

# **Guidelines Relating to Gas Tax Expenditures for Cities and Counties**



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**BACKGROUND 100****Purpose of the Guidelines 110**

*Guidelines Relating to Gas Tax Expenditures* was developed to assist cities and counties in making determinations as to eligibility, responsibilities, accounting requirements, and records, and as a source of technical assistance. The guidelines are not intended to replace statutory or legal authority, but to enhance and explain the somewhat general descriptions found in the California Constitution and the Streets and Highways (S&H) Code.

Guidelines relating to the Road Maintenance and Rehabilitation Program (RMRP) are included as an appendix to this document.

**Expenditure Authority 120**

Expenditure authority is governed by [Article XIX of the California Constitution](#) and [S&H Code section 2101](#). These laws describe the allowable uses of gas tax funds for public streets and highways, public mass transit guideways, and their related public facilities. The RMRP is additionally governed by [S&H Code section 2030](#).

**State Controller's Responsibility 130**

The constitutional responsibilities of the State Controller are outlined in the California Constitution and various statutes, the most general of which is [Government Code section \(GC\) 12410](#), which requires the Controller to superintend the fiscal concerns of the State. In addition, [S&H Code section 2153](#) imposes a mandatory duty on the Controller to ensure that the annual street and road reports are adequate and accurate.

The State Controller's Office (SCO) conducts audits of cities' Special Gas Tax Street Improvement Funds and counties' Road Funds. The SCO's audit objective is to ensure that highway users tax funds are accounted for and expended in compliance with applicable laws and regulations.

**City and County Responsibilities 140**

Cities and counties are required to expend gas tax revenues for street and road purposes in compliance with the S&H Code and to be accountable for the efficient and transparent use of the apportioned funds.

**REPORTING REQUIREMENTS 200****Reporting Requirements 210**

[S&H Code section 2151](#) requires cities and counties to file an annual report of street or road expenditures made during the preceding fiscal year. The SCO provides a tool for completing and submitting these reports, the [Annual Street Report](#) for cities and the [Annual Road Report](#) for counties, on its website. The website facilitates the compilation of the reports with instructions, forms, current and historical appropriation data, and relevant code references.

**Contents of the Report 220**

The reports filed by cities and counties must show the amount expended for: construction by contract, maintenance by contract, construction by day labor, and maintenance by day labor.

The reports also must include a detailed statement of all money available from all sources during the fiscal year covered by the report. This includes money made available by the federal government, the State, the county or city, and any other governmental agency; as well as money available from bond issues, special assessments, or from any other source for expenditure for street or road purposes.

The expenditures included in the report must be broken down into expenditure categories, such as expenditures for rights-of-way or other property, new construction, reconstruction, widening, resurfacing, maintenance, repair, and acquisition and maintenance of equipment. The report also must include a detailed statement of all expenditures for snow removal. ([S&H Code section 2152](#))

**Annual Tabulation and Compilation 230**

The SCO annually tabulates and compiles the city and county reports and publishes the compilation report on its website.

**Delinquent Reports 240**

No state money will be allocated to any city or county that is delinquent in filing this report. ([S&H Code section 2155](#))

**HIGHWAY USERS TAX ACCOUNT APPORTIONMENTS****300****Revenues****310**

Revenues from the gas tax deposited into the Highway Users Tax Account (HUTA) in the Transportation Tax Fund are apportioned by the SCO to cities and counties. These apportionments are provided for in [S&H Code sections 2100 through 2127](#). The following table outlines the recipients, apportionment basis, and restricted use of the HUTA money:

**HUTA Apportionment Basis and Usage of Funds Apportioned per the S&H Code**

<u>Code Section</u>	<u>Apportionment Based on</u>	<u>Restricted Use</u>
<a href="#">S&amp;H §2103</a>	Population, vehicle registration, maintained mileage	Any street or road purpose
<a href="#">S&amp;H §2104(a)</a>	Specified amount of \$1,667 per month	Undistributed engineering cost and administrative expense
<a href="#">S&amp;H §2104(b)</a>	The lesser of: 1) total reimbursable snow removal and/or snow grooming costs reported annually by counties, or 2) \$7,000,000	Snow removal or snow grooming or both
<a href="#">S&amp;H §2104(c)</a>	Specified percentage per §2110.5 payable only to certain counties	Heavy rainfall and storm damage
<a href="#">S&amp;H §2104(d)(e)(f)</a>	Vehicle registration maintained mileage	Any road purpose
<a href="#">S&amp;H §2105</a>	Per gallon tax per R&T§7360, §8651, §8651.5, §8651.6, §60050, §60115	Any street or road purpose
<a href="#">S&amp;H §2106</a>	Vehicle registration, tangible property assessed valuation, and population; also specifies monthly payment to each city (\$400) and county (\$800)	Any street or road purpose
<a href="#">S&amp;H §2107(b)</a>	Amount equal to one-half of expenditures in excess of \$5,000	Snow removal
<a href="#">S&amp;H §2107(c)</a>	Population	Any street or road purpose
<a href="#">S&amp;H §2107.5</a>	Population	Engineering cost and administrative expense*

\* Cities with populations of fewer than 10,000 inhabitants may expend S&H Code section 2107.5 money for acquisition of rights-of-way and for construction of their street systems.

**Prerequisites to Receive HUTA Apportionments****320**

To receive HUTA apportionments, a city or county must:

- Establish a Gas Tax Street Improvement Fund or Road Fund as required by law;
- Deposit HUTA money in a separate bank account when required by law;
- File any report required by law; and
- Restore any gas tax money not expended in conformance with any law or constitutional provision.

