



[Issue](#) | [Background](#) | [Findings](#) | [Conclusions](#) | [Recommendations](#) | [Responses](#) | [Attachments](#)

Summary of Old Myths and New Realities Who's Responsible for Taking Care of Business? Allocating Property Taxes in Times of Scarcity

Issue

Who is responsible for the accurate allocation of property taxes to local agencies when the rules become more complex than the ability of governments to implement them accurately?

Summary

San Mateo County property owners pay about one billion dollars in property taxes each year, which is roughly the same amount that County residents pay in state income tax or in state and local sales tax. The County Controller (Controller) allocates property tax revenues to schools, cities, special districts, and the County.

The state determines how the property tax collected in each county is allocated among the various local entities. Legislation passed in 1988, known as AB 1197, directed counties to shift property tax revenues from the county to their no/low-property-tax cities. The AB 1197 formula, more commonly known as the "Tax Equity Allocation" formula (TEA), guaranteed qualifying cities a minimum of 7% of the property tax revenue generated within their boundaries. These provisions are currently codified as §98 of the California Revenue and Taxation Code.

In 2005, Portola Valley discovered it was not being allocated property taxes in accordance with the TEA formula. The County agreed and five months later paid four qualifying cities (Colma, Half Moon Bay, Woodside, and Portola Valley) \$2.6 million of the \$8.1 million that they had failed to allocate over the previous 15 years.

Of the 17 counties with qualifying cities, San Mateo is the only county in the state that failed to comply promptly with the TEA provisions of AB 1197. Many offices share responsibility for this outcome. The Controller is responsible for allocating property taxes in accordance with the law. In 1988, the Controller relied heavily on the County Manager's Office and the County Counsel to identify changes in the law. The State Controller's Office audits the County's property tax allocations and it too overlooked TEA

compliance. The County Assessor was informed by the state of AB 1197 but evidently failed to notify the Controller. Lastly, the four cities, each of whom received at least 23 bulletins from the League of California Cities mentioning TEA, failed to protect their own interests.

To minimize a recurrence of this situation and build better cooperation between local agencies and the Controller's Office, the Grand Jury recommends that the Controller stay better informed, the County Manager and Assessor help inform the Controller, and the cities be more proactive in protecting their own interests. Lastly, to determine if other provisions of the law have also fallen through the cracks, the Grand Jury recommends the Controller's Office conduct a mini-compliance audit of property tax allocation practices.



Old Myths and New Realities

Who's Responsible for Taking Care of Business?

Allocating Property Taxes in Times of Scarcity

Issue

Who is responsible for the accurate allocation of property taxes to local agencies when the rules become more complex than the ability of governments to implement them accurately?

Background

In San Mateo County, property taxes are managed by three separate elected officials: the County Assessor who establishes the value of property, the County Tax Collector who calculates tax bills and collects tax payments from property owners, and the County Controller (Controller) who allocates property taxes to local agencies.

San Mateo County property owners pay about one billion dollars (\$1,000,000,000) in property taxes each year, which is roughly the same amount that County residents pay in state income tax or in state and local sales tax. Property tax revenues are allocated to 104 County or local entities. Specifically, in 2004-05 the County allocated 64% of its property taxes to K-12 schools and community colleges, 14% to the County itself, 12% to the cities, and 10% to special districts.

Over 20 years ago California voters approved Proposition 13, limiting the rate at which property is taxed to one percent, limiting increases in assessments, and giving state government the authority to allocate local property tax revenues. Prior to the passage of Proposition 13, local governments were able to adjust their property tax rate annually to accommodate changes in needs and demands for services. Under Proposition 13, the state determines how the property tax collected in each county is allocated among the various local entities. Legislation passed in 1979, known as Assembly Bill 8 (AB 8), set the share of the revenues allocated to each local jurisdiction based on the proportion of county-wide property tax revenues they received before Proposition 13. Although this allocation scheme was designed to reflect local obligations and priorities at the time, much has

changed since then, and the constraints of local governments have led to many unintended consequences.

Since property tax allocations under AB 8 depend upon historical shares, cities that didn't exist in 1979, had never levied a property tax or levied a low-rate property tax received no share or a very small share of the property taxes generated within their boundaries. There were 31 no-tax cities and roughly 60 low-tax cities within the state of California that received less than 10% of the property tax paid by their residents. Some of these cities had no or low taxes because they provided few municipal services and thus their costs were low at the time. It soon became obvious however, that some flexibility (in the form of deviations from historical shares) was needed to accommodate boundary changes, new incorporations, and shifts in service responsibilities.

The first adjustment in AB 8 allocations was made in 1984 (SB 794, Marks) when the legislature created a "Tax Equity Allocation" (TEA) formula for the city of Yorba Linda, providing 10% of the property taxes generated within the city. Property tax allocation is a zero-sum game; that is, the revenues allocated to Yorba Linda had to come from some other local government's share, and so the legislation shifted funds from Orange County and special districts to Yorba Linda.

The Yorba Linda action sparked a hot-button political issue for the next four years. The remaining 30 no-property-tax cities and a number of cities receiving some but less than 10% of the property taxes generated within their boundaries strove to receive the new 10% mark.

The issue was resolved by more general legislation in 1987. When the Legislature provided money to counties for the Trial Court Funding program, it also directed counties to shift property tax revenues to their no/low-property-tax cities. Following the Yorba Linda precedent, no/low-tax cities were guaranteed a minimum 10% of the property tax revenue generated within their boundaries (SB 709, Lockyer). This shift from counties to the no/low tax cities was modified a year later with the passage of the Brown-Presley Trial Court Funding Act of 1988. AB 1197 (W. Brown) amended the earlier generalized TEA legislation by phasing-in a 7% shift over seven years and by allowing the no/low-tax cities to benefit from the growth in their property tax base. These provisions are currently codified as §98 of the California Revenue and Taxation Code.

To resolve serious and recurring budget deficits since the early 1980's, the legislature has repeatedly modified the system (and made it more complex) by establishing such mechanisms as the ERAF Shift, VLF Swap, and Triple Flip. For instance, in 1992-93 the legislature established an Educational Revenue Augmentation Fund (ERAF) in each county. Under ERAF most local government agencies are required to transfer a portion of their property tax revenues to this fund. The fund is subsequently allocated and apportioned to schools by the county auditor/controller according to instructions received from the County Superintendent of Schools. The state budget benefits because California schools are guaranteed a minimum amount of funding. The increased property tax

revenue apportioned to schools decreases the State's obligation to support schools, but it provides no increase in school revenue.

Investigation

The Grand Jury conducted interviews with the County Controller's Office; the County Manager's Office; the State Controller's Office; the controller's offices of 16 other counties; the California State Association of Counties; the League of California Cities; the cities of Colma, Half Moon Bay, Portola Valley, and Woodside; the Town Councils of Portola Valley and Woodside; and the City Attorneys of Half Moon Bay, Portola Valley, and Woodside.

