of refinancing a district’s outstanding bonded indebtedness are called refunding bonds.²⁹

The refunding process may also be seen as an opportunity for a school district to generate supplemental funds, in the form of a premium. This can occur if, for example, the district issues the refunding bonds at an interest rate which, while still below the rate of the original bonds, is pegged above the current market rate. Purchasers of such above-market-rate bonds are willing to pay more than the face amount for these refunding bonds at the outset—a difference referred to as the premium—because, for the life of the refunding bonds, the district will pay the purchasers a higher interest rate than would be paid on the purchase of contemporaneously issued bonds sold at their face amount. Refunding bonds issued for the dual purpose of providing new funding as well as refinancing a district’s outstanding bonded indebtedness are sometimes called “cash-out refunding bonds.”

It is our opinion that some, but not all, kinds of refunding bonds may be constitutionally issued without voter approval. In general, we believe that refunding bonds issued *only* for the purpose of refunding valid existing general obligation bonds do not create new indebtedness within the meaning of the constitutional debt limit and do not, therefore, require voter approval, and we believe that a court, if presented with this question, would agree. This view is consistent with the Legislature’s apparent understanding and intent in enacting various statutes that authorize local agencies to issue refunding bonds without voter approval so long as the proceeds are used only for purposes of refunding the original bonds.³⁰ This view is also consistent with case law in other jurisdictions having similar constitutional or statutory voter-approval requirements for new bonded indebtedness.³¹

²⁹ For purposes of this analysis, we assume that the duration of refunding bonds would not exceed the maximum period permitted by law. Cal. Const. art XVI, § 18. *See, e.g.,* Govt. Code § 53553(e).

³⁰ Govt. Code §§ 53580 (defining refunding bonds as bonds issued to refund bonds), 53555 (requiring refunding bond proceeds to be deposited in escrow to refund original bonds), 53582 (prohibiting local agency from requiring escrow deposit of more funds than necessary to refund original bonds); *see also* Govt. Code § 53587 (permitting use of refunding bond proceeds for ancillary costs of refunding transaction).

³¹ *See City of Anadarko v. Kerr*, 285 P. 975 (Okla. 1930); *Com. ex rel. Keller v. Cannon*, 162 A. 277 (Pa. 1932). The Florida constitution expressly provides that voter approval is not required for bonds issued for the *exclusive* purpose of refunding bonds or interest thereon. Fla. const. art. 9, § 6; *see City of Miami v. State*, 190 So. 774 (Fla. 1939); *Sullivan v. City of Tampa*, 134 So. 211 (Fla. 1931).

But we see a clear distinction between (1) bonds that are issued solely for the purpose of refunding original debt, and (2) bonds that are issued to raise funds in excess of the amount needed to pay off the old debt—what we are calling cash-out refunding bonds.³² Bonds of this latter kind, we believe, categorically result in the creation of new indebtedness for purposes of the constitutional debt limit, and therefore require new voter approvals before they may be issued. The analogy is simple and straightforward: When a homeowner refinances a mortgage both to refinance the existing debt and to take out additional equity (cash) to make home improvements, the homeowner is plainly incurring additional debt beyond that required merely to refinance the existing debt. The same must be said of a cash-out refunding situation, in which the district unquestionably incurs new debt to support the excess amount of proceeds it derives beyond what is needed to refinance the existing bonds. However, as we have explained above, California’s constitution requires voter approval before a district may lawfully incur any new general obligation bond debt. Furthermore, because article XIII A, section 1, subsections (b)(2) and (3), prohibit the levying of taxes except to support *voter-approved* debt, the district would lack authority to levy taxes to support this additional debt without further voter approval.

To summarize, it is our opinion that pure refunding bonds—that is, bonds issued solely for the purpose of refunding existing debt—do not require additional voter approval under the constitutional debt limit, but that refunding bonds designed to generate additional proceeds for a purpose other than refunding the district’s existing debt are subject to voter approval as a precondition to their issuance.³³

Conclusion to Question 1: *Absent specific approval from the district’s electors, a school district may not issue refunding general obligation bonds at a price or an interest rate that*

³² Other jurisdictions also recognize this distinction. *See Lawrence County v. Jewell*, 100 F. 905 (8th Cir. 1900) (under federal statute applicable to territorial bond refundings, refunding bonds could be issued for sole purpose of retiring existing debt, and proceeds could not be used for ulterior purpose.); *City of Concord v. All Owners of Taxable Property Within the City of Concord*, 410 S.E.2d 482 (N.C. 1991) (refunding bonds may be issued without voter approval, but only if funds are used exclusively to retire existing debt); *Bolich v. City of Winston-Salem*, 164 S.E. 361 (N.C. 1932) (same); *Altafer v. Nelson*, 9 Ohio C.D. 599 (1898) (bonds issued to pay redemption premium that was not originally contracted for are not refunding bonds under refunding statute).

³³ This opinion does not address the question whether proceeds from the sale of refunding bonds may properly be applied to the costs associated with their issuance, and nothing in this opinion should be read as concluding that such an expenditure would be illegal.

will generate proceeds in excess of the amount needed to retire the designated outstanding bonds.

We are informed that some school districts, without voter approval, currently issue cash-out refunding bonds as a means not only to retire outstanding bonds, but also to raise additional funding that may be applied, for example, to uncompleted voter-approved capital projects. Rather than conducting new elections and obtaining voter approval for such cash-out refunding bonds, as provided by statute,³⁴ these school districts simply issue the bonds upon a resolution of their governing bodies—a process described in other statutory provisions.³⁵ They argue that such unilateral action is permitted under a purported exception to the constitutional debt limit established by judicial precedent. The debt-limit provision itself, article XVI, section 18, contains no mention of such an exception.

The case most often cited as establishing the exception is *City of Los Angeles v. Teed*, decided by the Supreme Court of California in 1896.³⁶ There, the Court made the following observation: “A bond is not an indebtedness or liability—it is only the evidence or representative of an indebtedness; and a mere change in the form of the evidence of indebtedness is not the creation of a new indebtedness within the meaning of the constitution.”³⁷ Despite the seemingly broad sweep of the Court’s language, we do not believe that *Teed* supports the conduct in question here.

In *Teed*, a city council had enacted an ordinance authorizing the issuance of bonds to raise money for the limited purpose of refunding existing bonds, some of which were soon coming due.³⁸ A city election was conducted, in which a large majority of the voters—“much more than two-thirds of the qualified electors”—approved the proposed refunding bonds.³⁹ The bonds were never issued, however, because the president of the city

³⁴ See Educ. Code § 15100, final paragraph. See also Govt. Code § 53506(a) (district may issue refunding bonds only as “authorized in accordance with the Constitution,” which may be understood to incorporate the voter-approval requirement of Article XVI, section 18).

³⁵ See, e.g., Educ. Code § 53552.

³⁶ 112 Cal. 319. *Teed* was recently discussed and distinguished by the court of appeal in *All Persons Interested*, 152 Cal. App. 4th at 1406-1407.

³⁷ *Id.* at 326-327.

³⁸ *Teed*, 112 Cal. at 324.

³⁹ *Id.*

council believed that the election was invalid due to inadequate notice to voters beforehand.⁴⁰ The city then sued the president of the city council in the Supreme Court to compel him to sign the bonds, and the president demurred.⁴¹

The Court sustained Teed's demurrer to the city's petition, and the city's bonds were held to be unconstitutional, as was the ordinance under which they were issued. But that decision did not turn on whether a refunding bond constitutes new debt requiring voter approval. Rather, the Supreme Court sustained Teed's demurrer on the sole basis that the bonds and the underlying city ordinance unconstitutionally provided for payment in New York.⁴²

Because Teed's constitutional objection was resolved on grounds unrelated to the Court's characterization of refunding bonds as a "mere change in the form of the evidence of indebtedness,"⁴³ that statement must be viewed as mere dictum having no precedential value. There is also a second, independent reason why the *Teed* Court's comments about possible avoidance of voter approval must be read as mere dictum: namely, that the refunding bonds in *Teed* received more than sufficient prior voter authorization. The Court found that the city *had* conducted a valid election for the refunding bonds in question in *Teed* (rejecting a claim of insufficient notice), and that the resulting voter approval had easily satisfied the constitutional debt limit provision then in effect.⁴⁴ Although *Teed* has been cited in some secondary sources, and by some courts in other states, for the proposition that an agency refunding an existing debt incurs no new indebtedness within the meaning of the constitutional prohibition,⁴⁵ no reported California decision has ever relied on *Teed* to

⁴⁰ *Id.* at 325.

⁴¹ *Id.* at 323.

⁴² *Teed*, 112 Cal. at 329-330.

⁴³ *Id.* at 327.

⁴⁴ *Id.* at 325.

⁴⁵ *See, e.g.*, Eugene McQuillin, *The Law of Municipal Corporations* vol. 15, § 41.35, 526-528 and n. 2 (3d rev. ed., Thomson/West 2005); 45 pt. 2 Cal. Jur. 3d *Municipalities* § 534 (1999); 52A Cal. Jur. 3d *Public Securities and Obligations* § 59 (2001).

Another case sometimes cited as establishing a refunding exception is *City of Long Beach v. Lisenby*, 180 Cal. 52 (1919). *See* McQuillin, *The Law of Municipal Corporations*, at 525 n. 1. In *Lisenby*, the court held that the issuance of refunding bonds was permitted

exempt refunding bonds from the Constitution’s voter-approval requirement. And, for the reasons stated above, we believe that this interpretation of *Teed* is overstated. Furthermore, as the court of appeal observed in *All Persons Interested*,⁴⁶ the *Teed* Court’s characterization of refunding bonds as not creating a new indebtedness was restricted to the refunding of “debt that already existed in the form of bonds issued *before* enactment of the constitutional debt limit”—that is, debt incurred prior to January 1, 1880.⁴⁷ Obviously, no such pre-debt-limit bonds are involved in the questions posed here.

In any case, *Teed*’s rationale, even if read broadly, could not reasonably be extended beyond refunding bonds that generate only enough proceeds to retire the old.⁴⁸ The Court did not consider refunding schemes in which a city would acquire any *supplemental* proceeds or premiums, but specifically limited its discussion to bonds which “merely . . . fund or refund an existing debt.”⁴⁹ We therefore conclude that any “*Teed* exception” would have no application whatsoever to cash-out refunding bonds, which have as a chief purpose the generation of proceeds *in excess* of the amount required to retire targeted bonded indebtedness. As we explained in the introduction, we see a clear distinction between bonds that merely refinance existing debt and cash-out refunding bonds.

Accordingly, to the extent that a district’s proposed refunding bonds would generate proceeds beyond the amount needed to refund its outstanding bonds, we believe that the refunding bonds would constitute a new bonded indebtedness within the meaning of article XVI, section 18, and would therefore require specific voter approval. Likewise, article XIII A, section 1, would prohibit the levying of taxes to support such new debt without voter approval.

to pay a tort judgment. Involuntary indebtedness was clearly the focus of the opinion, and we are not inclined to read it more expansively than that. *Cf. All Persons Interested*, 152 Cal. App. 4th at 1406-1407 (“In *Lisenby* . . . the original obligation had not been *voluntarily* incurred. Issuance of bonds was merely conversion of this involuntary debt from one form to another.”)

⁴⁶ 152 Cal. App. 4th at 1407.

⁴⁷ *See also Teed*, 112 Cal. at 326-327.

⁴⁸ *Id.* at 327.

⁴⁹ *Id.* at 327. *See People v. Scheid*, 16 Cal. 4th 1, 17 (1997) (“[A]n opinion is not authority for a proposition not therein considered.”)

We acknowledge that some cash-out scenarios may not necessarily increase the *principal* amount owed by the district beyond that of the existing debt. However, this is a distinction without a constitutional difference. In such cash-out scenarios, the excess proceeds beyond those needed to merely refinance existing debt would result from an artificial increase in the refunding bonds’ interest rate. And the constitution’s prohibitions apply to “bonded indebtedness”—a term that includes *both* the principal and the interest associated with a bond sale.⁵⁰ Hence, the district’s debt would nonetheless exceed what is necessary to retire the original obligation, thereby triggering the voter-approval requirement.

Similarly, it is irrelevant that the cash-out refunding bond may be issued without increasing the debt service that would have supported the original debt; the fact remains that the cash-out process would generate new debt, beyond that needed to merely refund the existing debt. As we understand the debt limit, it is this latter measure that is the standard—the constitutional ceiling—for a district’s permissible refunding without voter approval. And it is self-evident that, as a result of the artificially increased interest rate, a district issuing a cash-out refunding bond would need to maintain *ad valorem* taxes at a level higher than necessary to retire the original debt. This means that the district would be depriving its taxpayers of the full benefits of refinancing; instead, the taxpayers would be taxed, without voter approval, to support this new debt—a result that is not permitted under either the constitutional debt limit or the constitutional cap on taxes.