The SCO may withhold payment of HUTA apportionments in the event of a city or county's failure to comply with these prerequisites. When a city or county has provided satisfactory proof to the SCO of the establishment of a Gas Tax Street Improvement Fund or Road Fund, the deposit of HUTA money in a separate bank account, the filing of the delinquent report, or the restoration of the improperly expended money, the city or county will then receive the gas tax apportionments. ([S&H Code section 2119](#))

**DEFINITIONS RELATED TO STREETS AND ROADS****400****General****410**

The following information is derived from the [Local Assistance Program Guidelines](#) and the [Local Assistance Procedures Manual](#) developed by the California Department of Transportation (Caltrans), and the applicable sections in the S&H Code, California Attorney General Opinions, and SCO legal opinions, as well as from frequently asked questions and various audit findings.

The subsequent definitions presented are useful for the proper accounting of street and road costs. Some consolidations have been made and certain wording modified; however, the definitions are essentially those presented in the aforementioned documents.

<u>Term</u>	<u>Definition</u>
City	Includes “city and county” and “incorporated town.” ( <a href="#">S&amp;H Code §15</a> )
County highway or roads	Any highway that is (a) laid out or constructed as such by the county, (b) laid out or constructed by others and dedicated or abandoned to or acquired by the county, (c) made a county highway in any action for the partition of real property, or (d) made a county highway pursuant to law. ( <a href="#">S&amp;H Code §25</a> )
County	Includes “city and county.” ( <a href="#">S&amp;H Code §14</a> )
Exclusive public mass transit guideways	A channel, slot, or track in which a common carrier vehicle is fitted or linked so that its line of motion is controlled.
Governing body	City Council for cities and Board of Supervisors for counties.
Highway	Includes bridges, culverts, curbs, drains, and all works incidental to highway construction, improvement, and maintenance. ( <a href="#">S&amp;H Code §23</a> )
Non-motorized transportation facility	A facility designed primarily for the use of pedestrians, bicyclists, or equestrians. ( <a href="#">S&amp;H Code §887</a> )
Sidewalks	That portion of a highway, other than the roadway, set apart by curbs, barriers, markings, or other delineation for pedestrian travel. ( <a href="#">Vehicle Code §555</a> )
Street	All or any portion of territory within a city set apart and designated for the use of the public as a thoroughfare for travel, and includes the sidewalks, the center, and the side plots thereof. ( <a href="#">S&amp;H Code §22010</a> )
Right-of-way	Land acquired for use as a street or highway, either as an easement or by grant deed conveying title in fee.
City street	No public or private street or road shall become a city street or road until the governing body, by resolution, has accepted the street or road into the city street system ( <a href="#">S&amp;H Code §1806</a> ). The width of all city streets except state highways, bridges, alleys, and trails, shall be at least 40 feet. The governing body of any city may, by a resolution passed by a four-fifths vote of its membership, determine that the public convenience and necessity demand the acquisition, construction, and maintenance of a street of less than 40 feet. ( <a href="#">S&amp;H Code §1805</a> )
County road	No public or private road shall become a county highway until the board of supervisors by appropriate action caused the road to be accepted into the county road system. ( <a href="#">S&amp;H Code §941</a> ) The width of all county highways, other than bridges, alleys, lanes, and trails, shall be at least 40 feet, except the board of supervisors of any county may, by a resolution passed by a unanimous vote of its members, determine that the public convenience and necessity demand the maintenance of a highway of less than 40 feet. ( <a href="#">S&amp;H Code §906</a> )

**Construction****420**

Construction can be defined as the building or rebuilding of streets, roads, bridges, ferries; and acquisition of rights-of-way or their component parts; to a degree that improved traffic service is provided and geometric or structural improvements are effected. Construction also includes allocated administration and engineering necessarily incurred and directly related to these activities.

The following information is intended to define the categories of expenditures and provide examples for general guidance.

**Construction work can be separated into four categories:**

- 1) **New Construction** – A construction that substantially deviates from the existing alignment and provides for an entirely new street or roadbed for the greater parts of its length.
- 2) **Reconstruction** – A construction involving realignment or the use of standards well above those of the existing element, whereby the type or the geometric and structural features are significantly changed.
- 3) **Preventative Maintenance** – Includes, but is not limited to, roadway activities such as joint and shoulder rehabilitation, heater re-mix, seal coats, corrective grinding of PCC1 pavement, and restoration of drainage systems.
- 4) **3R Work** – All other work that does not fall into the above-defined categories for new construction, reconstruction, or preventative maintenance and typically involves the improvement of highway pavement surfaces through resurfacing, restoration, or rehabilitation. 3R Work is generally regarded as heavy, non-routine maintenance designed to achieve a ten-year service life. Specifically, 3R Work is defined as:
  - *Resurfacing* generally consists of placing additional asphalt concrete over a structurally sound highway, street, or bridge that needs treatment to extend its useful service life.
  - *Restoration* means returning a road, street, structure, or collateral facility to the condition existing after original construction.
  - *Rehabilitation* implies providing some betterments, such as upgrading guardrail or widening shoulders.

