BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Public Utilities Code Sections 21670, 21671.5, 21675, and 21676, as added or amended by Statutes 1967, Chapter 852; Statutes 1970, Chapter 1182; Statutes 1972, Chapter 419; Statutes 1973, Chapter 844; Statutes 1980, Chapter 725; Statutes 1981, Chapter 714; Statutes 1982, Chapter 1047; Statutes 1984, Chapter 1117; Statutes 1987, Chapter 1018; Statutes 1989, Chapter 306; Statutes 1990, Chapter 563; Statutes 1990, Chapter 1572; Statutes 1991, Chapter 140; Statutes 1993, Chapter 59; Statutes 1994, Chapter 644; Statutes 2000, Chapter 506; Statutes 2002, Chapter 438; and Statutes 2002, Chapter 971
Public Resources Code Section 21080, as added or amended by Statutes 1983, Chapter 872; Statutes 1985, Chapter 392; Statutes 1993, Chapter 1131; Statutes 1994, Chapter 1230; Statutes 1996, Chapter 547;
Filed on September 26, 2003 by,

County of Santa Clara, Claimant

Case No.: 03-TC-12 and 08-TC-05

Airport Land Use Commission/Plans II

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

(*Adopted on March 26, 2010*)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on March 26, 2010. Lizanne Reynolds appeared on behalf of the claimant, County of Santa Clara and Carla Shelton and Donna Ferebee appeared on behalf of Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 *et seq*., and related case law.

The Commission adopted the staff analysis to deny this test claim at the hearing by a vote of 4-2.

Summary of Findings

The Commission finds that the test claim statutes do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution because:

1. The Commission does not have jurisdiction over section 21670 as amended by Statutes 1994, chapter 644 or over the activity of developing the ALUCP required by Section 21675 by June 30, 1991, because these statutes and activities were the subject of a final decision of the Commission in CSM 4507.
2. Any increased costs resulting from the test claim statutes occur as a result of a cost shift between local entities, not a cost shift between the state and county. Thus the test claim statutes do not mandate a new program or higher level of service.

Background

This test claim addresses Airport Land Use Commissions (ALUCs) and Airport Land Use Compatibility Plans (ALUCPs). All further code references are to the Public Utilities Code unless otherwise specified.

In 1967, the California State Legislature required counties with regularly scheduled airlines, to establish ALUCs, to protect the "public health, safety, and welfare by encouraging orderly expansion of airports and the adoption of land use measures that minimize exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses."[1] This requirement was extended in 1984 to counties having only general aviation airports. Generally, each county's ALUC prepares an ALUCP with a twenty-year planning horizon focused on broadly defined noise and safety impacts. In addition, ALUCs make compatibility determinations for proposed amendments to airport master plans, general plans, specific plans, zoning ordinances and building regulations within the planning boundary established by the ALUC. ALUCPs were originally known as "Airport Comprehensive Land Use Plans" until Statutes 2002, chapter 438 and Statutes 2004, chapter 615 renamed ALUCPs in the several code sections in which they are mentioned to provide for the use of uniform terminology in airport land use planning law and publications.[2] The acronym ALUCP will be used throughout this analysis.

Establishment of an ALUC

In 1967, the Legislature adopted Statutes 1967, chapter 852 which added Article 3.5 (sections 21670-21674) to require every county containing one or more airports for the benefit of the general public served by a regularly scheduled airline to establish an ALUC. The original Article 3.5 included, among other provisions: section 21670, which contains findings and provides for the establishment of ALUCs including membership selection; and section 21671, which addresses the situation where an airport is owned by city, district or county and provides for the appointment of certain members by cities and counties. Section 21670 was not pled in the amended test claim.

Article 3.5 was subsequently amended by Statutes 1970, chapter 1182, which added: section 21670.1 allowing for action by designated body instead of the ALUC and requiring two members with expertise in aviation; and, section 21670.2 regarding applicability to the County

[1] Statutes 1967, chapter 852.

[2] Senate Floor Analysis of Assembly Bill No. (AB) 3026 and Senate Transportation Committee Analysis of Senate Bill No. (SB) 1233.

of Los Angeles.[3] This statute also added sections 21675 and 21676 which required ALUCs to prepare an ALUCP and imposed the requirement for local land use plans to be submitted to the ALUC for a compatibility review.