Some districts may argue that their cash-out refunding practices are authorized by statute, and we are aware of several statutory provisions which expressly authorize local agencies to issue refunding bonds without voter approval under certain circumstances.⁵¹

⁵⁰ The term “bonded indebtedness” first appeared in article XIII A in 2000, in the amendments added by Proposition 39. Prop. 39, § 4, Gen. Elec. (Nov. 7, 2000). Although this term is not defined in article XIII A or elsewhere in the state’s constitution, courts have defined “bonded indebtedness” as describing “those more formal transactions of both municipal and private corporations which require such prerequisites as elections or express approval of the stockholders in order for their creation and which, when issued, take the express form of bonds.” *Shasta County v. Trinity County*, 106 Cal. App. 3d 30, 39 (1980) (citing *Hammond Lumber Co. v. Adams*, 7 Cal. 2d 24, 27 (1936)). “Bonded indebtedness” is incurred once an approved bond has issued. *Faulkner v. California Toll Bridge Authority*, 40 Cal. 2d 317, 325 (1953); *Clark v. City of Los Angeles*, 160 Cal. 30, 44-45 (1911).

⁵¹ See, e.g., 53550-53569, 53580-53589.5. Article 9 (commencing with section 53550) of the Government Code, permits the governing body of a local agency to issue refunding bonds “for the purpose of refunding any of the indebtedness of the local agency evidenced by bonds.” (*Id.* at § 53551.) It is unclear whether sections 53580 through 53589.5

However, in light of the constitutional constraints discussed above, we do not believe that the relevant statutory schemes governing school district bond issuances may reasonably be read to authorize issuance of *cash-out* refunding bonds without voter approval. Manifestly, the Legislature cannot override constitutional limitations by statute,⁵² and we are constrained to interpret statutes authorizing the issuance of refunding bonds in a manner that is consistent with the state constitution.⁵³ Statutory authority may not be read to “clash with the constitutional provision which required popular approval of the bonds in the first place, or, as in this case, the constitutional authority for the bond issue.”⁵⁴ In our view, each of these cited statutory provisions must be interpreted as requiring voter approval whenever the proceeds of refunding bonds, or their associated supporting taxes, exceed the amounts required to retire the district’s existing debt.

Additionally, some districts argue that cash-out refunding bonds satisfy the constitution’s voter-approval requirement as long as the particular *projects* to which the cash-out funds are applied were among funding targets previously identified and “approved” in conjunction with voter endorsement of a prior general obligation bond. We reject this theory, however, because it both misses and defies the central point and purpose of the debt limit: namely, to require voter approval whenever new “*indebtedness*” is incurred.⁵⁵ Thus, in our view, any approval by voters of prior bond proposals would authorize only the amounts associated with those earlier bonds, regardless of the number or size of the construction projects that were identified on the earlier ballot as possible objectives for that funding. We think it unreasonable to construe a positive vote on those previously requested bond amounts as constituting an open-ended voter endorsement of future funding schemes

(Article 11), apply to the general obligation refunding bonds under discussion here or concern only “revenue bonds.” (See § 53583(a) [“any local agency may issue bonds pursuant to [Article 11] . . . for the purpose of refunding *any revenue bonds* of the local agency”]; emphasis added. Cf. § 53581 [“notwithstanding the provisions of any other law, the provisions of [Article 11] apply to all refunding bonds of any local agency”].) General obligation bonds are plainly not the same as revenue bonds. (See, e.g., *City of Redondo Beach v. Taxpayers, Property Owners, Citizens and Electors of City of Redondo Beach*, 54 Cal.2d 126, 131-133 (1960) [clear distinction between the two].)

⁵² See, e.g., *In re Marriage Cases*, 43 Cal. 4th 757, 852 (2008).

⁵³ See *City of Palm Springs v. Ringwald*, 52 Cal. 2d 620, 623 (1959).

⁵⁴ *Metro. Water Dist. v. Dorff*, 138 Cal. App. 3d 388, 398 (1982) (citing *Eastern Mun. Water Dist. v. Scott*, 1 Cal. App. 3d 129, 135 (1969)).

⁵⁵ Cal. Const. art. XVI, §§ 18(a) and 18(b).

and of subsequent indebtedness not then proposed. If the proceeds from issuance of those prior bonds prove insufficient to complete some or all of the previously listed projects—because the district’s cost estimates were too low, for example, or its project lists too ambitious—then, under the debt limit’s requirements, it is incumbent upon the district to obtain new voter approval for new bonds if it wishes to further advance the projects.

We conclude that, absent express approval by the voters, a school district may not issue refunding general obligation bonds at a price or interest rate that will generate proceeds in excess of the amount needed to refund the targeted outstanding bonds.

Conclusion to Question 2: Without voter approval, a district may not use proceeds from a refunding general obligation bond to provide supplemental funding for unfinished projects, even if the projects were previously approved by the electorate, or for any other purpose except to pay off the designated outstanding bonds.

The second question is partially answered by our conclusion to Question 1: Refunding bonds may not be issued without voter approval if the proceeds (including premium) would exceed the amounts required for refunding purposes. However, the second question also encompasses the circumstance wherein a district issues general obligation refunding bonds with premium and without voter approval, but where the total amount of the proceeds, including premium, does not exceed the amount needed to pay off the outstanding indebtedness. In such a circumstance, are there any restrictions on the district’s deposit, use, or other disposition of the proceeds? We conclude that the use of proceeds derived from such refunding bond sales, including premium, is restricted to paying off the district’s outstanding bonded indebtedness.

There is both a constitutional and a statutory dimension to our analysis of this question. The constitutional answer is a corollary to the conclusion we reached in analyzing Question 1. That is to say, given that the only constitutionally permissible purpose for refunding general obligation bonds issued without voter approval is to merely refund the district’s outstanding bonds, and given that the amount of proceeds that may be derived from such refunding bonds is limited to the bare amount required to refinance and retire that outstanding bonded indebtedness, it follows that the debt limit prohibits application of those proceeds to any project or purpose except paying off the district’s outstanding bonds. Were it otherwise, the net effect to the voters would be the addition of new, non-refunding debt, evidenced by the proceeds of the ostensible refunding issuance that were diverted to other purposes. Accordingly, as a constitutional matter, we conclude that a district is prohibited from using the proceeds of even a non-cash-out refunding issuance to supplement funding for ongoing construction projects, to fund new projects, or for any purpose other than refunding the district’s targeted indebtedness.

As for the statutory dimension of the question, we are informed that most districts issuing cash-out refunding bonds claim to be doing so under the authority of Article 9.⁵⁶ As a threshold matter, it is an open question whether premiums are permitted under California law if the statutes authorizing the bonds are silent on that point, as Article 9 is. We know of no case addressing whether bond issuers may manipulate sale terms to obtain a premium without express statutory authorization. However, our state Supreme Court has determined that bonds may be issued at a *discount* if the statute is silent on that question, provided that the bonds are sold on the most favorable market terms available to the agency and thus protect the interests of the taxpayers.⁵⁷ By analogy, therefore, we believe that a court would, or reasonably could, deem it permissible to sell refunding bonds at prices *above par* so long as the taxpayers' interests are protected.⁵⁸ And, as we earlier observed, Article 9's authorization for issuance of refunding bonds without voter approval⁵⁹ cannot be read consistently with the constitution to encompass *cash-out* refunding bonds.⁶⁰

Assuming that a premium is permitted with Article 9-refunding bonds, even in the non-cash-out circumstance contemplated, *i.e.*, where total proceeds (including premium) would not exceed the amounts required to pay off the existing bonded indebtedness, Article 9 would clearly limit the use of the refunding bond proceeds when the issuance does not have voter approval. First, Article 9's authority is itself expressly restricted to bonds issued "for the purpose of refunding any of the indebtedness of the local agency evidenced by bonds."⁶¹ And second, Government Code section 53555, within Article 9, specifically

⁵⁶ See note 51 *ante*.

⁵⁷ *Golden Gate Bridge v. Filmer*, 217 Cal. at 760-762.

⁵⁸ If a district artificially raised a bond's interest rate for the purpose of generating a premium, the district might thereby *increase* the taxpayers' burden (unless, for example, the principal amount of the bonds or some other variable were reduced to offset the premium), because taxpayers would thereafter be paying more debt service on the refunding bonds than would have been required under market conditions at the time the bonds were sold. Under those circumstances, the district would be acting inconsistently with the rule stated in *Golden Gate Bridge*, and at cross purposes with the announced legislative purpose of Article 9 refunding bonds to "permit the *lowering* of property tax rates . . ." 1972 Cal. Stats. ch. 531, § 17.

⁵⁹ § 53552.

⁶⁰ See discussion page 14 *ante*.

⁶¹ § 53551.

requires that all proceeds received from the sale of refunding bonds be deposited in the local agency's treasury "for the purpose of refunding the bonds to be refunded."

Some districts might assert that a premium is distinct from the "proceeds" of a bond, and that, therefore, a premium escapes the reach of the debt limit and of section 53555. But we disagree. In our view, any premium generated by the sale of a refunding bond is simply one component of the total proceeds of the bond;⁶² hence section 53555's clear limitation on districts' use of proceeds applies to any premium.

We are aware that section 29303, if it governed in these circumstances, would apply premium to different purposes than the remaining proceeds.⁶³ But, by its terms, section 29303 has no application if "it is expressly provided by law that [premiums] be deposited in some other fund." In our view, section 53555, which expressly provides that Article 9 refunding-bond proceeds may be used *only* to pay off districts' targeted outstanding indebtedness, takes those proceeds, including any premium, outside the scope of section

⁶² See Franklin and Prendergast, *Glossary of Public Finance Terminology* 32 (3rd ed., 1992) (defining "proceeds" as "[t]he money the issuer receives upon initial delivery of an issue, being par value, plus premium or less discount, and plus accrued interest"). See also, e.g., *City of Oakland v. Williams*, 107 Cal. App. 340, 341 (1930) (it "would not seem to be open to dispute" that "when bonds are sold for more than their par value the entire purchase price, including the premium, constitutes the proceeds of the bonds").

⁶³ Government Code section 29303 states in part:

Whenever any bonds issued by . . . any school . . . district in any county, whose accounts are required by law to be kept by the county auditor and treasurer, are sold at a premium or with accrued interest, or both, *the amounts received for the premiums* and accrued interest shall be deposited in the debt service fund of the county or district unless it is expressly provided by law that they be deposited in some other fund.

Black's Law Dictionary at 434 defines "debt service" as: "**1.** The funds needed to meet a long-term debt's annual interest expenses, principal payments, and sinking-fund contributions. **2.** Payments due on a debt, including interest and principal." Cf. Cal. Const. art. XIII B, § 8(g). In section 29303, the referenced "debt service fund" would thus be applied to payments on the bonds that generated the premium.

29303.⁶⁴

Thus, even where a district's refunding-bond issuance contains no cash-out premium and generates only enough proceeds to retire outstanding bonds, the district's use of those proceeds is strictly limited. California law permits only one application of proceeds—including any premium—from a district's general obligation refunding bonds issued without voter approval, and that is to retire the district's targeted existing outstanding bonded indebtedness.⁶⁵

Conclusion to Question 3: Because a school district lacking voter approval may not issue refunding general obligation bonds to generate more proceeds than are necessary to refinance the district's targeted debt, the district is likewise prohibited from setting or maintaining ad valorem property tax rates at a level higher than necessary to refinance that targeted debt.

In Question 3, we are asked whether a district may issue refunding general obligation bonds that result in either an increase in the district's *ad valorem* property tax rate or maintenance of property taxes at a rate higher than would otherwise be necessary to refund the original voter-approved bonds. Again, we conclude that a district may not do so, unless the district's voters have given their consent to such refunding bonds as required under article XVI, section 18, of the California Constitution.

Article XIII A, section 1, imposes a one-percent property tax cap on local agencies, with the exception that *ad valorem* taxes may be levied to pay principal and interest on voter-approved bonds permitted under article XVI, section 18. Thus, the constitution prohibits increases or continuations of taxes, without voter approval, at a rate higher than necessary to refund the original voter-approved bonds, and therefore would forbid the imposition or maintaining of an *ad valorem* tax to support cash-out refunding bonds as proposed.⁶⁶

⁶⁴ In any event, even if section 29303 did govern Article 9 premiums, school districts would not be permitted to apply those funds to construction projects or other purposes; rather, the premium would be deposited in the district's debt service fund.