The following examples of construction expenditures are grouped by types of work:

<u>Expenditures</u>	<u>Types of Work</u>
Additions	<ul style="list-style-type: none"> <li>• The addition of a frontage street or road</li> <li>• Addition of auxiliary lanes such as speed change, storage, or climbing lanes</li> </ul>
Barriers	<ul style="list-style-type: none"> <li>• Earthwork protective structures within or adjacent to the right-of-way area</li> <li>• Extensions and new installation of walls</li> <li>• Replacement of retaining walls to a higher standard</li> <li>• Extension of new installation of guardrails, fence lines, raised medians, or barriers for traffic safety</li> </ul>
Bikeways	<ul style="list-style-type: none"> <li>• Construction of bikeways when they are an integral part of the streets and highways system</li> <li>• Construction of bicycle or pedestrian underpasses or overhead crossings for the general public use</li> </ul>

<sup>1</sup> Portland Cement Concrete (PCC) pavement, or *rigid pavement* as it is sometimes called, refers to the rigid concrete layer of the pavement structure that is in direct contact with the traffic.

Source: <http://www.industrialresourcescouncil.org/Applications/PortlandCementConcretePavement/tabid/447/Default.aspx>



<u>Expenditures</u>	<u>Types of Work</u>
Bridges	<ul style="list-style-type: none"> <li>• Reconstruction of an existing bridge or installation of a new bridge</li> <li>• Widening of a bridge</li> <li>• Replacement of bridge rails and floors to a higher standard</li> </ul>
Curbs, etc.	<ul style="list-style-type: none"> <li>• Installation or extension of curbs, gutters, sidewalks, or underdrains</li> </ul>
Drainage	<ul style="list-style-type: none"> <li>• A complete reconstruction or an addition to a culvert</li> <li>• Extending old culverts and drains and replacing headwalls</li> </ul>
Landscaping	<ul style="list-style-type: none"> <li>• Installation or additional landscape treatment such as sod, shrubs, trees, irrigation, etc., along the street or road right-of-way</li> </ul>
Layout	<ul style="list-style-type: none"> <li>• Change of alignment, profile, and cross-section</li> <li>• Reconstruction of an intersection and its approximate approaches to a substantially higher type involving a change in its character and layout including changes from a plain intersection to a major channelized intersection or to a grade separation and ramps</li> </ul>
Lighting	<ul style="list-style-type: none"> <li>• Installation or expansion of street or road lighting system</li> </ul>
Relocation	<ul style="list-style-type: none"> <li>• The removal of old street and roadbeds and structures, and detour costs when connected with a construction project</li> <li>• Replacement in kind, when legally required, of structures that are required to be relocated for street and road purposes</li> </ul>
Signs and signals	<ul style="list-style-type: none"> <li>• The installation of original traffic signs and markers</li> <li>• Replacement of all major signs or traffic control devices on a street or road</li> <li>• The installation of a new sign or the replacement of an old sign with one of superior design such as increased size, illumination, or overhead installations</li> <li>• Installation or improvement of traffic signal controls at intersections and protective devices at railroad grade crossings</li> <li>• Purchase and installation of traffic signal control equipment including traffic actuated equipment, radio or other remote control devices and related computers, and that portion of preemption equipment not mounted on motor vehicles</li> </ul>
Striping	<ul style="list-style-type: none"> <li>• Painting or rearrangement of pavement striping and markings, or repainting to a higher standard</li> </ul>
Surface work	<ul style="list-style-type: none"> <li>• Original surfacing of shoulders</li> <li>• Improvement of a surface to a higher type of material</li> <li>• Placing sufficient new material on soil surface or gravel street or road to substantially improve the quality or the original surface</li> <li>• Bituminous material of one inch or more placed on bituminous or concrete material—a lesser thickness may be considered construction provided the engineer certifies that the resulting pavement is structurally adequate to serve anticipated traffic</li> <li>• Remix existing bituminous surfacing with added materials to provide a total thickness of one inch or more—a lesser thickness may be considered construction provided the engineer certifies that the resulting pavement is structurally adequate to serve anticipated traffic</li> <li>• Stabilization of street or road base by adding material such as cement, lime, or asphalt</li> </ul>
Widening	<ul style="list-style-type: none"> <li>• Widening of existing street or roadbed or pavement, with or without resurfacing</li> <li>• Resurfacing, stabilizing, or widening of shoulders including necessary connections to side streets or road approaches</li> </ul>

**Maintenance****430**

Maintenance is defined as the preservation and upkeep of a street or road constructed condition, and the operation of a street or road facility and its integral services to provide safe, convenient, and economical highway transportation.

*Physical Maintenance* is preservation and upkeep of a highway, including all of its elements, in as nearly as practicable its original condition or its subsequently improved condition.

*Traffic Services* include the operation of a highway facility, and services incidental thereto, to provide safe, convenient, and economic travel.

Following are examples of maintenance expenditures:

- Scarifying, reshaping, and restoring material losses
- Applying dust palliatives
- Patching, repairing, surface treating, and joint filling on bituminous or concrete surfaces
- Jacking concrete pavements
- Repairing traveled way and shoulders
- Adding bituminous material of less than 1" to bituminous material including seal coats
- Remixing existing bituminous surfacing with added materials to provide a total thickness of less than one inch
- Patching operations including base restoration
- Resealing street or road shoulders and side street and road approaches
- Reseeding and resodding shoulders and approaches
- Reshaping drainage channels and side slopes
- Restoring erosion controls
- Cleaning culverts and drains
- Removing slides and restoring facilities damaged by slides (additional new facilities shall be construction)
- Mowing, tree trimming, and watering within the street right-of-way
- Replacing topsoil, sod, shrubs, trees, irrigation facilities, etc., on streets and roadsides
- Repairing curb, gutter, rip-rap, underdrain, culverts, and drains
- Cleaning, painting, and repairing bridges and structures
- Performing all snow control operations such as erection of snow fences and the actual removal of snow and ice from the traveled way
- Repainting pavements, striping, and markings
- Repainting and repairing signs, guard rails, traffic signals, lighting standards, etc.
- Adding small numbers of conventional traffic control devices including signs
- Servicing street or road lighting and traffic control devices
- Furnishing power for street or road lighting and traffic control devices