These initial statutes applied to all counties having an airport served by a regularly scheduled airline and the ALUCs in those counties. The planning requirement imposed on the ALUCs applied to the entire county area, including all airports in the county, even though all airports in the county may not have been served by the scheduled airline. The counties exempted from the requirement to establish an ALUC were those without an airport served by a scheduled airline.

The applicability of the requirements of article 3.5 was expanded by Statutes 1984, chapter 1117 to include counties having only general aviation airports.[4] Several statutes have since amended the provisions relating to membership of the ALUC.

In 1993, the Legislature made the establishment of an ALUC discretionary. In 1994, the Legislature made the establishment of an ALUC mandatory again and provided several new alternatives to forming an ALUC, including designating an alternative planning entity to fulfill the duties of an ALUC or contracting out for the preparation of the ALUCP.

Section 21670 provides for the membership of the ALUC. Regarding ALUC membership, section 21670, subdivision (b) provides in pertinent part:

> Each commission shall consist of seven members to be selected as follows:
>
> (1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.
>
> (2) Two representing the county, appointed by the board of supervisors.
>
> (3) Two having expertise in aviation, appointed by a selection committee comprised of the managers of all of the public airports within that county.
>
> (4) One representing the general public, appointed by the other six members of the commission.

Section 21674 provides the ALUC with the following powers and duties:

> The commission has the following powers and duties, subject to the limitations upon its jurisdiction set forth in Section 21676:

---

[3] Note that sections 21670 and 21670.1 do not apply to the counties of Los Angeles or San Diego. The Los Angeles Regional Planning Commission and the San Diego County Regional Airport Authority have the responsibility for preparing, reviewing and amending their respective ALUCPs. (See §§ 21670.2 and 21670.3.)

[4] A general aviation airport is an airport not served by a scheduled airline but operated for the benefit of the general public.

(a) To assist local agencies in ensuring compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses.

(b) To coordinate planning at the state, regional, and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare.

(c) To prepare and adopt an airport land use compatibility plan pursuant to Section 21675.

(d) To review the plans, regulations, and other actions of local agencies and airport operators pursuant to Section 21676.

(e) The powers of the commission shall in no way be construed to give the commission jurisdiction over the operation of any airport.

(f) In order to carry out its responsibilities, the commission may adopt rules and regulations consistent with this article.

The Role of the Counties

The counties were charged with the responsibility for establishing an ALUC or alternative body/process. (§§ 21670 and 21670.1.) The board of supervisors was also made responsible for providing for the staffing and contracting decisions and the operational expenses of the ALUC. Thus counties have substantial control over the ALUC budgets. (§ 21671.5)

The original Article 3.5, enacted by Statutes 1967, chapter 852, included section 21671.5 which provided for: terms of office; removal of members; filling vacancies; compensation of commission members; ALUC meetings; and required counties to provide staff assistance to the ALUC including "the mailing of notices and the keeping of minutes." Section 21671.5 was later amended by Statutes 1972, chapter 419 to specify that "[t]he usual and necessary operating expenses of the [ALUC] shall be a county charge." In addition, Statutes 1967, chapter 852 and Statutes 1972, chapter 419 provided the counties with significant budgetary controls over ALUCs which are also contained in section 21671.5. Specifically, counties determine:

- ALUC member "compensation, *if any*." (Added by Statutes 1967, chapter 852.)
- Whether to approve the ALUCs decision to employ any personnel as employees or independent contractors. (Added by Statutes 1972, chapter 419.)

ALUCPs

ALUCs must prepare an ALUCP to provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the ALUC, and to safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. (§ 21675.) The original ALUCP preparation was required to be completed by June 30, 1991. (§ 21674.5.) Later amendments to the statutes, however, require that the ALUCP "be reviewed as often as necessary in order to accomplish its purposes" and restrict amendments of the ALUCP to "no more than once in any calendar year." (§ 21675.)