Findings

While a widely reported political debate raged in Sacramento in 1987-1988 regarding a shift of property taxes from counties to no/low-tax cities, neither San Mateo County nor the four qualifying cities in the County participated. The County failed to participate in this debate despite having lobbied successfully against the shift just three years earlier. Additionally, despite being notified of the enactment of the Brown-Presley Trial Court Funding Act of 1988, the County failed to implement the TEA provisions of the Act, and the cities failed to demand the benefits provided to them in the Act. Seventeen years later, one of the four qualifying cities discovered that it was a beneficiary of the TEA provisions of the Act and brought it to the attention of the County.

Findings 1: San Mateo County

The Property Tax and Special Accounting division of the County's Controller's Office is responsible for accurately distributing collected property taxes to cities, special districts, and the County. The County must comply with the necessary legal requirements for the allocation and apportionment of property tax revenues as defined in the state's Revenue and Taxation Code (Code).

- The property tax system, including county allocations and state audits, builds on itself year upon year. Consequently, it is possible for errors introduced in a previous allocation to be incorporated in a future allocation and thereby be propagated from year to year.
- Although San Mateo County apparently benefited from the trial court funding provisions of the Brown/Presley Act of 1988, the County Controller did not identify or implement the TEA provisions of the Act, which would have benefited four no/low-tax cities at the expense of the County.
- Prior to learning of §98 of the Code in 2005, the Controller failed to allocate approximately \$8.1 million of TEA funds to four cities for the 15 year period between 1991 and 2005 (from \$0.3 million to \$3.3 million per city).

- The Controller relies on the State Controller’s Office (SCO) quadrennial audit of the methods employed by the County to apportion and allocate property tax revenues to determine compliance with statutory requirements. In 1997, the SCO audited the County’s property tax allocations for the seven-year period 7-1-88 to 6-30-95. It was standard procedure at that time to audit for TEA compliance. In this particular audit, however, the state auditor inexplicably modified the audit program to exclude TEA compliance. None of the three levels of SCO reviewers caught the omission.

In 2005, Portola Valley discovered that it was entitled to an additional share of property taxes collected within the town’s boundaries based on the TEA formula provided in Code §98 and brought this to the attention of the County Controller.

- The Controller promptly responded to Portola Valley’s claim by requesting the opinion of County Counsel. The request for opinion focused mostly on old information in its own files and less on the current Code §98. The Controller also stated “the impact would be material if it is found that San Mateo County is subject to the requirements of this law.”
- County Counsel responded to the Controller in 30 days and opined that the County is not exempt from the provisions of §98 of the Code.
- The Controller researched which cities in the County qualify under Code §98, and determined how to calculate the amounts they are entitled to under TEA and from where the TEA amounts are withdrawn. Additional payments to qualifying cities must come from payments previously allocated to other entities.
- Five months following receipt of Portola Valley’s claim pursuant to §98 of the Code, the Controller sent checks totaling approximately \$2.6 million (for the two most recent years of the 15 years in which payments should have been made) to the four qualifying cities in the County. The checks were accompanied by minimal documentation, but courtesy phone calls were placed on the day the checks were posted.
- The initial basis for calculating the payments sent to the four cities was later found to be incorrect. Upon reflection, the Controller changed its interpretation of how to apply the Code with regard to ERAF I and ERAF II, which reduced by 15% the earlier TEA payments from \$2.6M to \$2.2M. Additionally, the Controller modified the assumptions for the interest due each city, resulting in a slightly increased interest payment.
- In March 2006, the Portola Valley town council delayed a planned ballot measure to reduce the town’s utility tax rate because they had lost confidence in the figures generated by the County Controller and was uncertain of the town’s future receipts of property taxes. The town council’s loss of confidence was the result of

the minimal explanation sent with the original check, the changed interpretation of how to apply ERAF to TEA, and inaccurate interest calculations.

The 1980's and early 90's were a time of rapid change in financial systems and processes; however, the county's controller's office remained provincial and ineffective. William Bergman was elected County Controller in 1978, followed by Jerry Trias in 1986. The current Controller, Tom Huening, was elected in 1998.

- Grand Jury Reports in 1989 and 1990 identified significant deficiencies in the operation and management of the Controller's Office, including the misallocation of property taxes. On September 4, 1990, the Board of Supervisors reached agreement with the elected County Controller to add a Deputy Controller to the department to help address the deficiencies. A new Controller was elected in November 1998.
- In 1988, the State Legislative Analyst identified 17 counties as having qualifying no/low-tax cities. Thirteen of them identified the 1988 TEA legislation and implemented the requisite changes. Another three were incorrectly identified as having qualifying no/low-tax cities. San Mateo is the only county with qualifying low/no-tax cities to have failed to implement the TEA legislation. All 13 counties that correctly implemented the legislation indicated that their participation in the County Auditor's Association of California (CAAC) and County Property Tax Managers' Association Sub-Committee was instrumental in their identifying the TEA provisions.
- In the fall of 1987 and 1988, the State Board of Equalization sent all county assessors a table of Tax and Revenue Code sections that were affected by legislation of interest to assessors. The 1987 list identifies SB 709, and the 1988 list included AB 1197, the two generalized TEA legislative actions which the County Controller failed to identify and implement.

Currently, the Controller's Office appears to operate professionally and has put many of its earlier problems behind them. For example:

- In 2003, in cooperation with the County Counsel's Office, the Property Tax Division determined that the Educational Revenue Augmentation Fund (ERAF) owed the County, cities, and special districts \$33.7 million in excess property tax shift as defined by the law. Since that initial determination in 2003, the Controller has issued refunds totaling \$135 million to the County and \$59 million to cities and special districts, funds that might have been distributed three years later or not at all.
- Until the four no/low-tax cities discovered the TEA provisions, no misallocations of property taxes had been identified since the grand jury reported in 1990 that 23 school districts identified mistakes in the allocation of supplemental property taxes. Actually, few County agencies ever question their property tax allocation.

- Mistakes discovered during the SCO's quadrennial audits are adjusted. The most recent audit, completed August 13, 2004, identified only one shortcoming. The County did not properly record secure parcels in redevelopment project tax rate areas, which is actually the responsibility of the County Assessor. As of March 2006, the Assessor had put in place a number of quality assurance measures to improve tax rate area (TRA) assignments.
- The Controller reaches out to local agencies in the County primarily through the San Mateo County Financial Officer's Group (SAMFOG). Additionally, when addressing issues impacting the County's 23 school districts, the Controller works directly with the County Office of Education who in turn communicates with individual school districts.
- The Controller's Office conducts an annual survey of all cities, special districts, and RDA's in the County. The purpose of the survey is to measure their performance in meeting customers' needs. In January 2006, 11 of 47 customers surveyed responded. Five of the respondents rated their overall satisfaction with the Property Tax Division excellent, 5 rated it good, and 1 rated it poor. Thirty-six customers did not respond.

