

**2011 – 2012 Stanislaus County Civil Grand Jury
City of Riverbank System Development Funds
(Account 145-Overpass)
Case 12-16C**

Summary

The 2011-2012 Stanislaus County Civil Grand Jury (SCCGJ) investigated a citizen complaint alleging that during past fiscal years, the City of Riverbank, a general law city, misappropriated funds from its Systems Development Fee (SDF) funds. The complaint specifically identified Account 145 – SDF Overpass Funds. The primary sum in question was a transaction recorded in 1997 for \$296,497. Although this transaction occurred fifteen years ago, the Overpass Fund is still reported on the financial statements for the City of Riverbank. The SCCGJ investigated whether the City of Riverbank was operating within the guidelines of AB 1600 Government Codes 66000-66025 and whether the funds in this account have been properly administered and to determine if the City of Riverbank had misused or mis-appropriated funds.

Glossary

AB1600

**California Government
Code 66000-66025**

Adopted in 1987 with an effective date of January 1,1989. Various amendments have applied refinements to the bill from the period of 1988 through 2006; however the initial purpose of the code has not changed.

These codes provide guidance for the definition, purpose, disclosure, establishment, collection, specific uses and local agency responsibilities for Development Fees. “Building permit” fees are imposed on development projects in order to offset the impact on public facilities for infrastructure improvements created by new housing, commercial and/or industrial projects. The code stipulates that these fees shall not be levied, collected, or imposed for general revenue purposes (that is, salaries). The accounts associated with these fees are commonly referred to as SDF funds.

**City of Riverbank
Code of Ordinance 150.31**

“...a. since new development generates a need for new infrastructure such as parks, bridges, public works, facilities...it has been determined that development should pay for increase costs of this need”; “b.–to promote orderly and efficient expansion of public improvements, to adequately meet the domestic and economic needs of the community, and to minimize adverse fiscal and environmental impacts of new development.”

**City of Riverbank
Code of Ordinance 150.34**

A systems development fee, as established from time-to-time by City Council, by resolution, shall be due and payable as established by resolution of the City Council. ('67 Code, 5-17-4)

**City of Riverbank
Code of Ordinance 150.36**

All of the systems development charges collected shall be placed in one or more special funds which are hereby created and established for such purposes and which shall be known as Systems Development Funds. Sums collected under this chapter may be expended for any “Systems Development”, as defined in 150.36 (churches, hospitals, multi-family dwellings, etc.) provided that such expenditures from funds has been authorized by City Council. '67 Code Ordinance 89-13 passed 11-13-89.

**City of Riverbank
Resolution 87-68
(Res. 87-68)**

A resolution passed in 1987 to establish System Development Fees. The resolution identified each infrastructure project and delineated the amounts to be collected for residential, commercial and industrial building permits. This 1987 resolution remained in effect until the 1997 passage of Resolution 97-110, adopting a new System Development Fee structure and rescinding and/or deleting prior SDF resolutions.

**City of Riverbank
Resolution 87-68
Overpass Project**

In 1987, the City Council passed this Resolution to collect system development fees from developers for several purposes, one of which was this Overpass Project at Kentucky and Talbot.

**Overpass Fund
(Account 145)**

A general ledger account established in 1987 to report the fees collected and expenditures, per Res. 87-68, for this overpass project at Kentucky and Talbot. This account is still reported on the City of Riverbank financial statements. (Acct.145-Overpass)

Reclassification Entry

A term used by accountants to describe a necessary accounting entry to correct errors posted in the General Ledger.

GASB 54

Fund Balance Reporting and Governmental Fund Type Definitions (Issued 02/09). A statement now required by the Governmental Accounting Standards Board (GASB), intended to enhance the usefulness of fund balance information provided in a local agency's audited financial statements. These new disclosure guidelines are effective for financial statements for periods beginning after June 15, 2010.

Historical Background – Overpass Project

The City Council minutes of January 9, 2012. Agenda Item 6.2 summarizes the history of the **Overpass Project**. *“...This overpass (between Kentucky Ave and Talbot St) was intended to be constructed in order to allow vehicular and pedestrian traffic to travel over the railroad tracks. Subsequent housing development in the Kentucky Ave. area no longer made this project feasible, but was still reflected with the prior General Plan. During the General Plan update performed, staff removed this project. It was noted that a second pathway linking the eastern and western portion of the City was of extreme importance and during the development of the Downtown Specific Plan the creation of an **underpass** would serve to provide a direct connection to any future commercial and residential development that will occur...”* (note: emphasis added by the SCCGJ).