The contents of the ALUCP must be based on a long-range master plan or airport layout plan, as determined by DOT's Division of Aeronautics and include, among other things, the area

within the jurisdiction surrounding any military airport, and be consistent with the safety and noise standards in the Federal Air Installation Compatible Use Zone prepared for that military airport. (§ 21675.)

Local agencies (i.e. cities, counties and special districts) are required to submit their airport master plans, general plans, specific plans, zoning ordinances and building regulations to the ALUC for a determination of consistency with the ALUCP. However, there are procedures by which local agencies can overrule an ALUCP finding of incompatibility. (§ 21676.)

CEQA

The California Environmental Quality Act (CEQA) was enacted in 1970 and is currently contained in Public Resources Code sections 21000-21177. There are also numerous statutory provisions relating to CEQA that are contained in other codes. The amendment to this test claim (08-TC-05) pled Public Resources Code section 21080. Public Resources Code section 21080 specifies that CEQA applies "to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from [CEQA]." Public Resources Code section 21080 also lists the CEQA exemptions.

Generally, CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions that can be found in CEQA and the CEQA regulations. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration (ND). If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an environmental impact report (EIR). If the EIR includes a finding of significant environmental impacts, CEQA imposes a substantive requirement to adopt feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of the project.[5] The EIR requirement, which effectively accomplishes the above purposes, is "the heart of CEQA."[6]

CEQA specifies that the public agency carrying out a project has responsibility for CEQA compliance.[7] This is true even when the project is in another agency's jurisdiction.[8] A public agency acting in this capacity would be referred to as the "lead agency." An ALUC is the lead agency for purposes of CEQA compliance for its ALUCP since it is the public agency that prepares and adopts the ALUCP.[9]

---

[5] Public Resources Code section 21002.

[6] *County of Inyo v. Yorty* (1973) 32 Cal. App. 3d 795.

[7] California Code of Regulations, title 14, section 15051, subdivision (a).

[8] *Id.*

[9] See generally *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, for the propositions that ALUCPs are projects subject to CEQA and that ALUCs are the lead agency for such projects.

The Role of the Division of Aeronautics

ALUCs are required to submit a copy of the ALUCP and each amendment to the ALUCP to DOT's Division of Aeronautics. (§ 21675.) Additionally, DOT provides training and development programs to ALUC staff. (§ 21674 5.)

Fee Authority

Section 21671.5 subdivision (f), as added by Statutes 1990, chapter 1572 provided that "[t]he [ALUC] may establish a schedule of fees for reviewing and processing proposals and for providing the copies of land use plans, as required by subdivision (d) of section 21675. . . ." However, the current law, which has been in effect during the entire potential reimbursement period for this test claim, authorizes the ALUC to "….establish a schedule of fees necessary to comply with this article. . . ." (§ 21671.5, as amended by Stats. 1991, ch.140.)

Prior Test Claim Decisions

The Commission has adopted two prior Statements of Decision on ALUCs. These prior decisions are final, binding decisions which are relevant to the issue of jurisdiction.[10] However, they are of no precedential value for purposes of the Commission's decision on any other test claim, including this test claim. In 1989, the Attorney General's Office issued an opinion, citing the *Weiss* case to support the proposition that claims previously approved by the Commission have no precedential value.[11] Rather, "[a]n agency may disregard its earlier decision, provided that its action is neither arbitrary nor unreasonable."[12] While opinions of the Attorney General are not binding on the courts, they are entitled to great weight.[13] Moreover, agencies that are subject to the Administrative Procedures Act may designate decisions that have precedential value. The Commission is not subject to the Administrative Procedures Act.[14]

CSM 4231, *Airport Land Use*, Statutes 1984, Chapter 1117

In CSM 4231, the Commission found Chapter 1117, Statutes 1984 imposed a reimbursable state mandate on counties with only general aviation airports to form an ALUC and for the ALUC to develop an ALUCP. Counties with regularly scheduled airlines, such as Santa Clara County, were not eligible for reimbursement under CSM 4231 because they were required to establish an ALUC and those ALUCs have been required to develop an ALUCP since 1970. The CSM 4231 mandate was suspended under the provisions of Government Code section 17581 from 1990 through 1993. The mandate to establish a commission was then eliminated

[10] *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1200-1201.