Despite the many improvements mentioned above, there are other actions that indicate a need for the continued development of Controller's Office expertise.

- The Code (§96.1) stipulates that "If it is determined that an allocation method is required to be adjusted and a reallocation is required for previous fiscal years, the cumulative reallocation or adjustment may not exceed 1% of the total amount levied at a 1% rate of the current year's original secured tax roll. The reallocation shall be completed in equal increments within the following three years." The Controller adjusted in a single payment the reallocation to the four qualifying low/no-tax cities by an amount greater than 1%.
- The Code (§96.1) further stipulates "any allocation of property tax revenue that was subjected to a prior completed audit by the Controller, where all findings have been resolved, shall be deemed correct." The last State Controller's audit, covering the years 7-1-99 to 6-30-03 was completed August 13, 2004. There are no formal documents resolving the one finding contained in that audit. If the years covered by this audit are deemed eligible for retroactive TEA payments, it is estimated that an additional \$3.2 million will be payable to the four qualifying cities.

The recent widespread use of the Internet has made it much easier for organizations to inform their members of relevant issues and for communities of interest to support one another.

- The County Property Tax Manager’s Association (a subcommittee of the CAAC) is a state organization that stays on top of changes in the Code. This organization of county property tax managers is an excellent source of information and forum for the exchange of practices. In 2003 it published a 599 page “California Property Tax Managers’ Reference Manual,” which is currently posted on the Controller’s website. It describes TEA.
- The Controller has also posted on its website “Demystifying the California Property Tax Apportionment System” (written Feb. 2006). It describes TEA.

The Board of Supervisors is responsible for the County’s efforts to affect state legislation. The Grand Jury learned that in the 1980’s the Controller’s Office relied on the County Manager’s Office to inform it of legislation that might impact them.

- In 1985, the County lobbied against SB 1091, a predecessor TEA bill that was never enacted. The County Manager’s Office coordinated these efforts that at a minimum involved the County Manager, Controller, and various budget analysts. They relied at the time on Legislative Bulletins issued by the County Supervisors Association of California, which is today named the California State Association of Counties (CSAC). However, despite receiving legislative bulletins from CSAC, the County Manager’s Office apparently failed to identify, or at a minimum, failed to notify the Controller’s Office of the passage of SB 709 two years later or AB 1197 three years later.
- The present County Manager believes that in the 1985-88 time period the County did not have a legislative affairs office. A formal office was formed in the early ‘90’s and is headed today by a Deputy County Manager. However, that perception is inconsistent with a document the Grand Jury has reviewed dated 1985 with the following letterhead: “County Manager’s Office, Legislative Affairs.” That document addresses “No Prop Tax Cities.” In 1985, the County lobbied against legislation to set a 10% minimum for no/low-tax cities.
- Today, the monitoring of legislation is distributed throughout the County and not centralized in only the County Manager’s Office. Departments do their own monitoring through participation with professional state organizations, server lists, and websites. Additionally, more formal attention is paid to such monitoring in the County Manager’s Office. The Deputy County Manager for Legislative Affairs monitors state and federal bills that impact the County so the Supervisors can address them appropriately. Participation with the California State Association of Counties (CSAC) remains one means of monitoring. The Deputy County Manager notifies impacted departments and discusses with them what if any position the County should take.
- The County Manager believes that elected officials are responsible for their own agencies and that the County Manager is responsible for all other departments. Thus, it would be inappropriate for an elected official to rely on the County Manager.

Findings 2: The Four Qualifying Cites

Colma, Half Moon Bay, Portola Valley, and Woodside qualify as no/low-tax cites under the TEA formula adopted by the state legislature in 1988 (AB 1197) and as currently contained in §98 of the Code. All four were identified in an analysis of AB 1197's property tax shifts to no/low-tax cities prepared by the State Legislative Analyst in 1988.

All four cities were members of the League of California Cities in 1988. The League issued at least 23 bulletins in 1988 that contained articles on "no/low-property tax cities." The League identified by name all four San Mateo cities as eligible no/low-tax cities. On the eve of AB 1197 passing (Aug 26, 1988), the League indicated in one of its bulletins that it would send a special bulletin to all "no/low-tax cities" as soon as it knew the Conference Committee's decision. Despite this plethora of information, none of the four cities communicated with the Controller regarding its TEA status nor monitored its property tax allocations.

In 2005, Portola Valley's Town Attorney identified TEA legislation in response to persistent questioning from the town's mayor as to why the town received such a small percentage of property taxes. The Town Attorney was aware of TEA as a result of her previous work in Santa Clara County. The mayor persisted because by 2004 the town was in need of identifying new sources of revenue. Previously, there had been no pressing needs because the town had adopted a utility tax in 1985.

All four cities relied on their attorneys to keep them informed of state legislation that impacted them.

- In the early '90's, all four no/low-tax cities outsourced their city attorney functions. At that time, one individual was the city attorney for both Woodside and Half Moon Bay. This attorney believes that while his retainer agreement with Woodside provided that "The Town Attorney shall comment ... on any new legislation or new cases that may affect the Town," financial issues were not included in the "standard of care."
- Woodside's current town attorney interprets her standard of care to include "any law that impacts the town," even if it overlaps with other professionals' roles.
- In the early 1990's, Portola Valley was in the process of slowly transitioning from the town's founding Town Attorney to another attorney.

In the early 1990s, Portola Valley and Woodside did not have full-time finance professionals. Half Moon Bay did. None of the four cities were members of SAMFOG, though all belonged to the California League of Cities.

Since 1987 the Colma and Half Moon Bay city councils have taken significant steps to upgrade the quality and quantity of their professional staffs. This, along with monitoring information from the League of California Cities, Association of Bay Area Governments

(ABAG), and City/County Association of Governments of San Mateo County (C/CAG) and participation in organizations such as California Society of Municipal Finance Officers (CSMFO) and SAMFOG results in the cities being more informed of the impact of state legislation today than they were in the past.

Since 1987, Woodside and Portola Valley city councils have also taken significant steps to upgrade the quality of their professional staffs and Woodside is currently a member of SAMFOG.

The four no/low-tax cities rely on the County to allocate property taxes accurately in accordance with state law and on the state to audit the County accurately. They believe the fact that the SCO approved audits, where the County allocated property taxes without regard to TEA, is an inadequate basis for not fully refunding the amounts due them.

Conclusions

California property tax laws, especially, those that were enacted more recently, are complicated and difficult to interpret. This increases the risk of improper application of the law and confusion among the affected taxing agencies. The most profound changes in property tax laws have happened in the last few years as funds are shifted from local to state needs. Errors introduced in the past impact the future and are difficult to spot.

The Grand Jury believes San Mateo is the only county in the state with qualifying no/low-tax cities that failed to implement the 1988 TEA legislation (AB 1197) in a timely manner. The County's failure was overlooked by the SCO in three successive audits in which it failed to discover the error, thus demonstrating the hazards of relying solely on the SCO to monitor city or county obligations.