⁶⁵ But see footnote 33, *ante*, leaving open the question whether, under the debt limit, proceeds from refunding bonds issued without voter approval may be applied to costs of issuance. *Cf.* § 53556 (permitting costs of issuance to be paid from proceeds of bond sales).

⁶⁶ Furthermore, such an increase in tax rates or an unnecessary perpetuation of an inflated rate would likely conflict with a district's duties to obtain the best terms available and to lower the burden on district taxpayers when possible, as explained previously.

Conclusion to Question 4: *A school district's application of proceeds from the sale of refunding general obligation bonds to purposes not authorized by law may result in litigation to invalidate the bond issue or to restrain unauthorized expenditures, if timely filed; taxpayer lawsuits; or actions by the Attorney General.*

Question 4 asks about consequences that could befall a school district if it applied proceeds from a refunding general obligation bond to purposes not authorized by law. We conclude that the most significant potential penalty for such a misuse of bond proceeds would be invalidation of the bond issue. Bonds issued without authority may be invalidated,⁶⁷ as may school district bonds issued for an unauthorized purpose,⁶⁸ as well as bonds failing to satisfy the constitutional debt limit or to qualify as an exception thereto.⁶⁹

In Education Code section 15110, the Legislature has provided a vehicle for challenging the validity of bonds:

An action to determine the validity of bonds and of the ordering of the improvement or acquisition may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. In such action, all findings, conclusions and determinations of the legislative body which conducted the proceedings shall be conclusive in the absence of actual fraud.⁷⁰

One remedy available in such an action, if the court determines that a school district has issued refunding bonds for unauthorized purposes, is invalidation of the bond issues.⁷¹

However, interested persons must act promptly to make use of this remedy. It is available only if the challenge is filed within 60 days after the bonds were authorized to be issued.⁷²

⁶⁷ *Sutro*, 74 Cal. 332, 337.

⁶⁸ *Bd. of Supervisors of Merced Co. v. Cothran*, 84 Cal. App. 2d 679, 681 (1948).

⁶⁹ *All Persons Interested*, 152 Cal. App. 4th 1386, 1406-7.

⁷⁰ *See also* Govt. Code §§ 53511, 53589.5.

⁷¹ *Plan. & Conserv. League v. Dept. of Water Resources*, 83 Cal. App. 4th 892, 922 (2000).

⁷² Code Civ. Proc. §§ 863, 864, 869.

[A]n agency may indirectly but effectively “validate” its action *by doing nothing to validate it*; unless an “interested person” brings an action of his own under [Code Civ. Proc.] section 863 within the 60-day period, the agency’s action will become immune from attack whether it is legally valid or not.⁷³

Additionally, if a district exceeds the authority granted by the voters, the Legislature has provided a separate remedy in Education Code section 15284.⁷⁴ Specifically, section 15284 provides that a School Bond Waste Prevention Action may be brought to restrain or prevent certain unauthorized expenditures. However, this remedy may also be available only if the action is filed within 60 days after the bonds were authorized.⁷⁵

Apart from invalidation of the bond issue, other remedies may be available pursuant to a taxpayer’s suit under Code of Civil Procedure section 526a⁷⁶ or actions by the Attorney General.⁷⁷

Conclusion to Question 5: *Because the proposed arrangement between a school district and a joint powers authority would result in a refunding bond issuance in excess of that needed to merely refund the district’s designated outstanding bonded indebtedness, both the refunding bond issuance and the higher tax required to support it are constitutionally impermissible without specific voter approval.*

⁷³ *Cal. Commerce Casino, Inc. v. Schwarzenegger*, 146 Cal. App. 4th 1406, 1420 (2007) (quoting *City of Ontario v. Super. Ct. of San Bernardino Co.*, 2 Cal. 3d 335, 341-342 (1970) (emphasis in original)).

⁷⁴ *Comm. for Responsible Sch. Expansion*, 142 Cal. App. 4th at 1186; *Foothill-De Anza*, 158 Cal. App. 4th at 24.

⁷⁵ *McLeod v. Vista Unified Sch. Dist.*, 158 Cal. App. 4th 1156, 1171 (2008) (60-day statute of limitations applies when challenged matter pertains to validity of bonds).

⁷⁶ See *Sundance v. Mun. Ct.*, 42 Cal. 3d 1101, 1138-1139 (1986); *McKinny v. Bd. of Trustees*, 31 Cal. 3d 79, 91 (1982); *McLeod v. Vista Unified Sch. Dist.*, 118 Cal. App. 4th at 1165-1170; *TRIM, Inc. v. Co. of Monterey*, 86 Cal. App. 3d 539, 542 (1978) (taxpayers have standing to challenge illegal expenditures by county officials under section 526a, and may also enjoin wasteful expenditures).

⁷⁷ See, e.g., *Pierce v. Super. Ct.*, 1 Cal. 2d 759, 761-762 (1934); 81 Ops. Cal. Atty. Gen. 281, 291-292 (1998).

The final question concerns a school district’s hypothetical arrangement with a joint powers authority (JPA), through which a district would sell its refunding bonds to the JPA at par value but at an above-market interest rate, in exchange for which the JPA would issue its own revenue bonds and devote some of the proceeds to school construction projects in the district. In this way, the district’s refunding bonds would result in supplemental funds to be applied to capital projects, but the funds would be generated and delivered in a more circuitous fashion.⁷⁸ In this scenario, the district would take advantage of declining interest rates over a period of time to, in effect, fund the construction of new school facilities pursuant to an agreement negotiated with a JPA under the Joint Exercise of Powers Act.⁷⁹

On its face, the proposed transaction might appear to be legitimate.⁸⁰ The Joint Exercise of Powers Act authorizes two or more public entities to enter into an agreement to exercise jointly any power common to them,⁸¹ and this agreement may provide “for the creation of an agency or entity that is separate from the parties to the agreement.”⁸² Some

⁷⁸ An example might go as follows. Suppose the district sells the JPA \$90 million of the district’s refunding bonds at par value (i.e., without a premium) but bearing an above-market interest rate. The JPA then sells \$100 million in revenue bonds, at the market interest rate, to investors. Because of the above-market interest rate on the district’s bonds, the debt service on the district’s bonds—paid to the bond holder JPA—is designed to be sufficient to pay the debt service on the JPA’s revenue bonds. Meanwhile, after selling its \$100 million in bonds and purchasing the district’s \$90 million in bonds, the JPA would have \$10 million remaining for expenditure on local capital improvements or public buildings (see Govt. Code § 6546(c)), such as additional school facilities. Assuming that there had been a sufficient decline in market interest rates for bonds over a period of years, the school district’s issuance of its refunding bonds in this example could theoretically reduce the district’s overall debt service, yet the construction of additional school facilities would be funded by the JPA’s revenue bond proceeds. In such a market, however, the district’s debt service could be even further reduced in the absence of the proposed JPA arrangement.

⁷⁹ Joint Exercise of Powers Act, Govt. Code §§ 6500-6599.3

⁸⁰ We have not been asked to examine the powers of a JPA or the validity of the JPA actions described in this hypothetical transaction, and we express no views on that subject. We limit our analysis and opinion to the proposed conduct of a school district.

⁸¹ Govt. Code § 6502; 83 Ops.Cal.Atty.Gen. 82, 83 (2000).

⁸² Govt. Code § 6503.5; *see Rider v. City of San Diego*, 18 Cal. 4th 1035, 1055 (1998).

of the Act's provisions⁸³ were enacted expressly "to assist local agencies in financing public capital improvements."⁸⁴ The Act specifically authorizes the JPA created by a joint powers agreement to purchase bonds issued by public agencies.⁸⁵

Although the district would appear to have statutory power to enter into such an arrangement as a general proposition, collateral consequences of the arrangement would necessarily render it unconstitutional. This arrangement violates the constitutional debt limit because it results in a refunding bond issuance in excess of what is required merely to refund the district's outstanding bonds (the excess being represented not by cash this time, but by a bargained-for set of capital improvements to be delivered by the JPA). Qualitatively, the JPA scheme is the same as a cash-out with premium in which the excess cash received at closing (acquired in exchange for above-market interest rates) would be expended by the district on capital projects. Here, although the bonds are nominally sold to the JPA "without premium," the district will repay them at an above-market interest rate—a rate selected to obtain the JPA's promised financing for other projects. We have already explained, in our response to Question 1, that, absent voter approval, the constitution's debt limit permits only those refunding bonds that are limited to refinancing existing debt.

Further, the artificially increased interest rate on the district's refunding bonds would result in higher property taxes than would otherwise be necessary to retire the district's original bonds. Hence, the arrangement would also violate article XIII A, section 1, of the California Constitution. As we explained in our response to Question 3, a school district may not issue refunding general obligation bonds without voter approval if to do so would result in an increase in *ad valorem* property tax rates to, or a perpetuation of those rates at, a level higher than would otherwise be necessary to retire the original voter-approved bonds. Hence, the proposed arrangement between a district and a JPA would be barred by these constitutional provisions.

⁸³ *Id.* at §§ 6584-6599.3.

⁸⁴ *Id.* at § 6586.

⁸⁵ *Id.* at § 6589

Monterey Peninsula College		
Bills & Warrants Report		
Through June 30, 2016		
Vendor Name	Description of service or purchase	Amount Paid
<u>Student Center</u>	<i>Total Expense at March 31, 2016</i>	\$6,157,616.59
	No new expense this period.	\$0.00
	To Date Expense through June 30, 2016	<u>\$6,157,616.59</u>
<u>Arts Complex</u>	<i>Total Expense at March 31, 2016</i>	\$3,540,290.20
	No new expense this period.	\$0.00
	To Date Expense through June 30, 2016	<u>\$3,540,290.20</u>
<u>Music Building</u>	<i>Total Expense at March 31, 2016</i>	\$23,770.35
	No new expense this period.	\$0.00
	To Date Expense through June 30, 2016	<u>\$23,770.35</u>
<u>Furniture/Equipment</u>	<i>Total Expense at March 31, 2016</i>	\$5,337,175.28
	No new expense this period.	\$0.00
	To Date Expense through June 30, 2016	<u>\$5,337,175.28</u>
<u>Swing Space</u>	<i>Total Expense at March 31, 2016</i>	\$5,777,350.31
	No new expense this period.	\$0.00
	To Date Expense through June 30, 2016	<u>\$5,777,350.31</u>
<u>General Institutional Bond Mgmt.</u>	<i>Total Expense at March 31, 2016</i>	\$5,692,510.21
	No new expense this period.	\$0.00
	To Date Expense through June 30, 2016	<u>\$5,692,510.21</u>
<u>Theater Building</u>	<i>Total Expense at March 31, 2016</i>	\$10,382,736.18
	No new expense this period.	\$0.00
	To Date Expense through June 30, 2016	<u>\$10,382,736.18</u>

Monterey Peninsula College		
Bills & Warrants Report		
Through June 30, 2016		
Vendor Name	Description of service or purchase	Amount Paid
		<i>Total Expense at March 31, 2016</i>
<u>Infrastructure Phase III</u>		\$6,458,266.36
	No new expense this period.	\$0.00
		To Date Expense through June 30, 2016
		\$6,458,266.36
		<i>Total Expense at March 31, 2016</i>
<u>PSTC Parker Flats</u>		\$70,498.52
	No new expense this period.	\$0.00
		To Date Expense through June 30, 2016
		\$70,498.52
		<i>Total Expense at March 31, 2016</i>
<u>Humanities, Bus-Humanities, Student Services</u>		\$3,543,043.20
	No new expense this period.	\$0.00
		To Date Expense through June 30, 2016
		\$3,543,043.20
		<i>Total Expense at March 31, 2016</i>
<u>Life Science & Physical Science</u>		\$10,832,201.07
	No new expense this period.	\$0.00
		To Date Expense through June 30, 2016
		\$10,832,201.07
		<i>Total Expense at March 31, 2016</i>
<u>Miscellaneous</u>		\$66,657.00
Chris Dinner Heating	Professional services completed include: Install exhaust fan in the kitchen prep area of the cafeteria in the Student Center and to modify duct work to allow for air flow to the Security department.	\$8,200.00
		To Date Expense through June 30, 2016
		\$74,857.00
<u>Closed Projects</u>		
Old Library		\$21,279.52
Early Start - Walkway/Safety Improvements		\$225,630.18
Early Start -Telephone System Upgrades		\$599,414.48
Early Start - As Built Drawings		\$209,792.00
Early Start - Roof Repairs		\$480,255.64
Early Start - HVAC Repairs	Social Science/Computer Science buildings.	\$618,538.68
Early Start - Landscaping	Library technology area.	\$438,292.96
Early Start - Vehicles		\$187,070.27
Early Start - Master Signage Plan		\$53,890.42