[11] 72 Ops.Cal.Atty.Gen. 173, 178, fn.2 (1989), citing *Weiss v. State board of Equalization* (1953) 40 Cal.2d 772, 776.

[12] 72 Ops.Cal.Atty.Gen. 173, *supra*, p. 178, fn.2, citing *Weiss*, *supra*, 40 Cal.2d. at 777.

[13] *Rideout Hospital Foundation, Inc. v. County of Yuba* (1992) 8 Cal.App.4th 214.

[14] See Government Code section 17533.

by Statutes 1993, chapter 59, which made the establishment of an ALUC pursuant to sections 21670 and 21670.1 discretionary.

CSM 4507, *Airport Land Use Commissions/Plans*, Public Utility Code Sections 21670 and 21670.1 as amended by Statutes 1994, chapter 644, Statutes 1995, chapter 66, and, Statutes 1995, chapter 91

The Commission, in CSM 4507, found that Statutes 1993, chapter 59 "caused a gap in the continuity" of the state requirement to establish an ALUC, by changing the word "shall" to "may," and therefore, Statutes 1994, chapter 644, which replaced the word "may" with "shall," imposed a new requirement on counties which had disbanded their ALUCs, or alternative bodies, to reestablish such commissions or bodies.[15] The Commission also found that Statutes 1994, chapter 644 provided a new alternative process that a county could choose to implement rather than forming an ALUC or designating an alternative body, and that the choice by a county to establish this alternative process instead of reestablishing a commission or alternative body was also reimbursable. However, the Commission found that the development of the ALUCP was not a new state-mandated program or activity, because those plans had long been required by section 21675, and were to have been completed by June 30, 1991 (or June 30, 1992, under specified circumstances), pursuant to section 21671.5, subdivision (a).

Eligible claimants under CSM 4507 included counties, cities, cities and counties, or other appropriately designated local government entities, except as provided by Public Utilities Code section 21670.2.[16] The CSM 4507 period of reimbursement began January 1, 1995 and the parameters and guidelines adopted on December 17, 1998 authorize reimbursement for the following activities:

A. For each eligible Claimant, the direct and indirect costs of the following activities are eligible for reimbursement on a one-time basis:

    1. Selection of the Method of Compliance:

        a. Analyze the enacted legislation and alternatives.

        b. Coordinate positions of the county and affected cities within the county, providing information, and resolving issues.

    2. Establishment of one of the following methods:

    METHOD 1 - Set up or restore an airport land use commission.

        a. Establish and appoint the members.

        b. Establish proxies of the members.

    METHOD 2 - Determination of a designated body, pursuant to Public Utilities Code section 21670.1, subdivisions (a) and (b).

        a. Conduct hearing(s) to designate the appropriate body.

[15] CSM 4507, Corrected Statement of Decision, adopted July 31, 1997.

[16] CSM 4507, parameters and guidelines, adopted December 17, 1998, p. 1.

b. Augment the body, with two members with expertise in aviation.

METHOD 3 –Establishment of an alternative process, pursuant to Public Utilities Code section 21670.1, subdivision (c).

a. Develop, adopt and implement the specified processes.

b. Submit and obtain approval of the processes or alternatives from the Department of Transportation, Division of Aeronautics.

METHOD 4 - Establishment of an exemption, pursuant to Public Utilities Code sections 21670 (b) or 21670.1, subdivisions (d) and (e).

a. Determine that a commission need not be formed and meet the specified conditions.

If an eligible claimant, which has selected and established an exemption as specified under 21670 (b) or 21670.1, subdivisions (d) or (e), determines that the exemption no longer complies with the purposes of Public Utilities Code section 21670 (a), activities to select the Method of Compliance and to establish Method 1, 2 or 3 are eligible for reimbursement.

B. For each eligible claimant, per diem for Commission members of up to $100 for each day actually spent in the discharge of official duties and any actual and necessary expenses incurred in connection with the performance of duties as a member of the Commission.

The parameters and guidelines adopted on December 17, 1998 also specifically state: "the airport land use planning process described in Public Utilities Code section 21675 is not reimbursable."