The Controller's Office could have responded better to Portola Valley's claim for an additional share of property taxes. While seeking County Counsel's and surrounding counties' guidance was appropriate, it should also have sought SCO guidance, consulted the Property Tax Manager's Reference Manual on its own website, kept Portola Valley better informed, complied with §96.1 of the Code, and calculated payments accurately. A more considered response would have minimized the loss of confidence in the Controller's Office currently shared by some of the low-tax cities.

There are three major risks that would lead the County to fail to allocate property taxes properly:

- Risk 1 is failing to understand fully or identify changes to the Tax and Revenue Code. It is not reasonable for the Controller to rely solely on the SCO to catch such failures. The SCO did not correct the County's failure to identify the TEA legislation in 1988. The County has an obligation to establish procedures that minimize the possibility of misapplying the Code or of failing to identify changes to the Code.

- Risk 2 is failing to implement the Code properly. Current results seemingly indicate proper implementation of identified changes to the Code. It is reasonable for the Controller and agencies to rely on SCO to catch any misapplication or mis-interpretation of the law. The SCO identifies shortcomings with each audit. However, this conclusion of proper implementation is tempered by the fact that in November 2005, when the Controller's Office paid the four qualifying low-tax cities their TEA adjusted taxes, it did not compensate them as prescribed by §96.1 of the Code.
- Risk 3 is failing to interpret the Code impartially. The situation described in this report clearly favored the County. The Controller is an elected official and must have an independent, unbiased perspective when interpreting the Code. Allocating property taxes is a zero-sum game, and all agencies must have confidence that the County is not advantaged at the expense of any of the 103 other taxing agencies.

The confusion associated with three County Controllers in 12 years, combined with the serious deficiencies in the Controller's Office at that time, and the fact that TEA was phased in over seven years probably contributed to the failure in 1988 to identify and implement TEA legislation. Additionally, no help was forthcoming from either the County Manager or County Counsel.

The Controller's Office has improved its performance, processes, and infrastructure since the 1988-90 timeframe. It is more connected to and active in state organizations such as CAAC to stay abreast of legislative changes and SAMFOG to keep the County's agencies informed. Also, it posts information on its website to keep agencies and individuals informed.

Cities are responsible for identifying and protecting their own financial interests. Despite receiving at least 23 bulletins addressing the subject, the four low/no-tax cities of the County failed to identify TEA as legislation that would benefit them. It is reasonable for cities to rely on the County to allocate taxes accurately and on the state to catch any failures of the County, but it might not be wise.

It is unfortunate that Portola Valley imposed a utility tax in 1985 and reauthorized it several times since to obtain necessary funds when AB 1197 (1987-88) was designed to provide them additional funds from their existing property tax payments to the County.

Recommendations

1. Cities:

Cities should not rely entirely on the county to look after their interests. As demonstrated here, to do so is a false economy. The city councils of Colma, Half Moon Bay, Woodside, and Portola Valley should:

- 1.1 Align their expectations of receiving services with those of the professionals providing services. Contracts should clearly specify all expectations. Specifically, agreements with contract city attorneys should clearly state the scope of the city's expectations with regard to their monitoring and reporting of state legislation that impacts the city. Likewise, job descriptions for full-time city attorneys should also clearly state the full scope of activities expected of them by the city council.
- 1.2 Assign city staff to participate in relevant financial organizations such as SAMFOG or CSMFO, participate in and monitor bulletins of the League of California Cities and report on items of interest at city council meetings.

2. The County Controller should:

- 2.1 Proactively monitor its allocation of property taxes and not rely entirely on the state audit to identify errors of calculation, interpretation, or omission. By December 31, 2006, the Controller should conduct a mini-compliance audit of current property tax allocation practices by comparing them to the entire California Property Tax Managers' Reference Manual. The results should be reported to the Board of Supervisors and Grand Jury.
- 2.2 Work to rebuild and retain the confidence of the County's agencies by:
 - 2.2.1. Expanding its cooperation with SAMFOG and encouraging those agencies that don't currently participate in SAMFOG to do so. Additionally, the Controller should use SAMFOG to disseminate timely information regarding the distribution of property taxes that can assist local agencies to budget future revenues.
 - 2.2.2. Establishing guidelines to communicate more openly, frequently, and accurately with customers.
 - 2.2.3. Encouraging more agencies to participate in the annual customer survey. At a minimum, steps should be taken to assure a broad sampling of opinion, so as to accommodate the needs of both large and small, and sophisticated and less sophisticated agencies.
 - 2.2.4. Explaining to affected agencies the reasoning behind all interpretations of the Code that result in benefiting the County at the expense of local agencies.

- 2.3 Institutionalize means to monitor legislative actions that impact them, independently of the County Manager's Office. Both the Controller and the Property Tax and Special Accounting Manager should actively and consistently participate with the CAAC and the County Property Tax Managers' Sub-Committee respectively and endeavor to form mutually beneficial relationships with professionals in other counties.
- 2.4 Continuously improve its procedures and tools by having the Controller and Property Tax and Special Accounting Manger periodically visit other counties to compare processes and adopt their best practices.

3. The County Assessor should:

- 3.1 Monitor legislation that affects the Revenue and Tax Code and share its findings with the County Controller and County Manager.

4. The Board of Supervisors should:

- 4.1 Take the following steps to assure that cities, schools, and special districts in the County can rely on figures generated by the County Controller.
 - 4.1.1. Provide funds for the Property Tax and Special Accounting Manager to actively and consistently participate in the County Property Tax Manager's subcommittee of the CAAC.
 - 4.1.2. Monitor the results of customer surveys conducted by the Controller's Office and bring concerns to the Controller's attention,.
- 4.2 Extend the responsibilities of the Deputy County Manager for Legislative Affairs and County Counsel to include informing elected officials of the County of legislation that might impact their departments.
- 4.3 Monitor the progress of and review the results of the Controller's mini-compliance audit of current property tax allocation practices and take further actions as deemed necessary to assure that the County accurately allocates property taxes.



Warren Slocum

Chief Elections Officer & Assessor-County Clerk-Recorder

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August 24, 2006

Honorable Stephen M. Hall
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd floor
Redwood City, CA 94063-1655

RE: 2006-07 Grand Jury report: Old Myths and New Realities
Who's Responsible for Taking Care of Business?

Dear Judge Hall:

In the above referenced report, the 2006-07 Grand Jury at recommendation 3 stated:

The County Assessor should:

Monitor legislation that affects the Revenue and Tax Code and share its findings with the County Controller and County Manager.

I agree with this recommended action and have forwarded the latest Legislative Bulletin, produced by the Legislative and Research Division of the California State Board of Equalization to the County Controller and County Manager. We will continue to share this information with them. Additionally, we provide staff training each year on new legislation and have invited the County Controller and County Manager to send interested staff to this training next year.