Monterey Peninsula College		
Bills & Warrants Report		
Through June 30, 2016		
Vendor Name	Description of service or purchase	Amount Paid
Early Start - Auto Technology Bldg	HVAC replacement.	\$16,443.00
Drafting Bldg	Furnace replacement.	\$13,974.00
Early Start - New Plant Services Bldg	Costs over state funding for new building.	\$487,574.35
Early Start - Demolition of Old Plant Services Bldg		\$63,521.68
Environmental Impact Report - Campus		\$154,162.67
Business & Computer Science Bldg	Seismic design.	\$7,981.84
Humanities Bldg	Seismic design.	\$16,375.04
International Center Bldg	Blue Prints.	\$14.71
Physical Science Bldg	Architectural Services, for potential elevator replacement.	\$6,986.44
Life Science Bldg	Architectural Services, for potential elevator replacement.	\$7,793.83
Pool/Tennis Courts	Preliminary architectural services.	\$206.00
Physical Education Facility		\$1,488,294.29
PE Field/Track		\$14,848,446.67
Fitness Phase IB		\$899,827.93
College Center Renovation		\$23,608.41
Social Science Renovation		\$863,696.74
Music/Theater Building		\$22,732.50
Family and Consumer Science		\$67,671.12
Gymnasium Building	Floor/Seismic/Bleachers.	\$877,847.00
Lecture Forum Renovation		\$2,117,203.20
Child Development Center		\$1,029,198.71
Infrastructure/Parking		\$20,886,001.04
Infrastructure 2		\$2,481,606.93
New Administration/Old Library Building		\$4,712,191.10
Public Safety Training Center Renovation		\$7,478,201.30
Auto Technology Building Renovation		\$958,602.22
Business & Computer Science (includes Math)		\$2,215,417.93
New Student Services Building		\$9,681,388.03
New Education Center at Marina		\$8,159,654.52
PE Phase II (Gym/Locker Room Renovation)		\$3,810,035.95
Pool Renovation (includes Pool Building)		\$2,047,493.00
	To Date Expense through June 30, 2016	<u>\$88,278,316.30</u>
	Total Payments (closed projects, under construction, and planned projects)	<u>\$146,168,631.57</u>

BOND EXPENDITURE REPORT 6/30/16

Total Budget With Other Funds	Projects	A Total Bond Budget	B Total Bond Prior Year Expenses	C 2015-2016	A-B-C	(B+C)/A	% Construction Schedule
				Year to Date Bond Payments	Bond Budget Balance	% Bond Cost	
	In Process						
\$4,724,000	Arts Complex	\$4,724,000	\$3,539,621	\$669	\$1,183,710	75%	70%
\$5,952,000	College Center Renovation	\$5,952,000	\$6,157,617	\$0	(\$205,617)	103%	100%
\$5,685,000	Furniture & Equipment	\$5,685,000	\$5,337,175	\$0	\$347,825	94%	99%
\$6,614,000	Humanities, Bus-Hum, Student Services	\$3,296,000	\$3,543,043	\$0	(\$247,043)	107%	100%
\$6,466,000	Infrastructure - Phase III	\$6,466,000	\$6,458,266	\$0	\$7,734	100%	100%
\$10,750,000	Life Science/Physical Science	\$10,750,000	\$10,832,201	\$0	(\$82,201)	101%	100%
\$5,800,000	Swing Space / Interim Housing	\$5,800,000	\$5,777,350	\$0	\$22,650	100%	99%
\$10,400,000	Theater	\$10,400,000	\$10,382,736	\$0	\$17,264	100%	100%
\$0	Miscellaneous	\$0	\$61,738	\$13,119	(\$74,857)	0%	100%
\$0	General Contingency	\$612,990	\$0	\$0	\$612,990	0%	0%
\$56,391,000	Total in Process	\$53,685,990	\$52,089,747	\$13,788	\$1,582,455		
	Future						
\$1,200,000	Music	\$1,200,000	\$23,770	\$0	\$1,176,230	2%	0%
\$12,000,000	PSTC Parker Flats	\$6,000,000	\$70,500	\$0	\$5,929,500	1%	0%
\$13,200,000	Total Future	\$7,200,000	\$94,270	\$0	\$7,105,730		
	Completed						
\$1,057,576	Early Start/Completed-HVAC Repairs	\$618,539	\$618,539	\$0	\$0	100%	100%
\$2,965,574	Early Start/Completed-New Plant Serv Bldg	\$487,574	\$487,574	\$0	\$0	100%	100%
\$599,414	Early Start/Completed-Telephone System	\$599,414	\$599,414	\$0	(\$0)	100%	100%
\$67,671	Family Consumer Science	\$67,671	\$67,671	\$0	\$0	100%	100%
\$1,517,774	Gym - floor/seismic/bleachers	\$877,847	\$877,847	\$0	\$0	100%	100%
\$2,481,607	Infrastructure - Phase II	\$2,481,607	\$2,481,607	\$0	\$0	100%	100%
\$20,886,001	Infrastructure - Phase I	\$20,886,001	\$20,886,001	\$0	\$0	100%	100%
\$2,117,203	Lecture Forum Renovation	\$2,117,203	\$2,117,203	\$0	\$0	100%	100%
\$7,427,191	New Admin / Old Library Renovation	\$4,712,191	\$4,712,191	\$0	(\$0)	100%	100%
\$5,413,198	New Child Development Center Bldg	\$1,029,198	\$1,029,198	\$0	\$0	100%	100%
\$21,420,211	Other Early start / completed	\$1,950,012	\$1,950,012	\$0	\$0	100%	100%
\$17,336,569	PE Field Track, Fitness Building	\$17,236,569	\$17,236,569	\$0	\$0	100%	100%
\$863,697	Social Science Renovation (inc. Seismic)	\$863,697	\$863,697	\$0	\$0	100%	100%
\$7,478,201	Public Safety Training Center Renov.	\$7,478,201	\$7,478,201	\$0	\$0	100%	100%
\$1,000,000	Auto Technology Building	\$958,602	\$958,602	\$0	(\$0)	100%	100%
\$2,300,000	Business Computer Science	\$2,215,418	\$2,215,418	\$0	\$0	100%	100%
\$8,300,000	New Ed Center Building at Marina	\$8,300,000	\$8,159,654	\$0	\$0	98%	100%
\$9,700,000	New Student Services Building	\$9,700,000	\$9,681,388	\$0	\$0	100%	100%
\$3,830,000	PE Phase II - Gym/Locker Room Renov.	\$3,830,000	\$3,810,036	\$0	\$0	99%	100%
\$2,640,519	Pool Renovation	\$2,640,519	\$2,047,493	\$0	\$0	78%	100%
\$112,931,887	Total Completed	\$89,050,263	\$88,278,316	\$0	(\$1)		
\$182,522,887	Total All Projects	\$149,936,253	\$140,462,333	\$13,788	\$8,688,184		
	General Institutional-Bond Management		\$5,692,510	\$0			
			\$146,154,843	\$13,788			
	Total Bond Funds Spent to Date		\$146,168,631				



Monterey County Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Upon motion of Supervisor Salinas, seconded by Supervisor Armenta and carried by those members present, the Board of Supervisors hereby:

- a. Received and accepted the Treasurer's Report of Investments for the quarter ending June 30, 2016;
- b. Received and approved the Treasurer's Investment Policy for FY 2016-17; and
- c. Renewed the Delegation of Investment Authority to the Treasurer-Tax Collector pursuant to California Government Code 53607.

PASSED AND ADOPTED on this 26th day of July 2016, by the following vote, to wit:

AYES: Supervisors Armenta, Salinas, Parker and Potter

NOES: None

ABSENT: Supervisor Phillips

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 79 for the meeting on July 26, 2016.

Dated: August 2, 2016
File ID: 16-904

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By

Deputy



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Report

Legistar File Number: 16-904

July 26, 2016

Introduced: 7/15/2016

Current Status: Agenda Ready

Version: 1

Matter Type: General Agenda Item

- a. Receive and Accept the Treasurer's Report of Investments for the quarter ending June 30, 2016; and
- b. Receive and Approve the Treasurer's Investment Policy for FY 2016-17; and
- c. Renew the Delegation of Investment Authority to the Treasurer-Tax Collector pursuant to California Government Code 53607.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Receive and Accept the Treasurer's Report of Investments for the quarter ending June 30, 2016; and
- b. Receive and Approve the Treasurer's Investment Policy for FY 2016-17; and
- c. Renew the Delegation of Investment Authority to the Treasurer-Tax Collector pursuant to California Government Code 53607.

SUMMARY:

Government Code Section 53646 (b) (1) states the Treasurer may submit a quarterly report of investments. The attached exhibits provide a narrative portfolio review of economic and market conditions that support the investment activity during the April - June period, the investment portfolio position by investment type, a listing of historical Monterey County Treasury Pool yields versus benchmarks, and the investment portfolio by maturity range.

The Treasurer has also amended the Monterey County Investment Policy to provide additional clarification, revise language and update investment guidelines and categories as stated in Government Code §53601(q). In addition, annual Board approval of the Investment Policy and delegation of investment authority are prescribed by Government Code sections 53646 and 53607.

DISCUSSION:

During the April - June quarter yields on U.S. Treasuries continued to fall due to concern over slowing economic growth and the release of the May employment data which revealed the lowest level of jobs gain since 2010. Market participants correctly predicted this would discourage the Federal Reserve from raising rates at the June committee meeting. While the labor market rebounded in June, adding a net 287,000 jobs which largely exceeded the market expectation of 175,000, Britain's vote to leave the European Union caused volatility throughout the global financial market, causing sovereign yields across the world to plummet. The political and economic consequences continue to be highly uncertain as Britain has the second largest economy in the European Union.

On June 30, 2016 the Monterey County investment portfolio contained an amortized book value of \$1,299,086,359.71 spread among 86 separate securities and funds. The par value of those

funds was \$1,297,997,754.70 with a market value of \$1,298,648,951.83 or 99.97% of amortized book value. The portfolio's net earned income yield for the period was 1.03%. This produced an estimated income of \$3,429,732.19 for the quarter which will be distributed proportionally to all agencies participating in the investment pool. The investment portfolio had a weighted average maturity of 491 days.

The investment portfolio was in compliance with all applicable provisions of state law and the adopted Investment Policy, and contains sufficient liquidity to meet all projected outflows over the next six months. Market value pricings were obtained through Bloomberg LLP, Union Bank of California and included live-bid pricing of corporate securities.

OTHER AGENCY INVOLVEMENT:

A copy of this report will be distributed to all agencies participating in the County investment pool and the Treasury Oversight Committee. In addition, the report will be published on the County Treasurer's web site. A monthly report of investment transactions is provided to the Board of Supervisors as required by Government Code 53607.

FINANCING:

The investment portfolio contains sufficient liquidity to meet all projected expenditures over the next six months. We estimate that the investment earnings in the General Fund will be consistent with budgeted revenue, but at historically low levels, as the Federal Reserve may not raise rates by the end of 2016.