By 2008, the City of Riverbank included in its General and Specific Plan(s) development discussions, the need to utilize these Overpass Funds collected for the Kentucky/ Talbot intersection for an Underpass Project at Santa Fe Ave. These facts are supported by the reports submitted and the open and public meeting minutes of the City Council, as required by the open and public laws, namely the Ralph M. Brown Act and the public disclosure requirements in AB1600.

A recent City of Riverbank Development Services Department Staff Report dated March 20, 2012, provides clear evidence that the same issue of the divided traffic issue created by the BNSF railroad tracks (the original purpose of the Overpass Project) still exists today.

Method of Investigation

The 2011-2012 SCCGJ requested financial data, audited financial reports, financial audit information, city council resolutions, city council minutes and related agenda item detail, including staff reports. The SCCGJ also reviewed, in their entirety, the City's Chapter 150: Building Regulation Code of Ordinances, prior SCCGJ reports issued regarding the City of Riverbank and California AB1600 Government Codes 66000-66025. The Grand Jury conducted interviews with the complainant, the City of Riverbank Certified Public Accounting Firm, the City Attorney and city officials and staff. The 2011-2012 SCCGJ utilized a committee that included accountants, financial and educational professionals to conduct this investigation. The investigation began in January 2012 and was finalized in June 2012.

Accounting for SDF Account 145 -Overpass

Per Res. 87-68 the portion of the building permit fees to be collected for the Overpass Project was \$340 per residential unit. Fees were collected for two residential subdivisions, namely, Welch Acres and Churchill Downs Estates. The majority of the residential permits issued and collected occurred between 1987 and 1998 totaling 1,112 dwelling units. This provided \$ 378,080 in SDF revenue.

One commercial building permit (Galaxy Theatre) was issued and paid \$12,698.55 into Fund Acct.145-Overpass for the period 1999 to 2003.

Budget

The complaint states that the city budget figures for Acct.145- Overpass, was in excess of \$500,000 and was reported at its highest point as \$565,234 for the 1998-99 fiscal year. The City of Riverbank Financial Statements and supporting documents agree. The 2011-12 SCCGJ did not investigate the development of the budget figures:

- 1) a balance sheet budget is a (life of the account) target figure
- 2) the investigation of the actual revenues and expenses provided the information to determine if there was an actual mis-appropriation of funds and if the City was in compliance with AB1600 (Government Codes 66000-66025).

Actual

In 1996, a beginning balance in Acct 145-Overpass of \$494,778 was reported on the City of Riverbank's financial statements. The 1996-97 Financial Statements reflect, the entry of concern, of \$296,497 that was posted to reduce the balance in the account, with no apparent explanation as to the purpose or use of the funds, leading one to question whether amounts were being erroneously posted, misappropriated or to cover deficit spending.

The 2011-12 SCCGJ discovered that there was a concerted effort during the 1996-97 fiscal year to correct beginning balance issues in at least 15 balance sheet accounts in that fiscal year alone. One of the entries was the \$296,497, reducing the balance in Acct.145-Overpass. These fund balance corrections were created in part by the inaccurate posting of fund revenues received and/or collected in prior fiscal years and a 1991 accounting software conversion that moved the City of Riverbank from a single entry accounting system to a double entry accounting system. These facts are supported by the following historical records:

- a) The SCCGJ report of 1995 details severe accounting deficiencies for periods prior to 1991 and continuing to 1993 with deficit spending issues due to the poor financial reporting at the time.
- b) Notations in the financial audit for 1996-97 indicated that a comprehensive reconciliation of fund beginning balances was performed by the CPA firm and the City of Riverbank staff to correct the fund balances with what was noted as 'reclassification entries'.

- c) The Certified Public Accounting Management Letters published as part of the 1996, 1997, 1998 audits continued to detail many major fundamental accounting deficiencies. Additional balance sheet 'clean-up' or reclassification entries were posted in the 1998 and 1999 Financials. However, none affected Acct. 145-Overpass.
- d) The City of Riverbank received Qualified Audits (an indication of findings and concerns) until 1999, when the financial records of the city finally received an Unqualified (highest ranking) status.

In 1998-99, 2001-02, and 2002-03, \$2951, \$518 and \$3,108 of residential SDF funds were collected and posted to this Overpass Account, respectively, after the rescinding of Res. 87-68 in 1997. All are cases where the vesting tentative maps (Welch Acres and Churchill Downs Estates) were approved but the individual building permits were pulled after the City Council approval of Res. 97-110 in 1997. Because the maps were vested the original conditions applied and the resulting fees were booked to Acct.145-Overpass.