Should you have any additional questions concerning this response to the Grand Jury recommendation, please contact me.

Sincerely,

A handwritten signature in blue ink that reads "Warren Slocum".

Warren Slocum
Assessor-County Clerk-Recorder

Cc: County Board of Supervisors



CITY OF HALF MOON BAY

City Hall, 501 Main Street
Half Moon Bay, CA 94019

September 18, 2006

Hon. Stephen M. Hall
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Dear Judge Hall,

On behalf of the City Council of the City of Half Moon Bay, I am enclosing the City's response to the 2005-2006 Grand Jury Report on Property Tax Allocations to No/Low Property Tax Cities in San Mateo County. Our response addresses Finding 1, Finding 2, the Conclusions, and the Recommendations for the four Cities.

If you have any questions, please call me at (650) 726-8283.

Sincerely,

Jud Norrell
Finance Director

Enclosures

Response of the City of Half Moon Bay to the report of the Civil Grand Jury of the County of San Mateo entitled “Old Myths and New Realities: Who’s Responsible for taking Care of Business? Allocating Property Taxes in Times of Scarcity.”

The County of San Mateo has the primary responsibility for this error

The City of Half Moon Bay appreciates the depth and scope of the investigation by the Civil Grand Jury of the County of San Mateo into the County of San Mateo’s failure to allocate to the City of Half Moon Bay and the Towns of Woodside, Portola Valley, and Colma the property taxes to which they are entitled, and which has resulted in these cities being deprived of several million dollars in revenue. The Grand Jury Report attributes most of the responsibility for this error to the County. The City agrees with this characterization, but also believes that the failure of the State Controller’s Office to detect this error in three consecutive audits should not be minimized. Both the County and the State Controller have the statutorily mandated responsibility of ensuring that property taxes are correctly allocated.

The cities were the least culpable parties in this enormous error because Proposition 13 took away from cities the power to levy and collect property taxes, and virtually all power over property taxes now lies with the counties and with the State. As explained in the Grand Jury Report, Proposition 13 set the rate of property taxation at one percent, and the power to collect and allocate the proceeds of this one percent property tax was given explicitly to the State and its political subdivisions, the counties. This is stated in the very first section of Proposition 13:

“The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.” (Cal. Const. Art. XIII A, § 1, subd.(a).)

As explained in the Grand Jury Report, the law according to which property taxes are apportioned was enacted by the State Legislature in 1979 as A.B. 8. The collection and allocation of property taxes is now entirely under the control of the State and the counties, and the counties are paid by the cities out of the cities’ property tax revenues for the service of collecting and apportioning the cities’ property taxes. (See Revenue and Taxation Code § 95.3.)

While the County has primary responsibility for ensuring that the property taxes it collects are properly allocated, the State Controller has the secondary responsibility of ensuring that the allocations are done correctly. The State Controller’s audit process, which is mandated by section 12468 of the Government Code, is meant to provide oversight by the State over the computations made by the County Auditor-Controller’s Office. That process failed with respect to TEA oversight, as admitted recently in a letter dated July 25, 2006, from the State Controller’s Office, which states: “We usually do look for TEA compliance; however, we did not do so for San Mateo County.” (A copy of this letter is attached to this response.)

The cities only had tertiary responsibility for ensuring that their property tax revenues are correctly allocated. In the Recommendations on Page 13 of the Grand Jury Report, the cities are

encouraged not to rely entirely on the County to look after their interests. As the past year's actions indicate, the City is no longer relying entirely on the County to look after the City's interests. The Grand Jury Report has helped to facilitate this change.

The City of Half Moon Bay participates in SAMFOG and CSMFO and monitors bulletins from the League of California Cities.

Recommendation 1.2 of the Grand Jury Report recommends that the cities participate in SAMFOG and CSMFO and monitor bulletins from the League of California Cities. The City of Half Moon Bay's Finance Director has been participating in SAMFOG and CSMFO and other financial organizations. City staff also participates and monitors bulletins of the League of California Cities and reports on items of interest at City Council meetings.

The partial payment of TEA by the County to the four cities did not exceed the maximum cap of one percent of the property taxes levied in the County.

The Grand Jury Report incorrectly states that the County's partial payment of TEA to the cities exceeded the maximum amount that it could reallocate under law. The Grand Jury Report makes this statement on page 8:

“The Code (§ 96.1) stipulates that ‘If it is determined that an allocation method is required to be adjusted and a reallocation is required for previous fiscal years, the cumulative reallocation or adjustment may not exceed 1% of the total amount levied at a 1% rate of the current year's original secured tax roll. The reallocation shall be completed in equal increments within the following three years.’ The Controller adjusted in a single payment the reallocation to the four qualifying low/no-tax cities by an amount greater than 1%.”

The statement that the refund to the cities was “an amount greater than 1%” is incorrect because it was not more than one percent of the total of the property taxes levied in the entire County in that year. As the Grand Jury Report states, the County collects approximately one billion dollars per year in property taxes. One percent of one billion is ten million, which is much more than the County has refunded to the cities.

When section 96.1 of the Revenue and Taxation Code refers to “1% of the total amount levied at a 1% rate of the current year's original secured tax roll” it is referring to all of the property taxes levied in the County, and not just those levied in a particular city. This is made clear in the legislative history of the bill that enacted this provision. In a question and answer sheet that was presented to both houses of the Legislature during the legislative process by the proponent of the bill, Assembly Member Patricia Wiggins, the following question was addressed: “What does ‘1% of the original current year's secured tax levy’ mean?” The answer given was:

“It means that the total reallocation or adjustment will be limited to one percent of the Prop. 13 property tax assessment.

“For example, if the total value of the real property in LA County is \$600 billion it would be subject to the Prop. 13 property tax limit of 1% which would amount

to \$6 billion. If there is a misallocation discovered, that \$6 billion is then subject to this bill's 1% cap which would be \$60 million. The county's total reallocation or adjustment would amount to \$60 million."¹

The example makes it clear that the one percent cap on the amount that can be reallocated is based upon the total of the property taxes levied in the entire county. Therefore, in this matter the cap would be approximately ten million dollars.

The findings of the 2004 audit by the State Controller have not been resolved and therefore the County should pay TEA for the years covered by the audit.

The findings of the 2004 audit have not been resolved, and the State Controller has conceded that the 2004 audit is unreliable. Therefore, the cities should be paid TEA for the years covered by that audit. The Grand Jury Report states on page 8:

“The Code (§ 96.1) further stipulates ‘any allocation of property tax revenue that was subjected to a prior completed audit by the Controller, where all finding [sic] have been resolved, shall be deemed correct.’ The last State Controller’s audit, covering the years 7-1-99 to 6-30-03 was completed August 13, 2004. There are no formal documents resolving the one finding contained in that audit. If the years covered by this audit are deemed eligible for retroactive TEA payments, it is estimated that an additional \$3.2 million will be payable to the four qualifying cities.”