**Administrative Costs****440**Direct Costs

Direct costs are expenditures incurred solely and specifically for street or road purposes or projects. Direct costs include contract payments, Right of Way acquisition, direct material, and forced labor costs; the salaries, wages, fringe benefits and related costs of employees directly participating on street and road purpose projects. Typical direct costs include:

- Compensation of employees for the time devoted and identified specifically to the performance of the street or road project(s). Direct cost typically includes first level of supervision dedicated to the project. Supervisory activities above the first level of supervision are recoverable as indirect costs.
- Costs of materials consumed, or expended specifically for the purpose in which the participating state/federal funds were authorized.
- Equipment and other approved capital expenditures.
- Expense items or services contracted, or furnished specifically for the project to carry out the purpose in which the participating federal/state funds were authorized.

Indirect Costs (Overhead)

Indirect costs, or general street or road overhead costs, are costs that are incurred for street or road purposes that cannot be readily identified to a particular project. Cities and counties are allowed to use highway users' tax monies to reimburse for indirect costs provided that there is documentation that amounts reimbursed were fairly and equitable allocated. Indirect costs typically include:

- Cost of overall supervision of field operations
- Cost of shop supplies such as expendable small tools and non-permanent barricades, warning signs, and other devices

**Ineligible Expenditures****450**

Following is a list of the types of expenditures **not** eligible for financing from gas tax money:

- Cost of rearranging non-street or road facilities, including utility relocation, when not a legal road or street obligation
- New (first installation of) utilities, including water mains, sanitary sewers, and other non-street facilities
- Cost of leasing property or right-of-way, except when required for construction work purposes on a temporary basis
- Cost of constructing or improving a street or area for parking purposes, **except** for the width normally required for parking adjacent to the traveled way and within the right-of-way
- Decorative lighting
- Park features such as benches, playground equipment, and restrooms
- Work outside the right-of-way which is not a specific right-of-way obligation
- Equestrian under- and overpasses or other similar structures for any other special interest group unless as a part of a right-of-way obligation

- Acquisition of buses or other mass transit vehicles or maintenance and operating costs for mass transit power systems or passenger facilities (passenger facilities include but are not limited to bus benches, shelters, and bus stop signs, or equipment and services)
- Maintenance or construction on alleys that have not been formally designated as part of the jurisdiction's street and road system
- Improvements and maintenance to park and ride designated lots
- Driveways outside of the street and road right-of-way
- Debt service payments for non-voter-approved bonds, including Certificates of Participation
- Over-expended funds (deficit fund balance)
- Negative interest allocation

**SPECIFIC DETERMINATIONS****500****Questions Related to HUTA Expenditures****510**

The following information is included to provide guidance on some specific questions that may arise during the course of a jurisdiction's annual street and road program. The list is not all-inclusive, but does cover a comprehensive area of activities.

<u>Subject</u>	<u>Determination</u>
May HUTA money fund a freeway emergency telephone system?	Yes. Freeway emergency telephone systems serve a highway purpose, potentially increasing traffic capacity through better accident reporting.
May a city or county purchase land for "greenbelt" purposes with HUTA money?	Surplus street or road land may be used for a park, providing it mitigates the environmental impact of a street construction project. However, legislative action is necessary to authorize the use of HUTA funds to purchase land for "greenbelt" purposes.
May a city or county expend interest earned on HUTA funds for non-street or road purposes?	No. Interest follows principal and may not be spent for a non-street or road purpose.
Are temporary transfers or loans from a Special Gas Tax Street Improvement Fund or Road Fund allowed if the borrowed amounts are repaid in the same fiscal year?	No. Article XIX of the Constitution prohibits loans or temporary transfers of HUTA funds, HUTA funds are confined to street and road purposes. ( <a href="#">CA Con Article XIX §2</a> , <a href="#">S&amp;H Code §2101</a> )
May HUTA money fund the cost of lighting for bus stop shelters?	No. A bus stop shelter is not a facility for non-motorized traffic and such shelters are related to the motorized mass transit system.
May a city or county expend HUTA funds for rubberized railroad grade crossing material or repair grade crossing?	Yes. The purchase or repair would constitute a streets and roads purpose and be eligible for HUTA funding.
May a city or county expend HUTA funds for maintenance on a state highway?	Yes, if there is an agreement allowing the city or county authority to maintain a state highway; otherwise, the State has sole authority to maintain state highways.
May a city or county purchase equipment with HUTA funds?	Yes. Street or road related equipment is eligible for HUTA funding provided the following criteria are met: <ul style="list-style-type: none"> <li>• The city or county keeps accurate records on acquisition cost, use, maintenance, and disposition;</li> <li>• Equipment purchased with HUTA funds may be used for non-street/road purposes provided the city or county reimburses the Special Gas Tax Street Improvement Fund or Road Fund for the use of the equipment at the Caltrans equipment rental rate or at an internally developed rental rate (supporting documentation required)</li> <li>• The city or county provides a representation letter substantiating street use, non-street use; and/or</li> <li>• Proceeds from disposition are redeposited in the Special Gas Tax Street Improvement Fund or Road Fund.</li> </ul>

May the HUTA funds pay for expenses incurred in attending or participating in Institute of Transportation and Traffic Engineering-sponsored programs conducted for street or road purposes?