Prepared by: Susanne King, Treasury Manager, x5490

Approved by: Mary A. Zeeb, Treasurer-Tax Collector, x5015

All attachments are on file with The Clerk of the Board:

Exhibit A - Investment Portfolio Review 06-30-16

Exhibit B - Portfolio Management Report 06-30-16

Exhibit C - Monterey County Historical Yields vs. Benchmarks

Exhibit D - Aging Report 07-01-16

Exhibit E - Monterey County Investment Policy - Red Line

Exhibit F - Monterey County Investment Policy - Proposed

cc:

County Administrative Office

County Counsel

Auditor-Controller - Internal Audit Section

All depositors

Treasury Oversight Committee

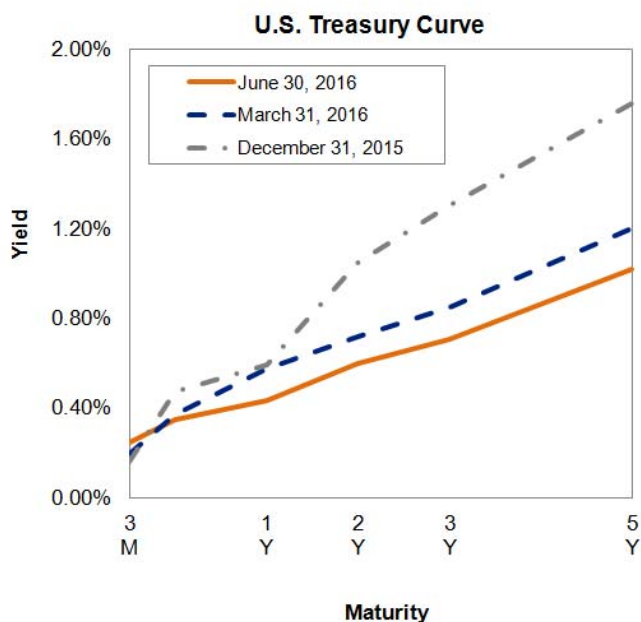
Exhibit A Investment Portfolio Review Quarter Ending June 30, 2016

OVERVIEW April 1, 2016 – June 30, 2016

During the April - June quarter yields on U.S. Treasuries continued to fall due to concern over slowing economic growth and the release of the May employment data which revealed the lowest level of jobs gain since 2010. Market participants correctly predicted this would discourage the Federal Reserve from raising rates at the June committee meeting. While the labor market rebounded in June, adding a net 287,000 jobs which largely exceeded the market expectation of 175,000, Britain’s vote to leave the European Union caused volatility throughout the global financial market, causing sovereign yields across the world to plummet. The political and economic consequences continue to be highly uncertain as Britain has the second largest economy in the European Union.

U.S. TREASURY YIELD CURVE

- Yields across the yield curve have fallen in 2016 except in the shortest maturities causing the yield curve to flatten.
- Rates continue to end the quarter significantly lower than in the two previous quarters.
- The portfolio has 60% invested in the 2-3 year maturity range to take advantage of the higher yields offered in that part of the yield curve.



	6/30/16	3/31/16	12/31/15
3-month	0.25%	0.20%	0.16%
6-month	0.35%	0.38%	0.47%
1-year	0.44%	0.58%	0.60%
2-year	0.60%	0.72%	1.05%
3-year	0.71%	0.85%	1.31%
5-year	1.02%	1.20%	1.76%
10-year	0.25%	0.20%	0.16%

Source: Bloomberg.

The County Treasury continues to outperform all of its portfolio benchmarks this quarter. Our investment strategy positions short term debt to provide liquidity and continues to take advantage of available higher yields on Commercial Paper, highly rated Corporate Notes and Negotiable CDs as well as maintaining Treasury Notes with attractive rates. The following indicators reflect key aspects of the County’s investment portfolio in light of the above noted conditions:

1. Market Access – During the quarter, the majority of County investment purchases were in the area of U.S. highly rated Corporate Notes and Commercial Paper. The Treasurer continues to keep a high level of liquid assets reflecting the need to maintain levels of available cash to ensure the ability to meet all cash flow needs.
2. Diversification - The Monterey County Treasurer’s portfolio consists of 86 different fixed income investments, all of which are authorized by the State of California Government Code 53601.

The portfolio asset spread is detailed in the table below:

Portfolio Asset Composition					
Corporate Notes	Negotiable CDs	Liquid Assets	US Treasuries	Federal Agencies	Commercial Paper
14%	6%	25%	20%	27%	8%

3. Credit Risk – Approximately 78% of the investment portfolio is comprised of U.S. Treasuries, Federal Agency securities, Negotiable CDs and other liquid funds. All assets have an investment grade rating. U.S. Treasuries are not specifically rated, but are considered the safest of all investments. The corporate debt (14%) is rated in the higher levels of investment grade. All federal agency securities have AA ratings, or are guaranteed by the U.S. Treasury. The credit quality of the County’s portfolio continues to be high.

The portfolio credit composition is detailed in the table below:

Portfolio Credit Composition									
AAA	AAAm	AA+	AA	AA-	A	A-1+ (Short-Term)	A-1 (Short-term)	Aaf/S1+ (CalTrust)	Not Rated (LAIF/MMF)
<1%	10%	50%	2%	7%	5%	2%	9%	11%	4%

4. Liquidity Risk – Liquidity risk, as measured by the ability of the County’s Treasury to meet withdrawal demands on invested assets, was adequately managed during the April to June quarter. The portfolio’s average weighted maturity was 491 days. The County maintained \$319.8M (25%) in overnight investments to provide immediate liquidity and \$176.7M (14%) in securities with maturities under a year to provide further enhanced liquidity.

PORTFOLIO CHARACTERISTICS

	<u>March 31, 2016</u>	<u>June 30, 2016</u>
Total Assets	\$1,279,023,414.54	\$1,299,086,359.71
Market Value	\$1,278,591,988.68	\$1,298,648,951.83
Days to Maturity	477	491
Yield	1.08%	1.03%
Estimated Earnings	\$3,432,128.12	\$3,429,732.19

FUTURE STRATEGY

The County portfolio has 60% invested in the 2-3 year maturity range to take advantage of the higher yields offered in that part of the yield curve and will continue to manage the portfolio to maximize safety, liquidity and the portfolio yield.

With the unemployment rate reaching 4.9% (its lowest level in eight years) and a steady rise in consumer spending, the economy is expected to grow. The Fed tightening at a slow pace along with a moderate economic growth should provide a supportive environment for investment-grade credit. The acquisition of new Corporate Notes, bank certificates of deposit (CDs) and Commercial Paper will continue to contribute positively to the County's portfolio performance.

Exhibit B

Monterey County Portfolio Management Portfolio Details - Investments June 30, 2016

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	Moody's	S&P	YTM	Maturity Date
Money Market Accts - GC 53601(k)(2)												
SYS11672	11672	BlackRock			1,081.32	1,081.32	1,081.32	0.304			0.304	
SYS11830	11830	Federated		07/01/2015	0.00	0.00	0.00	0.101	Aaa	AAA	0.101	
SYS11578	11578	Fidelity Investments			53,932,312.88	53,932,312.88	53,932,312.88	0.318	Aaa	AAA	0.318	
Subtotal and Average			62,871,855.61		53,933,394.20	53,933,394.20	53,933,394.20				0.318	
State Pool - GC 16429.1												
SYS11361	11361	LAIF			50,000,000.00	50,000,000.00	50,000,000.00	0.463			0.463	
Subtotal and Average			50,000,000.00		50,000,000.00	50,000,000.00	50,000,000.00				0.463	
CALTRUST/CAMP - GC 53601(p)												
SYS11801	11801	CalTrust			140,000,000.00	140,000,000.00	140,000,000.00	0.726	Aaa	AAA	0.726	
SYS10379	10379	Calif. Asset Mgmt			74,200,000.00	74,200,000.00	74,200,000.00	0.448		AAA	0.448	
SYS11961	11961	Calif. Asset Mgmt			465,959.07	465,959.07	465,959.07	0.510		AAA	0.510	
Subtotal and Average			230,714,310.72		214,665,959.07	214,665,959.07	214,665,959.07				0.629	
SWEEP ACCOUNT-MORG STNLY												
SYS12041	12041	Morgan Stanley		11/10/2015	1,208,401.43	1,208,401.43	1,208,401.43	0.273			0.273	
Subtotal and Average			2,280,851.04		1,208,401.43	1,208,401.43	1,208,401.43				0.273	
Negotiable CDs - GC 53601 (i)												
40428AR58	12047	HSBC Securites		11/18/2015	14,000,000.00	14,000,000.00	14,000,000.00	1.540	Aa2	AA-	1.540	11/17/2017
78009NZ22	12072	Royal Bank of Canada		03/15/2016	18,000,000.00	18,000,000.00	18,000,000.00	1.700	Aa3	AA-	1.700	03/09/2018
83050FBG5	12046	Skandinaviska Enskilada Banken		11/17/2015	14,000,000.00	14,000,000.00	14,000,000.00	1.480	Aa3	A+	1.501	11/16/2017
86958DH54	12048	Svenska Handelsbanken NY		11/24/2015	14,000,000.00	14,000,000.00	14,000,000.00	1.111			1.066	08/24/2017
89113E5E2	12073	Toronto Dominion Bank		03/16/2016	18,000,000.00	18,000,000.00	18,000,000.00	1.720	Aa1	AA-	1.744	03/14/2018
Subtotal and Average			78,000,000.00		78,000,000.00	78,000,000.00	78,000,000.00				1.532	
Medium Term Notes - GC 53601(k)												
0258M0DP1	12088	American Express Credit		06/27/2016	10,000,000.00	10,178,664.18	10,178,664.18	2.250	A2	A-	1.660	08/15/2019
037833BQ2	12066	Apple Inc Corp Notes		02/23/2016	6,000,000.00	5,999,101.00	5,999,101.00	1.700	Aa1	AA+	1.706	02/22/2019
084664BS9	12031	Berkshire Hathaway Finance		04/24/2015	10,000,000.00	10,080,700.00	10,075,682.05	1.600	Aa2	AA	0.724	05/15/2017
166764AE0	12049	Chevron Corp. Global		11/25/2015	8,175,000.00	8,210,806.50	8,206,496.72	1.718	Aa1	AA	1.519	06/24/2018
17275RBA9	12071	Cisco Systems Inc Corp		02/29/2016	4,265,000.00	4,265,000.00	4,265,000.00	1.400	A1	AA-	1.400	02/28/2018
172967KS9	12085	Citibank		06/09/2016	3,840,000.00	3,838,043.95	3,838,043.95	2.050	Baa1	A-	2.068	06/07/2019

Portfolio INVT
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Exhibit B

Monterey County Portfolio Management Portfolio Details - Investments June 30, 2016

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	Moody's	S&P	YTM	Maturity Date
Medium Term Notes - GC 53601(k)												
25468PDH6	12064	The Walt Disney Copr		01/08/2016	2,710,000.00	2,706,950.30	2,706,950.30	1.650	A2	A	1.696	01/08/2019
369604BC6	12010	General Electric		01/23/2015	10,000,000.00	10,784,700.00	10,575,224.59	5.250	Aa	AA	1.150	12/06/2017
38141GVT8	12074	Goldman Sachs		04/25/2016	1,415,000.00	1,411,306.69	1,411,306.69	2.000	A3	BBB+	2.096	04/25/2019
38141GVT8	12075	Goldman Sachs		04/26/2016	7,210,000.00	7,205,663.58	7,205,663.58	2.000	A3	BBB+	2.022	04/25/2019
02665WBA8	12068	American Honda Finance		02/23/2016	3,780,000.00	3,779,333.68	3,779,333.68	1.700	A1	A+	1.707	02/22/2019
459200JE2	12067	IBM Corp Notes		02/19/2016	20,000,000.00	19,992,726.71	19,992,726.71	1.800			1.812	05/17/2019
24422ETE9	12063	John Deere Captital Corp		01/08/2016	8,300,000.00	8,299,581.77	8,299,581.77	1.950	A2	A	1.952	01/08/2019
478160BF0	12000	Johnson & Johnson		12/23/2014	2,000,000.00	2,000,700.00	2,000,000.00	0.700	Aaa	AAA	0.700	11/28/2016
46625HQU7	12081	Morgan Stanley		05/26/2016	10,000,000.00	10,015,931.59	10,015,931.59	1.850	A3	A	1.789	03/22/2019
713448DE5	12070	Pepsico Inc Corp Note		02/24/2016	3,850,000.00	3,849,015.04	3,849,015.04	1.500	A1	A	1.510	02/22/2019
717081DU4	12083	PFIZER INC		06/03/2016	10,000,000.00	9,988,895.56	9,988,895.56	1.450	A1	AA	1.489	06/03/2019
89233P5S1	11839	Toyota Motor Corporation		02/29/2012	5,000,000.00	5,056,950.00	5,011,947.03	2.050	Aa	AA	1.580	01/12/2017
89236TCA1	12009	Toyota Motor Corporation		01/16/2015	10,000,000.00	9,999,000.00	10,025,399.26	1.450	Aa	AA	1.280	01/12/2018
89233P6S0	12018	Toyota Motor Corporation		03/30/2015	10,000,000.00	9,996,000.00	10,017,758.67	1.250	Aaa	AA	1.107	10/05/2017
94974BFG0	12021	Wells Fargo & Company		04/07/2015	10,000,000.00	10,018,900.00	10,050,777.78	1.500	Aaa	AA	1.164	01/16/2018
94974BFL9	12025	Wells Fargo & Company		04/13/2015	10,000,000.00	10,031,400.00	10,002,864.55	1.250	A2	A+	0.704	07/20/2016
94974BFU9	12089	Wells Fargo & Company		06/27/2016	10,000,000.00	10,175,804.43	10,175,804.43	2.125	A2	A	1.483	04/22/2019
Subtotal and Average			158,587,201.94		176,545,000.00	177,885,174.98	177,672,169.13				1.461	
Commercial Paper Disc.- GC 53601(h)												
06366GQH5	12086	Bank of Montreal Chicago		06/24/2016	20,000,000.00	19,852,913.85	19,852,913.85	1.022	P-1	A-1	1.044	03/17/2017
06538BKR3	12076	Bank of Tokyo-MITS		04/25/2016	20,000,000.00	19,942,644.45	19,942,644.45	0.890	P-1	A-1	0.909	10/25/2016
09659BLJ7	12079	BNP Paribas NY		05/24/2016	20,000,000.00	19,928,444.44	19,928,444.44	0.920	P-1	A-1	0.924	11/18/2016
21687AMT7	12087	Rabobank Nederland		06/24/2016	20,000,000.00	19,914,477.77	19,914,477.77	0.860	P-1	A-1	0.878	12/27/2016
90262CHX8	12065	UBS		01/28/2016	19,715,000.00	19,688,609.28	19,688,609.28	0.790	P-1	A-1	0.804	08/31/2016
Subtotal and Average			79,979,239.36		99,715,000.00	99,327,089.79	99,327,089.79				0.912	
Fed Agcy Coupon Sec - GC 53601(f)												
3133EDSU7	11985B	Federal Farm Credit Bank		08/15/2014	7,500,000.00	7,503,075.00	7,500,000.00	1.000	Aaa	AA+	1.000	08/15/2017
3133EEFE5	12008	Federal Farm Credit Bank		01/12/2015	10,000,000.00	10,018,200.00	10,021,559.09	1.125	Aaa	AA	0.975	12/18/2017
3133EEMA5	12011	Federal Farm Credit Bank		01/30/2015	10,000,000.00	9,940,700.00	10,006,686.21	1.500	Aaa	AA	1.480	12/30/2019
3133EELZ1	12012	Federal Farm Credit Bank		02/02/2015	10,000,000.00	9,966,500.00	10,018,889.71	1.000	Aaa	AA	0.890	03/29/2018
3133EESZ4	12016	Federal Farm Credit Bank		03/25/2015	10,000,000.00	9,998,600.00	10,000,211.99	0.460	Aaa	AA	0.390	07/12/2016
3133EDMB5	12017	Federal Farm Credit Bank		03/26/2015	10,000,000.00	9,997,200.00	10,000,214.36	0.500	Aaa	AA	0.485	08/23/2016
3133EETE0	12020	Federal Farm Credit Bank		04/01/2015	10,000,000.00	10,003,600.00	10,032,191.23	1.125	Aaa	AA	0.932	03/12/2018