The City agrees that the findings of the 2004 audit have not been formally resolved. It has been the practice of the State Controller not to determine that the findings of an audit have been resolved until the following audit. For example, the 2001 audit of San Mateo County contained a statement that the findings of the previous audit had been resolved, and the 2004 audit of San Mateo County contained a statement that the findings of the 2001 audit had been resolved.

The State Controller’s Office has now confirmed that its 2004 audit was seriously flawed. In a later dated July 25, 2006, the State Controller’s Office stated that “because TEA was not audited, the [State Controller’s Office] SCO is neither able to affirm or disaffirm the validity of San Mateo County’s property tax allocations for the years covered by the August 13, 2004 audit.” The years covered by the 2004 audit are therefore eligible for retroactive TEA payments.

It would also be particularly inequitable for the 2004 audit to preclude the payment of TEA for the years covered by that audit, since the Town of Portola Valley had already begun inquiring with the County about TEA before the 2004 audit was completed.

¹ Assembly Committee on Local Government, Author’s Assembly Policy Committee Statement and Notes for A.B. 169 (2001); Senate Committee on Local Government, Bill Analysis Worksheet and Attachments for A.B. 169 (2001).

It was the standard procedure of the State Controller's Office at the time of the last three audits to audit for TEA allocation.

The Grand Jury Report states on page 6 that in 1997 when the State Controller conducted its audit of San Mateo County's property tax allocations for the period from 1988 to 1995 it was standard procedure for the Office to audit for TEA. We have learned from the State Controller's Office that since 1997 this has remained standard procedure, although for some inexplicable reason it was not applied in either the 2001 or 2004 audits.

Even though the Grand Jury Report states that the County was not involved in the enactment of the current TEA statute, the statute includes a special exception for the County.

The Grand Jury Report states on page 5 that although San Mateo County lobbied hard against the initial version of TEA that was defeated, it did not participate in the debate surrounding the current version of TEA that was passed in 1988. The City finds this surprising because the current version of TEA includes, and has included since its enactment, a special provision pertaining to the City of Foster City, which is in San Mateo County. Section 98.03 of the Revenue and Taxation Code (originally enacted as section 97.39 of the Revenue and Taxation Code) provides that Foster City cannot receive TEA. This provision only benefits the County of San Mateo. It is unusual that such a provision would have been specially inserted into the TEA bill without any participation by the County of San Mateo.



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

County Manager's Office

DATE: September 1, 2006
BOARD MEETING DATE: September 12, 2006
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Board of Supervisors
FROM: John L. Maltbie, County Manager
SUBJECT: 2005-06 Grand Jury Responses

Recommendation

Accept this report containing the County's responses to the following 2005-06 Grand Jury report: "Old Myths and New Realities – Who's Responsible for Taking Care of Business."

VISION ALIGNMENT:

Commitment: Responsive, effective and collaborative government.

Goal 20: Government decisions are based on careful consideration of future impact, rather than temporary relief or immediate gain.

This activity contributes to the goal by ensuring that all Grand Jury findings and recommendations are thoroughly reviewed by the appropriate County departments and that, when appropriate, process improvements are made to improve the quality and efficiency of services provided to the public and other agencies.

Discussion:

The County is mandated to respond to the Grand Jury within 90 days from the date that reports are filed with the County Clerk, and Elected Officials are mandated to respond within 60 days. It is also the County's policy to provide periodic updates to the Board and the Grand Jury on the progress of past Grand Jury recommendations requiring ongoing or further action. To that end, attached are the County's responses to the Grand Jury's report titled "Old Myths and New Realities – Who's Responsible for Taking Care of Business."

Old Myths and New Realities
Who's Responsible for Taking Care of Business?
Allocating Property Taxes in Times of Scarcity

Findings:

Generally agree.

Recommendations:

4.1. Take the following steps to assure that cities, schools, and special districts in the County can rely on figures generated by the County Controller:

4.1.1 Provide funds for the Property Tax and Special Accounting Manager to actively and consistently participate in the County Property Tax Manager's subcommittee of the CAAC.

Response: Concur. In future budget submittals provided by the Controller's Office, the County Manager's Office will request a budget for out-of-town travel to County Property Tax Manager's subcommittee meetings of the CAAC. The County Manager's Office will review and consider the CAAC travel request as part of the annual review of the Controller's budget.

4.1.2 Monitor the results of customer surveys conducted by the Controller's Office and bring concerns to the Controller's attention.

Response: Concur. All County departments are required to survey their internal and external clients each year and report back to the County Manager's Office on the results. As such, the Controller's Office sends customer service surveys to all its customers each year, including all taxing agencies in the County. The results of the survey responses are then summarized by the Controller's Office and the results are reported to the County Manager's Office. The County Manager's Office reviews both the response rates and the feedback and relays any concerns back to the Controller's Office. The County Manager's Office also consolidates the customer service survey results by County department into an annual report to the Board of Supervisors.

4.2 Extend the responsibilities of the Deputy County Manager for Legislative Affairs and County Counsel to include informing elected officials of the County of legislation that might impact their departments.

Response: Concur. The Deputy County Manager for Legislative Affairs monitors all legislation that could impact County operations or revenues. It is normal operating procedure for the Deputy County Manager to request assistance from County Counsel as well as the County's Legislative Advocate in Sacramento to analyze legislation for potential impacts.

4.3 Monitor the progress of and review the results of the Controller's mini-compliance audit of current property tax allocation practices and take further actions as deemed necessary to assure that the County accurately allocates property taxes.

Response: Concur. The Controller's Office will be conducting a mini-compliance audit of its current property tax allocation practices. The scope of the audit will include a review of the Controller's current practices to ensure compliance with policies and procedures in the Property Tax Manager's Reference Manual. The audit is scheduled to begin before December 31, 2006. Once completed, the results will be reported to the County Manager's Office.

*Mailed & emailed
9/18/06*

TOWN of PORTOLA VALLEY



September 14, 2006

COUNCIL:
Steve Toben - Mayor
Ted Driscoll - Vice Mayor
Maryann Moise Derwin
Richard T. Merk
Ed Davis

Honorable Stephen M. Hall
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

TOWN OFFICERS:
Angela Howard
Town Administrator
Sandy Sloan
Town Attorney

Re: Response to 2005 – 2006 Grand Jury Report

Dear Judge Hall:

In response to the 2005 – 2006 Grand Jury report, the Portola Valley Town Council ("Respondent") reviewed the pertinent recommendations of the reports affecting the Town of Portola Valley ("Town"). In summary, we offer the following responses:

ACCURATE ALLOCATION OF PROPERTY TAX REVENUE:

State Recommendation 1: Cities should not rely entirely on the county to look after their interests. As demonstrated here, to do so is a false economy. The city councils of Colma, Half Moon Bay, Woodside, and Portola Valley should:

State Recommendation 1.1: Align their expectations of receiving services with those of the professionals providing services. Contracts should clearly specify all expectations. Specifically, agreements with contract city attorneys should clearly state the scope of the city's expectations with regard to their monitoring and reporting of state legislation that impacts the city. Likewise, job descriptions for full-time city attorneys should also clearly state the full scope of activities expected of them by the city council.