The SCCGJ has determined that the total building permit revenue collected for the life of Acct. 145 - Overpass was \$397,355.

\$	378,080.00	1,112 building permits issued from 1987 to 1996
\$	12,698.00	Galaxy Theater Commercial Building Permit
\$	2,951.00	1998-99 Additional Residential Permits
\$	518.00	2001-02 Additional Residential Permits
\$	<u>3,108.00</u>	2002-03 Additional Residential Permits
\$	397,355.00	Total Fees Collected

Today, the City of Riverbank utilizes a 10-member citizen volunteer committee, to review the financial status, budget(s) and various assigned projects requested by the City Council. This Finance/Budget Committee was created by the city council as an advisory group and works with the City Finance Director along with other city directors as needed. A member of the city council attends these Finance Committee meetings, as a non-voting member. Recently this committee has been utilized to make recommendations to the city council on how to overcome an initial \$500,000 budget deficit for the upcoming fiscal year.

Per the financial statements and G/L detail, no expenses were incurred or booked to Acct. 145- Overpass for the fiscal years 2000-01 to 2007-08. During the fiscal periods of 2008-09 to 2010-11 the City of Riverbank reported expenses in the account totaling \$141,345.09 for an Underpass Project at Santa Fe Avenue.

The 2010-11 audited financial statements reports an ending fund balance in Acct. 145-Overpass of \$225,462.27 (all fees collected + interest earned – expenses). The 2011-2012 SCCGJ concurs with this balance as a result of its investigation.

Findings: Accounting For SDF Account 145 (Overpass)

- F1: City staff has responded to the public with many documents in an attempt to roll forward 25 years of activity in Acct.145-Overpass, without the benefit of a full and complete financial history. The public is left with the impression that funds have been mis-appropriated or misused. The City’s CPA could have provided a more complete and accurate roll-forward for far less money and time spent.
- F2: The 2011-12 SCCGJ finds that prior to 1999, the lack of proper and basic accounting policies and procedures, the lack of staff understanding of the fundamentals of accounting processes and an

inept accounting software conversion all contributed to the Acct.145-Overpass beginning balance cleanup of \$296,497 executed in the 1996-97 financial statements.

- F3: The City of Riverbank continues to achieve an Unqualified (highest status) audit ranking. No internal control findings or recommendations are being reported by the auditors, an indication that appropriate GASB financial policy and procedural standards are being followed.
- F4: The additional revenue posted to Acct.145-Overpass in the years of 1998-99, 2001-02 and 2002-03 was proper.
- F5: The total fees collected per Res. 87-68, \$397,355 and resulting interest earned over the last 25 years has never provided sufficient funds for the City to complete the Overpass Project. Past and current city officials and staff have allowed Acct. 145-Overpass to remain in existence for 25 years without constructing a capital improvement.
- F6: The 2011-12 SCCGJ concludes that the revenues in Acct. 145-Overpass have not been transferred or spent for general fund purposes or to fund some other undisclosed project. However, in 2008-09 the City of Riverbank began utilizing Account 145-Overpass for the Santa Fe Underpass Project. The core purpose (to mitigate the railroad and traffic issue and to connect the East and West sectors of the City) may be the same, however the actual projects are different. This multi-use of Funds is not in compliance with AB1600.

AB1600 Government Codes 66000-66025

AB1600 Government Codes 66000-66025 provides clear direction for the handling and public disclosure for SDF funds, public funds collected for the public and held 'in trust' by a local agency. The SCCGJ reviewed the City of Riverbank's compliance with regards to these codes.

The City of Riverbank consultants and staff are currently preparing a System Development Fee Report that will define and summarize the project status of the General and Specific Plans and each SDF fund. The City Council minutes of January 9, 2012 stated, "... *the annual (SDF) report will be presented to Council every December 15th and the first catch-up report will be presented as soon as possible.*"

- F7: The City of Riverbank, California Code of Ordinances for Building Regulations related to System Development fees and projects, established initially in 1967, do not reference and are not in compliance with AB1600 California Code 66000-66025.
- F8: Clearly, there is a need for the City of Riverbank to provide safe access between the East and West ends of town and to overcome the railroad dissection of the City of Riverbank.
- F9: During the January 9, 2012 council meeting, the City Council asked for an opinion from the City Attorney regarding the proper procedures to address the use or disposition of the balance in Acct. 145-Overpass. As of June 2012, the Mayor has not received a written opinion.
- F10: Though General and Specific Plans have been approved by the current City Council in open and public meetings a review of the March 20, 2012 Downtown Specific Plan does not tie the Plan together with the Funds established and collected for the city's SDF projects. Consequently, several sections of AB1600 Government Code 66000-66025 appear to be disregarded and/or not fully utilized for;
 - 1) full and clear disclosure to the citizens of the city
 - 2) powers granted to the City Council, and
 - 3) responsibilities and actions that need to be taken by the City Council.