Claimant's Position

In its test claim filing (03-TC-12) claimant states that test claim CSM 4507 filed by San Bernardino County on the 1994 and 1995 amendments "did not address several points incumbent within the newly mandated establishment of airport land use commissions." Claimant maintains that these points remain "unreviewed and unconsidered by the Commission" and that this test claim "seeks to correct that oversight."[17] Specifically, because only sections 21670 and 21670.1 were pled and analyzed in CSM 4507, that test claim "did not examine the effect the creation of the mandate would have on other statutes closely associated with it that were heretofore voluntary."[18] With regard to section 21675, the claimant admits that this section pre-dates 1975, but states that it was amended several times between 1980 and 2002 and did not mention amending the comprehensive plan until the enactment of Statutes 1984, chapter 117.[19] Claimant also states that Statutes 1987, chapter

[17] Test Claim, page 1.

[18] Test Claim, page 3.

[19] Test Claim, page 4.

1018 first set forth the requirement in section 21675 to review ALUCPs as often as necessary. Claimant states that section 21675 was not part of the CSM 4507 test claim, though it should have been because Statutes 1993, chapter 59 made the activities under section 21675 optional and Statutes 1994, chapter 644 made them mandatory again. Claimant argues that this is true because immediately prior to the enactment of 1994, chapter 644, ALUCs were not required to exist and Statutes 1994, chapter 644 establishment of an ALUC or alternate body/process, and hence the requirements of 21675, mandatory. Finally, regarding section 21676, claimant states that though it was added in 1970, there was no requirement for ALUCs to review general plans, specific plans, zoning ordinances or building regulations within 60 days before they are approved or adopted until the enactment of Statutes 1982, chapter 1041.[20]

Claimant submitted an amendment (08-TC-05) to this test claim on May 28, 2009, which added Public Utilities Code section 21671.5, as added by Statutes 1967, chapter 852, and as amended by Statutes 1972, chapter 419, Statutes 1989, chapter 306, Statutes 1990, chapter 1572, Statutes 1991, chapter 140 and Statutes 2002, chapter 438; and, Public Resources Code section 21080 as added by Statutes 1983, Chapter 872, and as amended by Statutes 1985, chapter 392; Statutes 1993, chapter 1131; Statutes 1994, chapter 1230; Statutes 1996, chapter 547. Claimant's test claim amendment also re-pled the section 21675 and 21676 statutes originally pled in the test claim filing (03-TC-12).

In addition to the arguments presented by claimant in the test claim filing (03-TC-12), the test claim amendment (08-TC-05) adds the following new points:

Regarding Public Utilities Code section 21675:

> An [ALUCP] must comply with the statutory criteria in Section 21675, including that it be based on a long-range master plan or airport layout plan. These airport plans are amended from time to time by the airport operators, thereby triggering the [ALUCP] amendments. (*Muzzy Ranch Co. v Solano County Airport Land Use Comm'n* (2007) 41 Cal.4th 372, 378.)
>
> If an ALUC determines that it is necessary or appropriate to amend its [ALUCP], then the county is obligated to provide assistance for this effort pursuant to Section 21671.5, subdivision (c). The county of Santa Clara has provided substantive and procedural assistance from planners, GIS technicians, county counsel, and clerks for these [ALUCP] amendments.
>
> The mandate to assist an ALUC with revising its [ALUCP] is impacted by the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 et seq., because [ALUCP] amendments are subject to compliance with CEQA. (Pub. Res. Code § 21080; *Muzzy Ranch*, 41 Cal.4th at p. 385.) Thus, as a result of the ALUC mandate, counties must also bear the costs associated with the environmental review of [ALUCP] amendments required by CEQA. (Stats. 1970, c. 1433.)

[20] *Ibid.*

Regarding Public Utilities Code section 21671.5, claimant quotes subdivision (c)[21] which provides:

> Staff assistance, including the mailing of notices and the keeping of minutes and necessary quarters, equipment and supplies shall be provided by the county. The usual and necessary operating expenses of the commission shall be a county charge.