Response 1.1: Portola Valley agrees with the finding. The contract with the current Town Attorney implicitly includes monitoring state legislation that impacts the Town. This recommendation will be implemented by amending the Town Attorney's contract to be more explicit.

State Recommendation 1.2: Assign city staff to participate in relevant financial organizations such as SAMFOG or CSMFO, participate in and monitor bulletins of the League of California Cities and report on items of interest at city council meetings.

Response 1.2: Portola Valley agrees with this recommendation. The Town Administrator shall assign staff to participate in SAMFOG and/or CSMFO and to monitor League of California Cities bulletins and will report on items of interest at town council meetings. This recommendation will be implemented by the end of the year.

DISASTER PREPAREDNESS TRAINING FOR THE RESIDENTS OF CITIES IN SAN MATEO COUNTY:

State Recommendation 1: The city council of every city and town in San Mateo County establish and promote an active and ongoing Community Emergency Response Team ("CERT") training program with the initial goal of training 5% of its households.

Response 1: Several years ago citizens in the area served by the Woodside Fire district formed Citizens Emergency Response and Preparedness Program ("CERPP"). The Portola Valley Town Council has actively participated and promoted CERPP programs and training of citizens and will continue to do so. As the Grand Jury report notes, over 300 individuals from Portola Valley, Woodside and neighboring County areas have received CERT training. Therefore, this recommendation has been implemented.

State Recommendation 2.1: All members of the Board of Supervisors become CERT trained as a demonstration of their commitment to this critical individual effort.

Response 2.1: Portola Valley agrees with this finding.

State Recommendation 2.2: All members of the city council of every city and town in San Mateo County become CERT trained as a demonstration of their commitment to this critical individual effort.

Response 2.2: We agree with this finding and are pleased to report that some of the Portola Valley councilmembers have become CERT trained. The other councilmembers will become CERT trained by the end of the current fiscal year.

Please let me know if you require additional information.

Sincerely,



Steve Toben
Mayor

cc: Town Council
Town Administrator
Town Attorney

August 16, 2006

Honorable Stephen M. Hall
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Dear Judge Hall:

Listed below are recommendations in the 2005-06 Civil Grand Jury report directed to the San Mateo County Controller's Office followed by our responses.

Recommendation 2

The County Controller should:

- 2.1 **Proactively monitor its allocation of property taxes and not rely entirely on the state audit to identify errors of calculation, interpretation, or omission. By December 31, 2006, the Controller should conduct a mini-compliance audit of current property tax allocation practices by comparing them to the entire California Property Tax Managers' Reference Manual. The results should be reported to the Board of Supervisors and Grand Jury.**

Response:

Concur. We will conduct a compliance audit of the property tax allocation practices of the Property Tax Division. We will begin the audit before December 31, 2006 and plan to complete it before June 30, 2007. The purpose of the audit will be to determine if the Property Tax Division complied with the requirements of the California Property Tax Manager's Reference Manual in apportioning property taxes

- 2.2 **Work to rebuild and retain the confidence of the County’s agencies by:**
- 2.2.1 **Expanding its cooperation with SAMFOG and encouraging those agencies that don’t currently participate in SAMFOG to do so. Additionally, the Controller should use SAMFOG to disseminate timely information regarding the distribution of property taxes that can assist local agencies to budget future revenues.**

Response:

Concur. We recently issued a publication titled “Property Tax Highlights”, which provides an overview of the processes of assessment, collection and distribution of property taxes. It also provides, by taxing agency, a detail distribution of taxes for the year. The information found in this report will help taxing agencies better understand the property tax apportionment process and assist in developing more effective tax revenue projection methodologies. This publication is currently available on our website www.co.sanmateo.ca.us/controller ‘What’s New.’ We will print a limited number of copies for distribution.

We have used SAMFOG meetings to discuss important issues relating to property tax. Recently, our office, in collaboration with the County Assessor, made presentations covering the property tax process and handling of the settlement with the airlines. We also made presentations covering changes in the property tax laws. We plan to continue working with the local taxing agencies through SAMFOG.

- 2.2.2 **Establishing guidelines to communicate more openly, frequently, and accurately with customers.**

Response:

Concur. As part of our survey and our attendance in the SAMFOG meetings, we will solicit from taxing agencies their opinion as to the accuracy and timelines of information we currently provide. We will make changes in our policies and procedures as warranted.

- 2.2.3 **Encouraging more agencies to participate in the annual customer survey. At a minimum, steps should be taken to assure a broad sampling of opinion, so as to accommodate the needs of both large and small, and sophisticated and less sophisticated agencies.**

Response:

Concur. We will explore means to encourage higher level of participation in the surveys. We will consider providing users of our website ability to provide input and suggestions online.

2.2.4 Explaining to affected agencies the reasoning behind all interpretations of the Code that result in benefiting the County at the expense of local agencies.

Response:

Concur. Through SAMFOG and individual communications to taxing agencies, we currently provide explanation of all changes in the property tax laws that affect apportionments.

2.3 Institutionalize means to monitor legislative actions that impact them, independently of the County Manager’s Office. Both the Controller and the Property Tax and Special Accounting Manager should actively and consistently participate with the CAAC and the County Property Tax Managers’ Sub-Committee respectively and endeavor to form mutually beneficial relationships with professionals in other counties.

Response:

Concur. We have developed means, independent of the County Manager’s Office, to identify and analyze pending legislative actions relating to property taxes.

We subscribe to the “Legislative Bulletin” published by California State Association of Counties (CSAC). This publication identifies pending legislation of interest to counties and it separately lists changes to Revenue and Taxation Code (R&T Code). CSAC also allows us to track legislation as it makes its way through the process of becoming law.

We review the annual State budget legislation to identify changes in areas such as school funding that can have an impact on property tax apportionment.

We obtain primary guidance from the publication identified in Recommendation 2.1 called “California Property Tax Managers’ Reference Manual”. Property Tax Managers from various counties wrote this six hundred-page manual. It underwent a series of reviews and approval with final submission to the State Association of County Auditor-Controllers (SACA).

The same Association produced a one hundred and sixty-page guideline for the implementation of SB1096. We utilized this guideline to implement the last major change in property tax apportionment.

We maintain close contact with Property Tax Managers of all counties in the State through a discussion forum using email. Individual members post their comments, questions, or concerns and receive input from other members. Members who are not involved in the exchange can view the inquiries and responses as well. This is a very valuable tool for reviewing procedures of other counties, receiving opinion of the more experienced and knowledgeable Property Tax Managers and for participating in the analysis of new or pending legislations.