Yes. These expenses are allowable uses of HUTA funds.

What is the acceptable methodology for charging the Special Gas Tax Street Improvement Fund or Road Fund for its proportionate share of governmental overhead?

Overhead must be substantiated by a cost allocation plan, or an equitable and auditable distribution of these costs to all departments.

What is the proper treatment of right-of-way acquisition and disposal?

- Any city or county that has purchased salable excess right-of-way with HUTA funds must report any unsold portions to the Controller along with the reason(s) for holding it, and the anticipated date of disposal.
- If a city or county rededicates a park or other city-owned property for a street right-of-way, no charge may be made to the Special Gas Tax Street Improvement Fund or Road Fund for the value of this property.
- Any local jurisdiction may expend highway users' taxes for relocation expenses necessitated by right-of-way acquisitions in accordance with the applicable Government Codes on relocation assistance.

May a city charge percentage engineering in lieu of actual costs?

Percentage engineering is allowable at the rates presented below.

**Contract Work:**

<u>Preliminary Engineering</u>	<u>Construction Costs (in thousands)</u>	<u>Construction Engineering</u>
22%	\$0-\$49	22%
17%	\$50-\$74	20%
15%	\$75-\$99	18%
13%	\$100-\$149	16%
10%	\$150-\$249	15%
8%	\$250-\$499	14%
8%	\$500-\$999	14%
8%	\$1,000-\$2,000	14%

These percentages will be computed on the eligible portion of the contract price.

**Day Labor:** 5% for preliminary engineering and 6% for construction engineering and inspection. (These percentages will be computed on eligible portions of material, equipment, rental and labor (including fringe benefits).)

**Right-of-Way Engineering:** 2%. This percentage is on the total eligible right-of-way costs. If percentage engineering is used, the agency must be aware that: (1) no agency may claim percentage engineering in excess of its total street purpose engineering shown on the agency's records; (2) percentage charges may be made to the Special Gas Tax Street Improvement Fund during the same fiscal year in which the actual engineering work occurred (in some cases, this may require an estimate to be made in one year with an adjustment to actual in a subsequent year); and (3) if actual costs are known, it must be used in all cases.

May a jurisdiction charge the Special Gas Tax Street Improvement Fund and Road Fund for construction of facilities that are necessary to drain streets and roads?

For this purpose, those portions of the drainage system listed below may be financed entirely with such money:

- Cross culverts, regardless of angle of crossing;
- Storm drains, culverts, or drainage channels that are required to be constructed or reconstructed by improvements of the roadway;
- Longitudinal storm drains or other longitudinal culverts, including manholes;
- Cross or longitudinal gutters at intersections; and
- Catch basins and related pipes. (The term *catch basin* shall include outlet structures or curb openings. Eligible catch basins must be located within the road or street system rights of way, or as close to the curb return joining the road or street system as practicable considering the location of obstructions and/or hydraulic considerations.)

Are HUTA funds available to be used for payment of the cost of any project to the extent that such cost is not reimbursable from federal funds (i.e. used as matching funds)?

Yes. HUTA funds are eligible to fund matching contributions to railroad grade separation projects, and county and federal matching programs.

**SPECIAL ACCOUNTING REQUIREMENTS 600****Special Accounting Requirements for Cities 610**

California law imposes specific requirements on the administration of and accounting for HUTA funds; this section compiles the current guidance.

**Special Revenue Fund Required**

[S&H Code section 2113](#) states, in part, “...no apportionment of money from the Highway Users Tax Fund as provided in [Section 2106](#) or [2107](#) shall be made to a city unless the city has set-up by ordinance a “special gas tax street improvement fund.” This fund is a special revenue fund used to account for proceeds of specific revenue sources that are legally restricted to expenditures for special purposes.

**Fund Criteria**

- Basis of Accounting – Modified accrual as required by generally accepted accounting principles for special revenue funds
- Primary Means of Spending Control – Annual budget appropriation limitations
- Usual Financing Sources – Legally or contractually identified revenues
- Measurement Focus – Spending and the quality and/or quantity of the products or services provided

**Specific Accounting Requirements**

The following requirements are to provide guidance on the specific accounting treatment as it relates to the Special Gas Tax Street Improvement Fund:

- All HUTA apportionments must be deposited directly into the Special Gas Tax Street Improvement Fund.
- If other revenues are commingled in the Special Gas Tax Street Improvement Fund, it is the jurisdiction’s responsibility to provide accurate and adequate documentation to support revenue and expenditure allocation as well as segregated balances.
- Any expenditures being funded by “expenditure reimbursement” transfers of gas tax cash to other funds must be identified. Generally accepted accounting principles require that expenditures of the fund being reimbursed are credited to avoid an overstatement of expenditures. The credit would specifically identify the nature of expenditures being funded by gas tax.

**Interest Requirements ([S&H Code section 2113](#))**

- Any interest earned on investment of HUTA funds must be deposited in the Special Gas Tax Street Improvement Fund to be used for street purposes.
- Any city that elects not to invest its HUTA funds but invests most of its other available funds should deposit the HUTA funds in a separate checking account to clearly indicate that this money was not invested.
- If HUTA funds are invested, they must receive their equitable pro-ration of interest earned on the total funds invested. Several methods are available to determine an equitable distribution of interest earned. Whatever method is employed will be analyzed during audit to determine reasonableness and confirm distribution to the Special Gas Tax Street Improvement Fund. The SCO recommends a distribution based on average month-end cash balances.