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Exhibit B

Monterey County Portfolio Management Portfolio Details - Investments June 30, 2016

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	Moody's	S&P	YTM	Maturity Date
Fed Agcy Coupon Sec - GC 53601(f)												
313380EC7	11878	Federal Home Loan Bank		09/17/2012	10,000,000.00	9,962,000.00	9,988,401.14	0.750	Aaa	AA	0.850	09/08/2017
313370TW8	11888	Federal Home Loan Bank		12/05/2012	10,000,000.00	10,104,800.00	10,027,621.86	2.000	Aaa	AA	0.521	09/09/2016
313378A43	11925	Federal Home Loan Bank		05/02/2013	10,000,000.00	10,058,800.00	10,102,110.59	1.375	Aaa	AA	0.758	03/09/2018
313383A68	11928	Federal Home Loan Bank		06/13/2013	10,000,000.00	9,925,600.00	10,000,000.00	1.080	Aaa	AA	1.080	06/13/2018
313378QK0	11966	Federal Home Loan Bank		04/04/2014	10,000,000.00	10,154,700.00	10,014,553.24	1.875	Aaa	AA	1.818	03/08/2019
3130A4Q70	12032	Federal Home Loan Bank		04/23/2015	10,000,000.00	10,008,500.00	10,025,712.55	1.000	Aaa	AA+	0.811	11/17/2017
3130A8BD4	12082	Federal Home Loan Bank		05/27/2016	32,000,000.00	31,926,366.81	31,926,366.81	0.875	Aaa	AA+	0.992	06/29/2018
3130A8DB6	12084	Federal Home Loan Bank		06/03/2016	16,935,000.00	16,928,068.68	16,928,068.68	1.125	Aaa	AA+	1.139	06/21/2019
3134G3S50	11887	Federal Home Loan Mtg Corp		11/30/2012	10,000,000.00	9,990,100.00	10,002,139.15	0.625	Aaa	AA	0.560	11/01/2016
3134G42G2	11917	Federal Home Loan Mtg Corp		04/30/2013	10,000,000.00	9,959,600.00	10,000,000.00	1.050	Aaa	AA	1.050	04/30/2018
3134G43F3	11920	Federal Home Loan Mtg Corp		04/30/2013	10,000,000.00	10,006,700.00	10,000,000.00	1.020	Aaa	AA	1.020	04/30/2018
3134G43V8	11923	Federal Home Loan Mtg Corp		05/15/2013	10,000,000.00	9,967,300.00	9,999,625.56	1.050	Aaa	AA	1.052	05/15/2018
3137EADL0	11987	Federal Home Loan Mtg Corp		08/25/2014	10,000,000.00	10,007,000.00	9,987,669.95	1.000	Aaa	AA	1.101	09/29/2017
3136G14N6	11890	Federal National Mtg Assn		01/02/2013	10,000,000.00	9,957,700.00	9,998,343.13	0.750	Aaa	AA	0.767	06/28/2017
3135G0PP2	11903	Federal National Mtg Assn		01/18/2013	10,000,000.00	10,008,300.00	10,008,612.96	1.000	Aaa	AA	0.928	09/20/2017
3135G0XA6	11924	Federal National Mtg Assn		05/21/2013	10,000,000.00	9,940,800.00	10,000,000.00	1.030	Aaa	AA	1.030	05/21/2018
3135G0XK4	11927	Federal National Mtg Assn		05/30/2013	10,000,000.00	9,951,300.00	10,000,000.00	1.050	Aaa	AA	1.050	05/25/2018
3135G0WJ8	11929	Federal National Mtg Assn		05/28/2013	10,000,000.00	9,921,400.00	9,968,787.51	0.875	Aaa	AA	1.045	05/21/2018
3135G0PQ0	11948	Federal National Mtg Assn		12/04/2013	10,000,000.00	9,979,000.00	9,976,144.97	0.875	Aaa	AA	1.060	10/26/2017
3135G0PQ0	12007	Federal National Mtg Assn		01/12/2015	10,000,000.00	9,979,000.00	9,996,735.56	0.875	Aaa	AA	0.900	10/26/2017
3136FTS67	12013	Federal National Mtg Assn		02/03/2015	10,000,000.00	10,065,100.00	10,140,396.17	1.700	Aaa	AA	1.157	02/27/2019
3135G0YM9	12033	Federal National Mtg Assn		04/23/2015	10,000,000.00	10,166,900.00	10,176,725.80	1.875	Aaa	AA+	1.060	09/18/2018
3135G0RT2	12039	Federal National Mtg Assn		10/22/2015	10,000,000.00	9,966,800.00	10,022,506.30	0.875	Aaa	AA+	0.720	12/20/2017
3135G0TG8	12040	Federal National Mtg Assn		10/22/2015	10,000,000.00	9,954,900.00	10,019,768.89	0.875	Aaa	AA+	0.750	02/08/2018
3135G0J53	12069	Federal National Mtg Assn		02/23/2016	21,150,000.00	21,105,985.35	21,105,985.35	1.000	Aaa	AA+	1.080	02/26/2019
Subtotal and Average			416,085,734.25		357,585,000.00	357,424,595.84	357,996,028.76				0.961	
US Treasury Note-GC 53601(b)												
912828A34	12042	U.S. Treasury		11/10/2015	9,940,000.00	9,944,671.80	9,940,000.00	1.250	Aaa	AA	1.250	11/30/2018
912828A34	12044	U.S. Treasury		11/16/2015	17,000,000.00	17,007,990.00	17,016,885.14	1.250	Aaa	AA	1.208	11/30/2018
912828VE7	12045	U.S. Treasury		11/16/2015	17,000,000.00	16,950,870.00	16,978,969.21	1.000	Aaa	AA+	1.066	05/31/2018
912828K82	12051	U.S. Treasury		11/25/2015	35,000,000.00	34,834,450.00	34,873,150.03	1.000	Aaa	AA+	1.174	08/15/2018
912828A34	12052	U.S. Treasury		11/25/2015	10,000,000.00	10,004,700.00	10,001,877.55	1.250	Aaa	AA	1.242	11/30/2018
912828VE7	12053	U.S. Treasury		11/25/2015	15,000,000.00	14,956,650.00	14,967,430.68	1.000	Aaa	AA+	1.115	05/31/2018
912828A75	12054	U.S. Treasury		12/04/2015	39,450,000.00	39,694,305.18	39,694,305.18	1.500	Aaa	AA+	1.247	12/31/2018

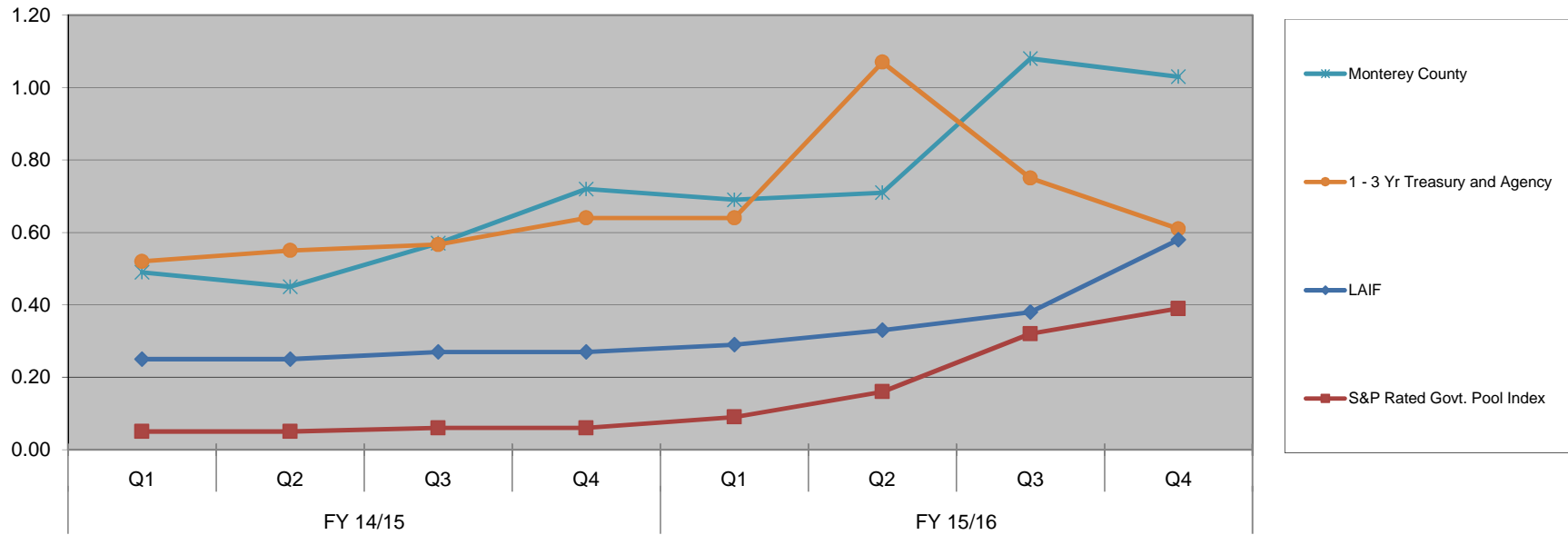
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Exhibit B

Monterey County Portfolio Management Portfolio Details - Investments June 30, 2016

