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## Oxnard's Lawyers Devise Way to Finance Street Repair

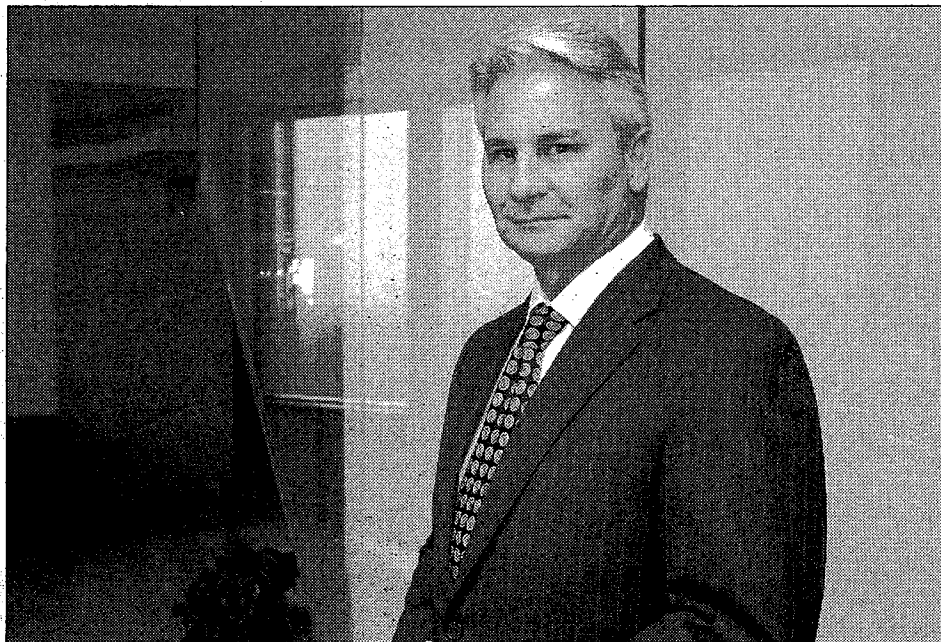
By Peter B. Matuszak  
Daily Journal Staff Writer

LOS ANGELES — Lawyers representing the city of Oxnard have devised a new way to pay for repairs to some of the city's most dilapidated streets — sell them.

Through a complex series of transactions dreamed up by lawyers from Goodwin Procter, the city's bond counsel, the streets were sold to an investment group for \$27.7 million. Oxnard then bought back the roads through certificates of participation, sold on the bond market. These notes are similar to traditional city bonds but are not guaranteed by general-fund money. The proceeds are used for a major overhaul of the streets, and investors are paid back over the next 30 years, with annual payments made from the city's state gas-tax allotment.

Goodwin Procter's Los Angeles chairman, Lewis G. Feldman, said the new financing structure makes sense for any city in need of major transportation improvements. Feldman estimated gas-tax financing could allow local

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ROBERT LEVINS / Daily Journal

"As in many cases necessity was the mother of invention. The gas tax has been bonded before but not in this way," said Lewis G. Feldman, Goodwin Procter's L.A. chairman.

# Oxnard's Attorneys Devise Way to Finance Repair of Streets

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governments to raise hundreds of millions quickly for infrastructure, despite the fiscal crisis in Sacramento.

"To the extent that there is more and more pressure for local governments to address transportation and less and less dollars to do so, as in many cases necessity was the mother of invention," he said. "The gas tax has been bonded before but not in this way, where they can leverage their general funds for other services and not have to place a reserve in back of this special fund."

Feldman has represented Oxnard as its bond counsel since 1982 and has made a name for himself in securitized debt deals and public financing throughout California.

In Los Angeles, he was hired to consult on the \$265 million worth of subsidies promised to AEG for building the Convention Center Hotel as part of the L.A. Live development with a hotel occupancy tax rebate. More recently, he was brought in to consult on the city's \$65 million in public funding for the Frank Gehry-designed hotel with a similar hotel tax concession and an additional parking tax refund.

The same theme runs through all of these deals.

Feldman and his staff find a way to get loans on stable sources of future tax revenue for cities without requiring reserves in the annual budget to guarantee the loans.

This new certificate-bond hybrid could quickly become a very popular loophole for cities to take out loans without requiring voter approval. Typically, general obligation bonds or a street improvement assessment is needed to fund large projects.

Every city in California receives a proportional share of the state's 18-cents-per-gallon tax, which is

mandated for use only on transportation projects. Oxnard's take last year was \$3.4 million.

Michael More, the financial services manager for Oxnard, said the annual stipend covers only patching and minor repairs to streets. More said that, although the city has raised other bonds and assessments to fix roads and sewers, more was needed to update all the roads in the city.

"We have about 10 projects that are overdue that this money will address," More said. "The rationale behind this is, if you do the capital improvement upfront, then maintain the streets, it will cost us less in the long run."

But also in the long run are the costs of the loan.

Investors expect to make 4.97 percent on full-term notes. Interest paid will amount to \$23.4 million over the three-decade deal. Annually, along with principal payments, at least half the city's annual gas-tax money will be sapped.

Current law also allows Gov. Arnold Schwarzenegger to suspend payments or adjust the tax increments during a fiscal crisis. Such a move was threatened during last year's budget standoff, but the local funding survived. If passed on the Feb. 5 primary election bal-

lot, Proposition 91 would prevent Schwarzenegger from diverting or canceling these transportation funds.

More said the risk of changes to the gas tax allocation are offset by the deal's AAA-rated bond insurer, De La Rosa & Co., and the fact that investors know the notes depend

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on state-controlled payments.

"For us, this works because it is secured solely by gas tax revenues. We have no risk to the general fund," More said. "Usually, there is an asset backing up this kind of loan, but no one is going to come in and close down our streets."

In October, the attorneys behind the deal were granted a judicial review and validation order from Ventura County Superior Court

Judge Ken W. Riley. The order verifies that this new type of municipal loan adheres to all applicable state laws. Frequently, new public bonds request this kind of scrutiny to stave off lawsuits.

Goodwin Procter real estate and public finance partner Bruce J. Graham also worked on the deal. Graham said the court's verification and an "A" rating from Standard & Poor will help encourage other cities to take advantage of the new financing.

"People have tried to securitize the gas tax before, but it was clunky and usually a leasing deal," he said. "It was kind of wacky: [Wall] Street didn't understand the gas tax and always put the general fund on the line."

"Now they are ready to treat it like any other bond."

De La Rosa & Co. underwrote the bond and shared the structure with another client, the city of Santa Ana. Orrick, Herrington & Sutcliffe represented Santa Ana as bond counsel for what Feldman called a "copy-cat deal" worth \$60 million.

Goodwin Procter is also set to represent the California Statewide Community Development Authority, an arm of the California League of Cities, to help bring the financ-

ing model to other cities.

The joint-powers authority, according to program director Terrence Murphy, counts 300 cities and every county in the state as members. The group offers a suite of financing programs for municipal governments and will add a gas tax program this spring. Murphy said his association also expects to pool the resources of smaller cities that might not be able to justify the cost of the program on their own but could make good use of the extra revenue.

"Once cities and counties see that it works, programs like this tend to grow faster," he said. "This has huge potential out there."

Feldman said that expanding this new source of funding was also an important part of revitalizing the real estate market in the state.

"One thing that is critically important in this consideration is that the real estate industry itself cannot afford to turn a blind eye to deteriorating infrastructure," he said. "When you look at what this can mean as a financial vehicle, it should translate to improved roads all over the state, which in turn equals better access to commercial sites, workplaces and retail. Overall, this will greatly benefit local economies."