We consult the San Mateo County Counsel's office routinely to make sure that we correctly interpret and apply new legislations.

We view the participation of the Controller and the Property Tax Manager in the SACA and County Property Tax Managers' Sub-Committee respectively as part of our internal controls. The objective of this set of internal controls is to provide assurance that property tax laws are identified in a timely manner and implemented correctly. We will participate in these organizations to the degree necessary to meet this objective.

2.4 Continuously improve its procedures and tools by having the Controller and Property Tax and Special Accounting Manager periodically visit other counties to compare process and adopt their best practices.

Response:

Concur. We review procedures of other counties primarily through participation in the discussion forum described above. We also contact counties directly whose issues are similar to ours. Recently, we visited the City and County of San Francisco to learn more about their automated tax roll change process.

We will continue to compare processes of other counties with ours as described above to identify opportunities for improvements in our processes.

Yours truly,

Tom Huening
Controller

TH:of
ferrando\hue\grandjuryresponse06

cc: Members, Board of Supervisors
John Maltbie, County Manager



TOWN OF COLMA

1198 El Camino Real • Colma, California 94014-3212
Tel 650-997-8300 • Fax 650-997-8308

September 29, 2006

City Council

Helen Fiscaro
Mayor

Frossanna "Fro" Vallergera
Vice Mayor

C. R. "Larry" Formalejo
Council Member

Philip J. Lum, Jr.
Council Member

Joseph Silva
Council Member

City Officials

Diane McGrath
City Manager

Laura Allen
Assistant City Manager

Robert L. Lotti
Chief of Police

Rae P. Gonzalez
City Treasurer

Roger Peters
City Attorney

Richard Mao
City Engineer

Andrea Ouse
City Planner

Brian Dossey
Director of Recreation
Services

Honorable Stephen M. Hall
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Dear Judge Hall:

The City Council of the Town of Colma acknowledges receipt of the 2005-2006 Grand Jury Report and responds to it as follows.

Specific Responses to Findings. The Town agrees with the findings that the County Controller's Office is responsible for accurately distributing collected property taxes to cities, special districts and the County, that the County failed to implement the provisions of the Tax Equity Allocation (TEA) Act (Rev. & Tax Code § 98), and that the County failed to allocate approximately \$8.1 million of TEA funds to the City of Half Moon Bay, Town of Portola Valley, Town of Woodside and Town of Colma.

The Town also agrees with the finding that each of the four cities should not rely entirely on the county to look after their respective interests. However, the Town disagrees with the implication that the misallocation of property taxes was caused by the four cities.

Discussion of Findings. The Town justifiably relied on the reports by the County Controller and an audit by the State Controller's Office that no additional property taxes were due to the Town.

Unfortunately, and through no fault of the Town of Colma, the County Controller apparently misinterpreted or misapplied the law and an audit by the State Controller's Office never checked for compliance with the TEA law. While it was normal procedure for the State Controller's Office to audit for TEA compliance, the state auditor admitted that it had modified the audit program to exclude TEA compliance. Thus, it is clear that the misallocation of property taxes was caused by improper procedures at the County and State levels, not by the four low-tax cities.

Implementation of Recommendations.

1.1. Expectations of the City Attorney are discussed each year in an oral and written performance evaluation. These expectations include monitoring and reporting of state legislation that impacts the city. The City Council will amend the City Attorney's contract to include monitoring and reporting of state legislation that impacts the city.

1.2. The City Manager and Assistant City Manager are assigned to participate in relevant financial organizations such as San Mateo Finance Officers Group (SAMFOG) or County of San Mateo Finance Officers (CSMFO), participate in and monitor bulletins of the League of California Cities and report on items of interest at city council meetings.

Discussion of Recommendations.

As noted in the Grand Jury Report, the Town of Colma has upgraded the quantity and quality of its staff since 1987 and is an active participant in a number of professional organizations that provide up-to-the minute analyses of new developments in the law that may be of interest to Town officials.

Thus, even prior to the Grand Jury's report, the City Council had implemented many of the recommendations that the Grand Jury is now making. The Town regularly receives legal updates from its City Attorney and it has assigned staff to participate in SAMFOG, CSMFO, and the League of California Cities.

The Town obtains information about state laws, such as housing mandates, zoning laws, and property tax allocations, from a variety of sources including the State agency responsible for implementing the change, the City Attorney, the League of California Cities, the Association of Bay Area Governments (ABAG), newspapers, magazines, broadcast news programs, list serves, professional associations such as the International City Managers Association (ICMA), CSFMO, SAMFOG, and colleagues.

Very truly yours,



Diane McGrath, City Manager

July 12, 2006

The Honorable Stephen M. Hall
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

RE: 2005-06 GRAND JURY REPORT – SUMMARY OF OLD MYTHS AND NEW REALITIES: WHO’S RESPONSIBLE FOR TAKING CARE OF BUSINESS?

Dear Judge Hall:

The Town of Woodside received a copy of the above captioned Grand Jury Report on June 21, 2006, and the staff has studied the report and recommendations contained therein. On behalf of the Town Council, I would like to offer several comments and responses.

First, the Town Council greatly appreciates the efforts of the Grand Jury in investigating the County’s multi-year misallocation of property tax revenues to the Town of Woodside and the other three cities named in the report. The Grand Jury’s overview of the legislative and administrative history of the Tax Equity Allocation (TEA) formula was well researched and added clarity to a rather complicated and cumbersome process.

Second, the Town Council is in full agreement with the two recommendations in the report that are directed to the four involved cities. In fact, the Town’s current practices already incorporate both recommendations. Specifically, the Town’s formal agreement with the law firm that provides Town Attorney services includes a requirement for the Town Attorney to provide a monthly report to the Town Council, in which she is to report on new legislation or recent court cases that may affect the Town. Further, the Town Manager, who also serves as the Town’s Finance Director, is a finance professional who is already a member of several municipal finance officers associations, including the two referenced by the Grand Jury. She also regularly monitors legislation through the League of California Cities and reports items of interest or import to the Town Council. We intend to continue to adhere to these practices, in full compliance with the recommendations of the Grand Jury.

Finally, I would like to report that the Town Council agrees with the Grand Jury’s assertion that cities should not rely entirely on the County to look after their interests. To that end, the Town has joined with Colma, Portola Valley, and Half Moon Bay and hired special counsel expert in tax law to ascertain the appropriateness of the County’s actions thus far in response to the administration of the TEA formula. While we appreciate the efforts of the current County Controller and his staff in trying to rectify an error that first occurred almost twenty years ago, we are looking out for our own interests and not passively accepting the County’s interpretations or calculations.

On behalf of the Town Council, I would like to extend our thanks for an opportunity to respond to the work of the 2005-06 Grand Jury. Please do not hesitate to call our Town Manager, Susan George, should you require any further information.

Sincerely,

Deborah Gordon
Mayor
Town of Woodside