## Reimbursements

Reimbursements of HUTA funds previously expended must be deposited in the Special Gas Tax Street Improvement Fund. This includes, but is not limited to:

- Federal aid urban projects
- Cooperative agreements
- Right-of-way dispositions
- Federal and safety projects

## Special Accounting Requirements for Counties

620

All HUTA apportionments shall be deposited into a county's Road Fund. A county may deposit other money into the Road Fund. All money deposited into the Road Fund must be expended exclusively for the road related purposes specified in [S&H Code section 2101](#). ([S&H Code section 2150](#))

## Procedural Requirements

Guidance on specific accounting treatment for County Road Funds is provided in Chapter 9, Appendix A of the [Accounting Standards and Procedures for Counties manual](#) published by the SCO as required by [GC section 30200](#).

- All apportionments received from the Highway Users Tax Fund must be deposited into the county's Road Fund.
- The road commissioner of each county must prepare a tentative road budget covering all proposed county road expenditures. This budget must be submitted to the board of supervisors in accordance with [Government Code sections 29000-29144](#) and in the form and manner prescribed by the SCO and at the same time as other county departments submit their recommended budgets. ([S&H Code section 2007](#))
- Interest received by the county from the investment of money of its Road Fund must be deposited in its Road Fund and shall be used for road purposes.
- All other money deposited into the Road Fund shall be used for road purposes.

## County Road Commissioner

Each county Board of Supervisors must appoint a single road commissioner for all road districts in the county. Every person who is appointed road commissioner after December 31, 1965, must be a registered civil engineer. There are exceptions to this requirement; the City and County of San Francisco may appoint a road commissioner who is not a registered civil engineer. ([S&H Code section 2006](#))

The Board of Supervisors of any county may abolish the office of road commissioner if the board transfers all duties of the road commissioner to the county director of transportation. The director of transportation need not have any special permit, registration, or license. Any civil engineering functions required will be performed by a registered civil engineer acting under the authority of the director of transportation. ([S&H Code section 2006.1](#))

The Board of Supervisors of Orange County may abolish the office of road commissioner if the Board transfers all duties of the road commissioner to an environmental management agency. The director of the environmental management agency is not required to have any special permit, registration, or license. Any civil engineering functions required to be performed by the road commissioner must be performed by a registered civil engineer acting under the authority of the director of the agency. ([S&H Code section 2006.5](#))

Allocations or payments will not be made to any county from the HUTA until the county has complied with the requirements of [S&H Code section 2006](#). If a vacancy occurs, the county has 180 days to appoint a new road commissioner. The 180-day time limit is contingent on the condition that there be a qualified acting road commissioner functioning during the interim period appointed by the board of supervisors. ([S&H Code section 2006](#))

In May of each year, each county must submit to Caltrans any additions or exclusions from its mileage of maintained county highways, specifying mileage of each route added or excluded from its county-maintained roads. ([S&H Code section 2121](#))

## **Records**

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*Source Documentation* – On construction or purchase of right-of-way, all expenditures charged to the Special Gas Tax Street Improvement Fund or Road Fund must be supported by a warrant or other source document clearly showing that the payment for the expenditure was made and the source document (e.g. invoice, requisition, time sheet, equipment rental charge, engineering plans, specifications) clearly identifies the project to establish a readily discernible audit trail.

*Record Retention* – The SCO recommends retention of all documentation related to gas tax expenditures (electronic or hard copy) until audited and cleared without exception by the SCO.

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The law does not provide for prior review of projects or proposed expenditures. The SCO's audit function relates only to a review of expenditures after the fact. However, the SCO will provide an informal determination as to whether a particular expenditure is within the guidelines. This does not constitute a final determination, but would point out whether or not a question of legality or authorized purpose exists. The initial determination still rests with the jurisdiction.

For Gas Tax program general information contact:

State Controller's Office  
Division of Audits  
Gas Tax Program  
Email: [AUDStreetsRoads@sco.ca.gov](mailto:AUDStreetsRoads@sco.ca.gov)

To request an informal determination, submit a written request to:

Betty T. Yee  
Controller of the State of California  
Division of Audits  
Gas Tax Program  
Post Office Box 942850  
Sacramento, California 94250

## APPENDIX: ROAD MAINTENANCE AND REHABILITATION PROGRAM<sup>1</sup>

### Program Overview:

The Road Maintenance and Rehabilitation Program (RMRP) was created to address deferred maintenance on the state highway system and the local street and road system. Program funds relating to Local Streets and Roads (LSR) will be apportioned by formula to eligible cities and counties pursuant to [S&H Code section 2032\(h\)](#) for basic road maintenance, rehabilitation, and critical safety projects on the local streets and roads system.

Cities and counties receiving RMRP funds must comply with all relevant federal and state laws, regulations, policies, and procedures. Expenditure authority for RMRP funding is governed by [Article XIX of the California Constitution](#); [Revenue and Taxation Code, Division 2, Part 5, Chapter 6, section 11051](#); and [S&H Code section 2030 \(b\)](#). Program requirements include S&H Code sections [2034](#), [2036](#), [2037](#), and [2038](#).

The California Transportation Commission (CTC) has project reporting requirements for the RMRP-LSR funds and has developed an [Annual Reporting Guidelines](#) for this purpose.