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	Moody's	S&P	YTM	Maturity Date
US Treasury Note-GC 53601(b)												
912828B33	12055E	U.S. Treasury		12/18/2015	7,805,000.00	7,833,276.01	7,833,276.01	1.500	Aaa	AA+	1.356	01/31/2019
912828WD8	12056	U.S. Treasury		12/22/2015	40,000,000.00	40,012,751.44	40,012,751.44	1.250	Aaa	AA+	1.236	10/31/2018
912828WD8	12060	U.S. Treasury		12/22/2015	10,000,000.00	9,998,406.07	9,998,406.07	1.250	Aaa	AA+	1.257	10/31/2018
912828VE7	12062	U.S. Treasury		12/22/2015	20,000,000.00	19,937,484.22	19,937,484.22	1.000	Aaa	AA+	1.166	05/31/2018
912828Q52	12077	U.S. Treasury		05/19/2016	25,000,000.00	24,907,238.53	24,907,238.53	0.875	Aaa	AA+	1.010	04/15/2019
912828XK1	12080	U.S. Treasury		05/24/2016	20,150,000.00	20,121,543.27	20,121,543.27	0.875	Aaa	AA+	0.945	07/15/2018
Subtotal and Average			260,861,583.90		266,345,000.00	266,204,336.52	266,283,317.33				1.167	
Total and Average			1,339,380,776.83		1,297,997,754.70	1,298,648,951.83	1,299,086,359.71				1.001	

Exhibit C Monterey County Historical Yields vs. Benchmarks



Quarterly Yield	FY 14/15				FY 15/16			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Monterey County	0.49	0.45	0.57	0.72	0.69	0.71	1.08	1.03
1 - 3 Yr Treasury and Agency	0.52	0.55	0.57	0.64	0.64	1.07	0.75	0.61
LAIF	0.25	0.25	0.27	0.27	0.29	0.33	0.38	0.58
S&P Rated Govt. Pool Index	0.05	0.05	0.06	0.06	0.09	0.16	0.32	0.39

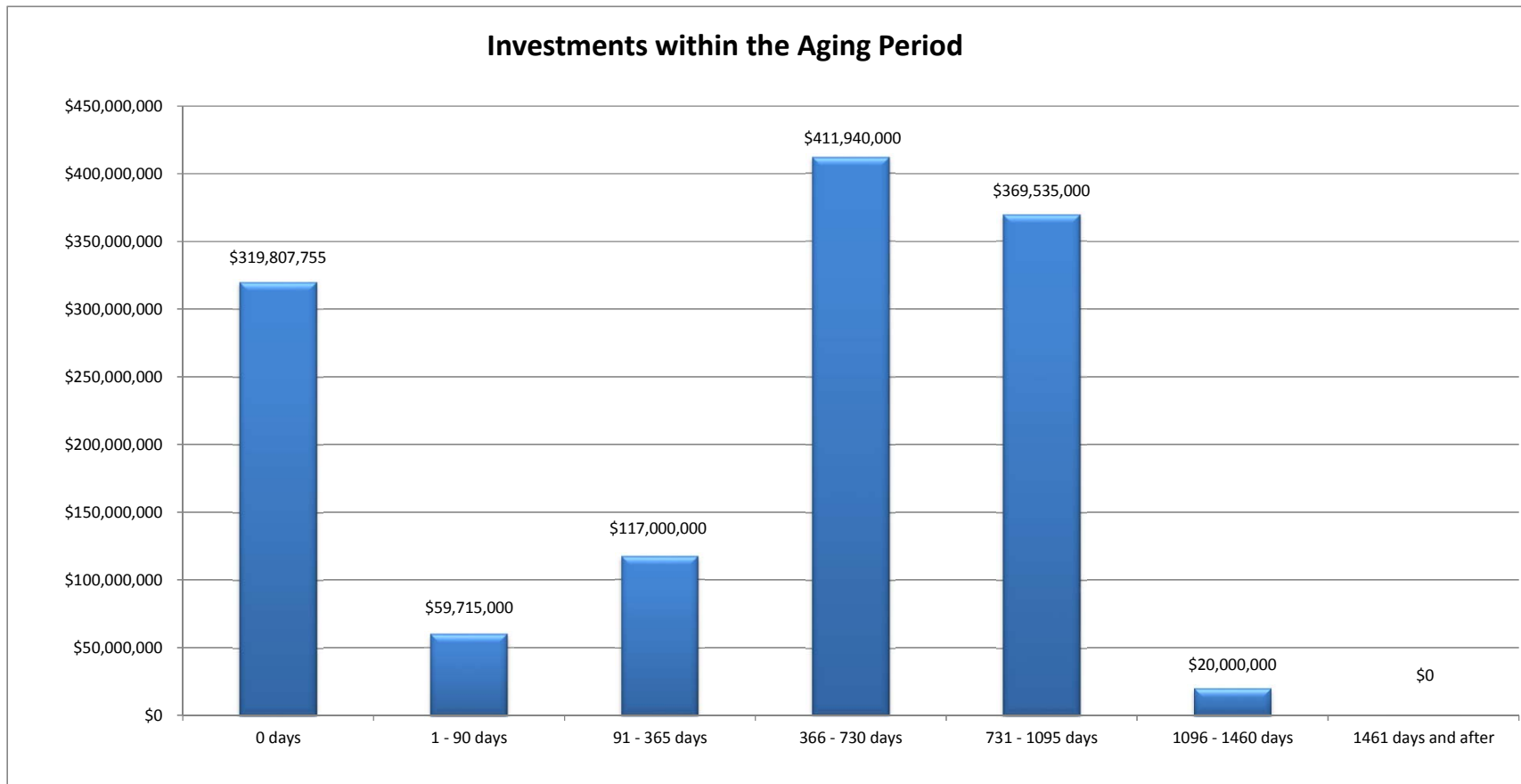
The S&P Index yields are obtained from Bloomberg

The 1-3 Yr Treas and Agy yields are obtained from the B of A Merrill Lynch Global Bond Indices/Bloomberg



Exhibit D Monterey County Aging Report By Maturity Date As of July 1, 2016

				Maturity Par Value	Percent of Portfolio	Current Book Value	Current Market Value
Aging Interval:	0 days	(07/01/2016 - 07/01/2016)	8 Maturities	319,807,754.70	24.64%	319,807,754.70	319,807,754.70
Aging Interval:	1 - 90 days	(07/02/2016 - 09/29/2016)	5 Maturities	59,715,000.00	4.60%	59,719,522.04	59,820,609.28
Aging Interval:	91 - 365 days	(09/30/2016 - 07/01/2017)	9 Maturities	117,000,000.00	9.01%	116,726,591.87	116,724,630.51
Aging Interval:	366 - 730 days	(07/02/2017 - 07/01/2018)	35 Maturities	411,940,000.00	31.74%	412,619,623.95	412,134,152.53
Aging Interval:	731 - 1095 days	(07/02/2018 - 07/01/2019)	27 Maturities	369,535,000.00	28.47%	370,027,516.76	370,042,440.63
Aging Interval:	1096 - 1460 days	(07/02/2019 - 06/30/2020)	2 Maturities	20,000,000.00	1.54%	20,185,350.39	20,119,364.18
Aging Interval:	1461 days and after	(07/01/2020 -)	0 Maturities	0.00	0.00%	0.00	0.00
Total for			86 Investments	1,297,997,754.70	100.00	1,299,086,359.71	1,298,648,951.83





MONTEREY COUNTY TREASURER'S INVESTMENT POLICY

FISCAL YEAR 2016-2017

APPROVED BY THE BOARD OF SUPERVISORS JULY 26, 2016

MONTEREY COUNTY INVESTMENT POLICY

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APPENDIX A 9

Exhibit F**INVESTMENT POLICY****Treasurer-Tax Collector
County of Monterey****1.0 Policy**

It is the policy of the Treasurer-Tax Collector of Monterey County (“Treasurer”) to invest public funds in a manner which provides for the safety of the funds on deposit, the cash flow demands, or liquidity needs of the Treasury Pool participants, and the highest possible yield after first considering the first two objectives of safety and liquidity. In addition, it is the Treasurer-Tax Collector's Policy to invest all funds in strict conformance with all state statutes governing the investment of public monies.

2.0 Scope

This Investment Policy applies to all financial assets in the Treasury Pool. The Policy does not apply to bond proceeds, which are governed by their respective bond documents. These funds are accounted for in the Comprehensive Annual Financial Reports of the County and each of the Treasury Pool's participating agencies.

2.1 Participating Agencies

Participants in the Treasurer's Investment Pool shall be limited to the County of Monterey, school districts within Monterey County and those special districts, which, by statute, maintain depository authority with the County Treasurer.

2.2 Outside Agency Participation

It is the Treasurer's policy to prohibit any voluntary agency participation in the Treasury Pool.

3.0 Prudence

The County Treasurer is a trustee and therefore a fiduciary subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing public funds, the County Treasurer shall act with care, skill, prudence and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the county and the other depositors. Within the limitations of this section and considering individual investments as part of an overall investment strategy, a trustee is authorized to acquire investments as authorized by law.

Nothing in this Policy is intended to grant investment authority to any person or governing body except as provided in Sections 53601 and 53607 of the Government Code.

Exhibit F**4.0 Objectives**

The primary objectives, in priority order, of the County of Monterey's investment activities shall be:

4.1 Safety of Principal

Investments of the County shall be undertaken in a manner that seeks to ensure preservation of capital in the overall portfolio. To attain this objective, diversification is required in order that potential losses do not exceed the income generated from the remainder of the portfolio.

4.2 Liquidity

The investment portfolio shall remain sufficiently liquid to enable all depositors to meet all expenditure requirements that might be reasonably anticipated. A minimum of 30% of the invested assets, including cash held in commercial bank accounts, shall be kept in assets having a maturity of one (1) year or less. In the event that unforeseen cash-flow fluctuations temporarily cause the ratio of liquid assets to decline below 30% of the portfolio balance, no new investments will be made until the minimum percentage is restored.

4.3 Return on Investment

The County's investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the County's investment risk constraints and the cash flow characteristics of the portfolio.

5.0 Delegation of Authority

Subject to amended delegation by the Board of Supervisors pursuant to Government Code Section 53607, the Treasurer-Tax Collector is authorized to manage the Monterey County investment program. The Treasurer-Tax Collector shall establish written procedures for the operation of the investment program consistent with this Investment Policy.

Procedures should include reference to: safekeeping, master repurchase agreements, funds transfer agreements, collateral/ depository agreements and banking service contracts. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this Policy and the procedures established by the Treasurer-Tax Collector. The Treasurer-Tax Collector shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials.

6.0 Conflict of Interest

Pursuant to Article 2 (commencing with Section 87200) of Chapter 7 of Title 9 of the Government Code and the regulations of the Fair Political Practices Commission enacted pursuant thereto, the Treasurer-Tax Collector shall disclose investments, interests in real properties, and any income received during the period since the previous statement was filed. Such disclosure shall be in writing, and shall be filed with the officer designated by law within the time periods specified by law.

Exhibit F**6.1 Acceptance of Gifts**

The Treasurer-Tax Collector, all deputized departmental staff, and members of the Treasury Oversight Committee are prohibited from accepting any monetary or in-kind gift from any broker, dealer, or firm doing business or seeking to do business with the Monterey County Treasurer.

7.0 Authorized Dealers and Institutions

The Treasurer-Tax Collector will maintain a list of broker/dealers and institutions authorized to provide investment services. Repurchase agreements and reverse repurchase agreements shall only be made with primary dealers designated by the Federal Reserve Bank of New York. The Treasurer-Tax Collector may impose additional qualifications of brokers and their firms in order to ensure professionalism and suitability. At a minimum, all broker/dealers and/or financial institutions authorized to provide investment services to Monterey County shall meet the following criteria:

- a. Commercial banks and savings institutions must be authorized as insured with the FDIC, SIPC, or NCUA (credit unions), as applicable.
- b. Must hold an active corporate registered status with the Secretary of State (California), or an out-of-state counterpart agency.
- c. Commercial banks and savings institutions used for deposits, must be a state or national bank, savings association or federal association, a state or federal credit union, or a federally insured industrial loan company, in this state
- d. Must be an active member of the Financial Industry Regulatory Authority.

If a third-party Investment Advisor is authorized to conduct investment transactions on the County's behalf, the Investment Advisor may use its own list of approved broker/dealers and financial institutions for investment purposes. The Investment Advisor's approved list must be made available to the County upon request.

7.1 Limitations on Political Contributions

Pursuant to Government Code Section 27133 (c), the Treasurer-Tax Collector shall not select for business any broker, brokerage, dealer, or securities firm that has made a political contribution within the last four years in an amount exceeding the limitations contained in Rule G-37 of the Municipal Securities Rulemaking Board, to the County Treasurer, any member of the Monterey County Board of Supervisors, or any candidate for those offices.

8.0 Authorized and Suitable Investments.

The Treasurer-Tax Collector of Monterey County may invest in any security within the limits authorized by Section 53601 and 53635 of the Government Code of the State of California, and within the limits of any other Government Code Statute that permits public agency investment in various securities or participation in investment trading techniques or strategies. Permissible investments are detailed in Appendix A.