Recommendations

- R1: The 2011-12 SCCGJ suggests that the City of Riverbank review its need for a City Treasurer. The 2011-12 SCCGJ finds the creation and assignments of the city's volunteer Finance/Budget Committee is a positive action to involve more members of the public in financial decisions, especially in these tough financial times. However, there are powers, responsibilities and duties granted to a Treasurer that may provide a higher level of over-sight and compliance.
- R2: Obtain the requested written opinion from the City Attorney per the City Council request of January 9, 2012. Provide a copy of the opinion to the SCCGJ.
- R3: Complete the System Development Report. Insure that the report is in full compliance with AB1600 (Government Codes 66000 – 66025), including a brief description of the city's intention of use and feasibility of each fund project. Treat the SDF Report as a living document. This document can serve as a current and historical record of the status for each fund / project, creating accountability for city staff, the foundation for the adherence to GASB 54, full disclosure to the public along with being a historical document for current and future staff and elected city officials.
- R4: Provide a copy of this first "catch-up" SDF Report to the SCCGJ by October 29, 2012.
- R5: The current City Council is now charged with the responsibility of understanding and correcting the action or lack of performance by prior city officials. A first step is an understanding of AB1600 (Government Codes 66000 – 66025). This educational process should be completed by the Mayor, all City Council members, finance staff, City Manager, Development Services Director, Planning Commission and any other participants in city government responsible for compliance with AB1600 California Government Codes (66000-66025).
- R6: The City of Riverbank should review, correct and amend its Code of Ordinances related to Building Regulations for System Development Fee Projects for accuracy and compliance with AB1600 Government Codes 66000-66025.
- R7: AB1600 Government Code 66001 requires that the City Council pass by resolution, the SDF Report. The resulting approval or re-approval, of each SDF fund should be included as part of the resolution. The city's Financial Records (G/L) should reflect each action.

For example, for Acct.145-Overpass, if the City Council decision is to replace the Kentucky/Talbot Overpass Project with the Santa Fe Underpass Project, the financial statements should reflect that decision/ resolution.

Acct. 145-Overpass should be closed out and all funds transferred to a new G/L Fund Account (preserving the detail of the Santa Fe Underpass expenditures). This general ledger action will serve as a clear delineation between the projects and will provide compliance with AB1600.

- R8: If the City Council passes a resolution to abandon the East/West Access RR crossing project, obviously, R7 no longer applies and the process of refund should be executed per AB1600.
- R9: Utilize the Finance/Budget Committee to review AB1600 Government Codes 66000-66025 for the benefit of understanding the fiscal and reporting responsibilities for the SDF funds. In addition, the committee can help prepare the city for compliance with GASB 54. Compliance with AB1600 (Government Codes 66000-66025) could reduce audit costs associated with GASB 54. The City's Certified Public Accounting Firm can provide the specifics of the GASB 54 requirements as it relates to the City of Riverbank's financial reporting responsibilities.
- R10: It is suggested that city staff and the City Council rely heavily on the advice of the City's CPA and City Attorney to guide the city through the approval of each SDF Fund and the amendments to the SDF Fund City Ordinances for compliance with AB1600 and GASB 54.

This report of case #12-16C is issued by the 2011-2012 Stanislaus County Civil Grand Jury and no members of the grand jury volunteered to recuse themselves due to a perceived conflict of interest.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code § 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code § 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

The primary function of the SCCGJ is to provide unbiased oversight and to investigate complaints from citizens about the operations of county and city government, school districts and special districts, as required by law. The grand jury is one means to inform citizens that government is operating efficiently and in an ethical, honest manner. The grand jury investigates policies and procedures and makes recommendations to improve local governmental operations. It has no power to enforce its recommendations. It only informs citizens about some of the legislative and administrative work of their local governments. All grand jury investigations and reports are approved by at least a 60% supermajority vote of the entire grand jury panel.

Response Requested:

City of Riverbank City Council