### Allowable Expenditures:

Funds made available by the program shall be used for projects that include but are not limited to:

- Road maintenance and rehabilitation.
- Safety projects.
- Railroad grade separations.
- “[Complete street](#)” components<sup>2</sup>
- Traffic control devices

### Maintenance-Of-Effort Requirements

Cities and counties are expected to maintain local funding for local road repair projects at pre-RMRP levels ([S&H Code section 2036](#)). The expected level of funding - Maintenance of Effort (MOE) will be calculated using a city or county’s average discretionary expenditures for the fiscal year (FY) 2009-10, FY 2010-11, and FY 2011-12, as reported in the Annual Street Report<sup>3</sup> ([S&H Code section 2151](#)).

- The SCO will oversee the MOE calculations and may request additional fiscal data for the base years and may withhold payment to cities and counties that do not comply with such requests within 120 days.
- The calculations of a city or county’s annual general fund expenditures and of its MOE may include any unrestricted, discretionary funds expended for street, road, and/or highway purposes (including vehicle in-lieu tax revenues and revenues from fines and forfeitures as general fund expenditures).
- One-time allocations expended for street and highway purposes but unavailable on an ongoing basis may not be considered when calculating a city’s or county’s annual general fund expenditures (including revenue provided under the Teeter Plan Bond Law of 1994).
- The SCO has the authority to perform audits to ensure MOE compliance. Non-compliant cities/counties shall reimburse the state for the funds they received during that fiscal year. Funds withheld or returned as a result of noncompliance shall be reapportioned to the other counties and cities whose expenditures are in compliance.

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<sup>1</sup>Created by the *Road Repair and Accountability Act of 2017*

<sup>2</sup> *Complete street* components, including active transportation purposes, pedestrian and bicycle safety projects, transit facilities, and drainage and storm water capture projects in conjunction with any other allowable project

<sup>3</sup> The MOE for a city incorporated after July 1, 2009 will be based on the periods: July 1, 2009 through December 31, 2015.

- If the expenditures of a city or county fall short of the MOE requirement in a particular fiscal year, the city or county may make up for the shortage in the following year with expenditures equaling or exceeding the total amount required to be expended for the two fiscal years.

## Questions Related to RMRP Expenditures

The following information is intended to provide guidance on specific questions relating to the RMRP-LSR funding. The list is not all-inclusive, but covers the most frequently asked questions about the RMRP. To obtain additional information, contact the SCO, Division of Audits, Local Government Bureau by email at [AUDrmr@sco.ca.gov](mailto:AUDrmr@sco.ca.gov).

<u>Subject – Use of Funds</u>	<u>Determination</u>
Can a city or county spend its RMRP-LSR fund apportionments prior to receiving the funds? Can a city or county incur expenditures for eligible projects using other funds and reimburse these other funds once it begins to receive its RMRP-LSR funding?	Yes. Cities and counties can use their apportionments received under S&H Code section 2032(h)(2) to reimburse the allowable expenditures incurred within the fiscal year of apportionment. ( <a href="#">S&amp;H Code section 2034(c)</a> )
Can a city or county issue bonds for RMRP funded projects and use RMRP-LSR funds for debt service payments?	<a href="#">Article XIX Section 6(b) of the California Constitution</a> allows “[u]p to 25 percent of the revenues allocated to any city or county” from revenues imposed by the State on motor vehicles to be used “for the payment of principal and interest on voter-approved bonds issued by that city or county” for purposes specified in Article XIX section 2 of the California Constitution.
Can a city or county use the RMRP-LSR funds for the costs of utility relocations?	Utility relocations are generally <u>not</u> allowable unless there is a legal street or road obligation to do so.
Can the RMRP-LSR funds be expended on phases of a project including planning and engineering?	Yes. RMRP-LSR funds can be expended on all phases of eligible projects that are street-related or road-related.
Can a city or county use RMRP-LSR funds to pay street or road crew salaries for major maintenance programs and for purchasing materials?	Yes. A city or county can use RMRP-LSR funds to reimburse the costs of work performed by its own employees on street-related or road-related projects that are otherwise RMRP-eligible and in compliance with applicable state laws and regulations.
Can a city or county use RMRP-LSR funds for bridges and culverts?	Yes. Cities and counties may use RMRP-LSR funds for eligible maintenance and rehabilitation projects provided that the bridges and culverts are street-related or road-related.
Can agencies pool resources by developing Memoranda of Understanding to share RMRP-LSR funds locally in order to implement projects sooner?	No. The S&H Code does not allow agencies to pool resources with funds apportioned under S&H Code section 2032(h)(2).
Will the city or county need to submit invoices for reimbursement in order to receive the RMRP-LSR fund apportionment?	No. Cities and counties need not submit invoices in order to receive the RMRP-LSR fund apportionment. However, the city or county should retain sufficient supporting documentation for all expenditures and retain such documentation consistent with the record-retention requirements applicable to its jurisdiction.
Can a city or county carry over allocations to future years?	Yes. A city or county can carry over unexpended RMRP-LSR funds apportioned under S&H Code section 2032(h)(2) to subsequent fiscal years.

If a city or county accounts for the RMRP-LSR funds in its Gas Tax Fund or Road Fund, can the city or county simply allocate all interest to the fund itself and not allocate it to each individual funding source?

Yes. A city or county can allocate RMRP-LSR interest earned at the fund level (Gas Tax Fund or Road Fund).

Subject – Maintenance of Effort

Determination

Where can a city or county view the existing state records that show expenditures that the city or county reported for fiscal year (FY) 2009-10, FY 2010-11, and FY 2011-12?

A city or county can view the SCO-compiled Annual Streets and Roads reports at [http://sco.ca.gov/ard\\_locrep\\_streets.html](http://sco.ca.gov/ard_locrep_streets.html).