Rating requirements and percentage limitations, where indicated, apply at the time of purchase.

Exhibit F**8.1 Limitations**

The Treasurer shall not invest in any security, which, by its structure, term or other characteristics, has the possibility of returning a zero or negative yield or could be subject to a loss of principal at the time such security has attained its maturity date. Investments shall not be made in inverse floaters, range notes, and mortgage-derived interest-only strips.

8.2 Reverse Repurchase Agreements

Any reverse repurchase agreement shall have a maximum maturity of 92 days, and the proceeds shall not be invested beyond the expiration of the reverse repurchase agreement. The maximum amount of Reverse Repurchase Agreements shall be limited to 20% of the portfolio's book value on the date of the transaction.

8.3 Maximum Credit Exposure

The Treasurer shall limit the investments in any single issuer, regardless of the combination of asset class; to no more than 5% of the portfolio's book value on the date of the transaction. Obligations of the U. S. Treasury, federal agencies, supranational, and pooled investments such as LAIF, CAMP, CalTrust, and money market funds are exempted from this restriction.

8.4 Credit Downgrade

In the event a security held by the County is downgraded below the minimum ratings required by the Policy, the security will be reviewed. The course of action will be determined on a case-by-case basis, considering such factors as the reason for the ratings change, prognosis for recovery or further ratings changes, and the market price of the security.

9.0 Safekeeping and Custody

All security transactions, including collateral for repurchase agreements, shall be conducted on a delivery-versus-payment basis. Securities shall be held by a third-party custodian designated by the Treasurer-Tax Collector and evidenced by safekeeping receipts and tri-party master repurchase agreements.

10.0 Investments Outside Treasury Pool

The Treasurer will accept funds for investment outside of the core pooled portfolio (custom invested funds) from depository agencies who also deposit their operating fund in the core portfolio under the following criteria:

- a. All such investments are subject to prior approval by the Monterey County Treasurer.
- b. the funds represent proceeds of bonds, other forms of indebtedness, or special purpose funds not required for normal operating expenses, and
- c. the funds represent new or additional assets of the agency that were not previously invested in the Monterey County Investment Pool, or under other conditions approved by the Treasurer, and

Exhibit F

- d. the funds may be transferred to the core portfolio upon mutual agreement between the depository agency and the Monterey County Treasurer. Any such transfer will reflect the market value of any securities sold prior to their maturity, where the underlying funds cannot be transferred back to a custom investment outside the core portfolio unless approved by the Treasurer, and
- e. funds may be transferred to the Monterey County Treasurer's operating (checking) account for further disbursement provided the funds originate from: maturing securities; overnight funds; sold securities subject to subsection 10 (c.) above, and associated earned income on those funds, and
- f. within 7 business days prior to the maturity of any security the depository agency shall inform the Monterey County Treasurer of the desired disposition of such maturing assets to include, rollover to a new asset, transfer to the core portfolio, or transfer to the Monterey County Treasurer's operating account subject to the conditions in 10 (a.) through (g.) inclusive, and
- g. any earned income on "custom invested funds" will be segregated from the core portfolio and deposited to an overnight fund designated specifically for such income. Any liquidation or transfer of the underlying asset will invoke a corresponding transfer of the associated earned income.

**11.0 Criteria for Withdrawal of Funds from the Treasury Investment Pool
Section 27136 and Section 27133 (h) - Government Code**

An agency with funds on deposit in the County Treasury where such funds may statutorily be invested outside of the County Treasury may apply for a withdrawal of those funds. Pursuant to Government Code Sections 27133 (h) and 27136, the County Treasurer shall evaluate each proposal for withdrawal of funds. The Treasurer's evaluation shall assess the effect of a proposed withdrawal on the stability and predictability of the investments in the County Treasury Pool. In addition and prior to any withdrawal, the Treasurer shall find that the proposed withdrawal will not adversely affect the interests of the other depositors in the Treasury Pool.

All applications for withdrawal must be submitted by a Resolution of the depository agency at least 30 days in advance of the anticipated date of withdrawal. Resolutions for withdrawal shall include:

- a. a statement of the purpose for withdrawal
- b. the date(s) and amount(s) of funds to be withdrawn
- c. a certification that funds withdrawn from the county pool shall be managed by the applicant agency and that withdrawn funds shall not be returned for future investment by the County Treasurer for a term of one year, and
- d. an acknowledgement that the value of any funds withdrawn from the County Treasury shall reflect their most recent quarterly asset valuation as reported by the Treasurer.

The Treasurer shall provide an applicant agency a written response within 15 days from receipt of the application. The Treasurer's determination shall be final.

Exhibit F**12.0 Maximum Maturities**

Any non-marketable investments, such as time deposits, should not exceed a two-year maturity. In addition, no specific investment shall have a term remaining to maturity in excess of five years except under the following circumstance, and subject to specific approval of the Board of Supervisors at least 90-days in advance of purchasing investments:

Other special purpose investments where the maturity term is not integral to short term cash flow needs.

12.1 Weighted Average Maturity

The weighted average maturity of the overall portfolio shall not exceed two years.

13.0 Audits

The Monterey County investment portfolio shall be subject to a process of independent review by the Auditor-Controller's internal auditor. The County's external auditors shall review the investment portfolio in connection with the annual county audit and requirements of the Governmental Accounting Standards Board.

14.0 Performance Standards

The investment portfolio will be designed to obtain a market average rate of return during budgetary and economic cycles, taking into account the County's investment risk constraints and cash flow needs. The County may establish a market-based performance benchmark for comparison.

15.0 Investment Policy Review and Approval

The Treasurer-Tax Collector of Monterey County shall submit the Investment Policy to the Board of Supervisors for review and approval at least annually.

15.1 Legislative Changes

Any State of California legislative action that further restricts allowable maturities, investment types, minimum credit requirements, or percentage allocations will be incorporated immediately into the Investment Policy.

16.0 Reporting

Pursuant to Government Code Section 53646 (b) the Treasurer-Tax Collector may provide quarterly investment reports to the Board of Supervisors, Treasury Oversight Committee, and all pool participants. The report shall include a listing of all securities held in the portfolio. Such listing shall include investment description, maturity date, par, amortized book value, market values and their source, and a risk measurement standard such as duration, along with certifications concerning the portfolio's compliance with the Policy and the portfolio's available liquidity to meet expenditure requirements for the next six months. The quarterly report shall be submitted to the Board of Supervisors within 30 days of the quarter end being reported.

Exhibit F**17.0 Allocation of Investment Costs**

The costs of investing, banking, and cash management as budgeted annually and applied quarterly shall be assessed to depositing agencies at the time of quarterly interest apportionment by the County Auditor-Controller, and in accordance with Government Code statutes. Depositing agencies will receive net revenue after pro rata application of costs that correspond to a basis point reduction to earned interest rates.

When actual annual costs of investing are determined, any differences from budgeted amounts shall be included in an adjusting interest allocation by the Auditor-Controller.

18.0 Treasury Oversight Committee

A Treasury Oversight Committee nominated by the County Treasurer and confirmed by the Board of Supervisors shall provide oversight through periodic review of the Investment Policy and compliance with such Policy. The Treasury Oversight Committee, pursuant to Government Code Section 27130 et seq; shall consist of 6 members including: the Treasurer-Tax Collector, the County Administrative Officer or his/her designee: the County Superintendent of Schools, or his/her designee, a representative of the governing bodies of County School Districts, a representative of the legislative bodies of County Special Districts that are authorized depositors in the County Treasury, and a member of the public. The committee shall meet at least annually, or as needed, and shall review the Investment Policy and report on compliance with such Policy.

18.1 Establishment of Treasury Oversight Committee

Pursuant to Section 27130 et seq; of the Government Code, the Monterey County Treasury Oversight Committee was established. The committee shall be subject to the provisions of the Political Reform Act of 1974, as amended (Government Code Sections 8100 et seq).

18.2 Brown Act

Pursuant to Government Code Section 27132.4, Committee meetings shall be open to the public and subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of part 1 of Division 2 of Title 5).

18.3 Membership Prohibitions

Pursuant to Government Code Section 27132.2, No member of the committee shall directly or indirectly raise money for a candidate for local Treasurer or a member of the governing board of any local agency that has deposited funds in the County Treasury while a member of the committee.

Pursuant to Government Code Section 27132.3, a member of the Treasury Oversight Committee may not secure employment with, or be employed by, bond underwriters, bond counsel security brokerages or dealers or financial services firms, with whom the Treasurer is doing business during the period that the person is a member of the Committee or for one year after leaving the Committee.

18.4 Compliance Audit

Pursuant to Government Code Section 27134, the County Treasury Oversight

Exhibit F

Committee shall cause an annual audit to be conducted to determine the County Treasurer's compliance with Article 6, Chapter 5 of Division 2 of Title 3 of the Government Code.

19.0 Disaster Recovery

The Treasurer-Tax Collector shall maintain a disaster recovery plan and shall include contact information for key personnel as well as active bankers, broker/dealers, and the County's investment advisor.

APPENDIX A
Authorized Investments County General Pool

Instrument	Maximum Maturity per code	County Restriction	Max %/ Dollar Limit
California State Treasurer's Local Agency Investment Fund	N/A	N/A	Amount permitted by LAIF per account or as approved by the State Treasurer for bond/note proceeds (Currently \$50,000,000)
California Asset Management Program (CAMP)	N/A	N/A	20%
CalTrust	N/A	N/A	20%
Bonds, including revenue bonds, issued by the County, its Agencies, or authorities	5 years	N/A	10% limit issuer
U.S. Treasury notes, bonds, bills, or certificates of indebtedness bearing a full faith and credit pledge	5 years	N/A	N/A
Registered warrants, notes, and bonds, including revenue bonds, of the State of California and all other 49 states ⁽¹⁾	5 years	N/A	10% limit issuer
Bonds, notes, warrants, and other evidences of indebtedness issued by any local agency within California, including revenue bonds ⁽¹⁾	5 years	N/A	10% limit issuer
Obligations of federal agencies and United States government-sponsored enterprises	5 years	N/A	N/A
Bankers acceptances ⁽²⁾	180 days	N/A	40%
Prime commercial paper of domestic issuers with assets in excess of \$500 million ⁽²⁾	270 days	N/A	40%
Negotiable certificates of deposit issued by domestic banks, associations, and state- chartered branches of foreign banks ⁽¹⁾	5 years	N/A	30%
Reverse repurchase agreements	92 days matched maturities	N/A	20%
Repurchase agreements	1 year	20%	N/A
Medium term notes issued by domestic corporations and depository institutions ⁽³⁾	5 years	No inverse floating rate instruments	30%
Money market mutual funds	N/A	N/A	20% Total all funds 10% any one fund
Mortgage-based or asset-backed securities rated "AA" or higher, from an issuer rated "AA" or higher	5 years	N/A	20%
U.S. dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation, or Inter-American Development Bank, and eligible for purchase and sale within the U.S. ⁽⁴⁾	5 years	N/A	30%
Overall portfolio weighted average maturity	2 years	----	----

- (1) which are rated by a nationally recognized statistical rating organization (NRSRO) as "A" or better for securities longer than one year and "A-1" or better for securities under one year at time of purchase
- (2) which are rated by an NRSRO as "A-1" or better at time of purchase
- (3) which are rated by an NRSRO as "A" or better at the time of purchase
- (4) which are rated by an NRSRO as "AA" or better at time of purchase

MONTEREY PENINSULA COLLEGE

Citizens' Bond Oversight Committee Members and Terms

NAME	MEMBERSHIP CRITERION	TERM
Wayne Cruzan	GENTRAIN Society (college support organization)	3rd term (11/2015 – 11/2017)
◆ Tom Gaspich	Carmel Foundation (senior citizens' organization)	1st term (11/2014 – 11/2016)
◆ Hunter Harvath	Monterey County Hospitality Association (business organization)	1st term (11/2014 – 11/2016)
Rick Heuer	Monterey Peninsula Taxpayers Association	3rd term (11/2015 – 11/2017)
Birt Johnson, Jr.	Community at-large member	3rd term (11/2015 – 11/2017)
Stephen Lambert	Associated Students of Monterey Peninsula College (student government)	1st term (10/2015 – 11/2017)
◆ Sharon Larson	Monterey Peninsula College Foundation (college support organization)	1st term (1/2015 – 11/2016)
◆ Rob Lee	Monterey Peninsula Chamber of Commerce (business organization)	1st term (11/2014 – 11/2016)
James Panetta	Community at-large member	3rd term (11/2015 – 11/2017)

- ◆ - denotes those members who will complete their 1st term on the committee in November 2016.