Can a city or county amend the annual street or road reports filed for FY 2009-10, FY 2010-11, and/or FY 2011-12?

No. The SCO does not accept amendments to annual reports that a city or county has filed once the deadline for the report has passed. Specifically, S&H Code Section 2151 requires cities and counties to file an annual report of expenditures for street or road purposes with the SCO on or before October 1 of each year. The deadlines for the annual reports filed for FY 2009-10, FY 2010-11, FY 2011-12, were October 1, 2010, October 1, 2011, and October 1, 2012, respectively. Therefore, no amendments to these reports will be accepted.

Will the SCO provide a mechanism for a city or county to request an adjustment to the maintenance-of-effort (MOE) requirement?

Yes. At the end of August 2017, the SCO sent each city and county a MOE Calculation Summary Sheet that must be completed and returned to the SCO by October 17, 2017. The MOE Calculation Summary Sheet shows the average general (discretionary) fund expenditure for FY 2009-10, FY 2010-11, and FY 2011-12 based on expenditures reported by the city or county in its streets or roads reports for those fiscal years. The city or county can either accept the MOE as calculated or request specific adjustments.

The SCO may deny or approve requested adjustments after a review of the adjustments.

If your city or county has not received the SCO's MOE calculation letter, please contact the SCO by email at [AUDrnr@sco.ca.gov](mailto:AUDrnr@sco.ca.gov).

Will the SCO consider economic hardship and grant a city or county additional time to meet its RMRP MOE requirement, or allow a city or county to expand the number of fiscal years it uses from three years to five years when calculating the MOE amount?

No. The S&H Code section 2036 establishes the RMRP MOE requirements; and does not provide for economic hardship considerations to allow additional time to meet its MOE, other than as stated in S&H Code section 2036(f), or to expand the number of fiscal years for MOE calculation.

If a city or county has an existing MOE requirement for another program, can the General Fund expenditures used to satisfy the existing MOE requirement also be used to satisfy the RMRP MOE requirement?

Yes. The General Fund expenditures that satisfy the MOE requirement for another program can also be used to satisfy RMRP MOE requirements.

Can a city or county use RMRP fund expenditures to satisfy the RMRP MOE requirements?

No. RMRP funds are not considered discretionary funds, and therefore cannot be used to satisfy the S&H Code section 2036 MOE requirements.

A city or county reported General Fund street-related engineering costs in its FY 2009-10, FY 2010-11, and FY 2011-12 annual streets/roads report. Can the city or county have these costs removed from the average General Fund expenditures for these fiscal years or, alternatively, can the city or county include these costs in its annual General Fund expenditures to satisfy the MOE requirement?

All General Fund street-related or road-related costs should be included in a city's average General Fund expenditures for FY 2009-10, FY 2010-11, and FY 2011-12. These costs, if still incurred, satisfy the MOE requirement.

What revenues qualify as "one-time allocations" that will not be considered when calculating a city's or county's annual General Fund expenditures?

S&H Code section 2036(b) describes one-time allocations as funds that may not be available on an ongoing basis. If a city or county believes that one-time allocations have been included in its average General Fund expenditures for FY 2009-10, FY 2010-11, and FY 2011-12, it can request an adjustment to remove these allocations.

Will the calculation of the MOE requirement (the average General Fund expenditure for FY 2009-10, FY 2010-11, and FY 2011-12) be updated in the future using amounts from more recent fiscal years?

No. The MOE requirement will be calculated once and will not be updated.

Can a city or county include non-General Fund money to satisfy its annual MOE requirement?

Yes. Any unrestricted funds that the city or county may expend at its discretion may be included to satisfy its annual MOE requirement. The funds do not have to be from the General Fund.

S&H Code section 2037 states that a city or county may spend its apportionment of funds under the program on transportation priorities other than those allowable pursuant to this chapter if the city's or county's average Pavement Condition Index meets or exceeds 80. Does this impact a city's or county's MOE requirement?

No. This section does not impact the MOE requirement.

A city currently receives Measure M2 Local Fair Share funds from the Orange County Transportation Authority and uses these funds for street-related expenditures. These fund expenditures are reported as "Other Discretionary" in its annual street report. Can the city use these expenditures to satisfy its MOE annual requirement?

Yes. If these funds are discretionary, the city can use the expenditures to satisfy its annual MOE requirement.

Subject – Fund Apportionment

How can a city or county obtain or view its apportionment of RMRP-LSR funds?

If a city or county does not submit a project list to the CTC by October 16, 2017, what happens to the funds that were apportioned to that city or county in the corresponding fiscal year?

Determination

Monthly apportionments, once made to cities and counties, may be viewed at [http://www.sco.ca.gov/ard\\_local\\_apportionments.html](http://www.sco.ca.gov/ard_local_apportionments.html).

Pursuant to S&H Code section 2034(a)(1 and 2), the CTC will submit to the SCO an initial report of eligible cities and counties. The SCO will apportion available RMRP funds to eligible cities and counties included in the initial report. If a city or county is not included in the CTC initial report, the SCO will retain for 90 days, the monthly share of funds that would otherwise be apportioned and distributed to that city or county. If the SCO receives a subsequent report from the CTC within 90 days of receiving the initial report, that a city or county has become eligible to receive an apportionment, the SCO shall apportion the funds retained to that city or county. Any RMRP funds retained by the SCO for a city or county that still remains ineligible after 90 days from the initial report to the SCO by the CTC, will be reapportioned to all other eligible cities and counties.