Claimant argues:

> This mandate, insofar as it relates to the county resources required to assist an ALUC in the review and update of its [ALUCP] (including environmental review under CEQA) and the processing of referrals related to the review of local agencies' amendments of their general plans, specific plans, and adoption or approval of zoning ordinances or building regulations within a 60-day time period, was not considered as part of the San Bernardino County test claim.[22] The staff time and other resources that a county must absorb in relation to these mandated activities are significant. For example, individuals in various County of Santa Clara departments are responsible for providing services to the ALUC, including the Planning Office, County Counsel, and Clerk of the Board. Thus the total costs of this program are reimbursable.

Claimant asserts that section "21671.5, subdivision (c) requires counties to provide staff assistance and other 'usual and necessary' services to ALUCs."[23] Moreover, claimant argues that because the Commission determined that section 21670, as amended by Statutes 1994, chapter 644, requiring the creation of ALUCs, imposed a new program when compared to the law in effect immediately prior (i.e. 21670, as amended by Statutes 1993, chapter 59), "all of the activities associated with ALUCs constitute new mandates, not modified mandates."

For fiscal year 2002/2003 claimant asserts its "actual increased costs" were "approximately $72,000."[24] Claimant provides no accounting for these costs. In addition, under the heading "Estimated Annual Costs Incurred by Claimant for Fiscal Year 2003/2004," claimant asserts that "[t]he actual increased costs incurred by the County of Santa Clara for fiscal year 2002/2003 [sic] are approximately $75,000."[25]

---

[21] Test Claim Amendment, p. 5. Claimant cites to "section 21670, subdivision (b)" but then quotes the language of Section 21671.5, subdivision (c). Given the context and the arguments presented, staff assumes that claimant meant to cite Section 21671.5, subdivision (c).

[22] Claimant is referring to CSM 4507.

[23] The plain language of section 21671.5 requires counties to pay for the "usual and necessary *operating expenses*" (emphasis added) not to provide usual and necessary services.

[24] Test Claim Amendment, *supra*, p. 5.

[25] Test Claim Amendment, *supra*, p. 6.

With regard to a statewide cost estimate, Allan Burdick, an employee of Maximus, states in his declaration that based on a survey of nine counties and internet research for the fiscal year 2003-2004 the statewide cost estimate is between $2.1 and $2.6 million.[26]

Claimant further asserts that section 21671.5 provides an ALUC with discretionary fee authority but does not mandate them to adopt fees and thus "the county providing services to that ALUC has no mechanism for recovering its ALUC-related costs."[27] Once established, claimant states, "an ALUC is an independent body and is not subject to the direct control of any other public agency."[28]

In its test claim amendment, claimant alleges that the following activities are required by the test claim statutes:

- Review and revise ALUCPs which includes CEQA compliance. [§ 21675 (a) and Pub. Resources Code § 21080.][29]
- Review and act on referrals [§ 21676.][30]
- Provide staff assistance and other resources [§ 21671.5]

Claimant's comments on the draft staff analysis can be summarized as follows:

- The draft staff analysis too narrowly interprets the county duties under section 21671.5.
- The mandated activities are not pre-1975.
- These issues (i.e. the activities pled in this test claim) were not considered in prior test claim decisions.[31]

Department of Finance's (DOF's) Position

DOF, in its comments on the test claim, concludes that "a reimbursable State mandate has not been created by the amendments specified" in the test claim because ALUCs have the authority to charge fees to cover their costs associated with the new activities specified.[32] In support of this argument DOF cites to section 21671.5. Additionally, DOF states that the mandated activities of including the area within the ALUC's jurisdiction which surrounds a military airport in the ALUCP and ensuring that the ALUCP is consistent with the safety and noise standards in the federal Air Installation Compatible Use Zone prepared for that military

---

[26] Test Claim Amendment, *supra*, Declaration of Allan P. Burdick, p. 13.

[27] Test Claim Amendment, *supra*, p. 7.

[28] Test Claim Amendment, *supra*, p. 8.

[29] Test Claim Amendment, *supra*, p. 2.

[30] Test Claim Amendment, *supra*, p. 3. Note that this activity includes reviewing local agency amendments to general plans and specific plans and adoption of or approval of zoning ordinances or building regulations within a 60-day time period. The Santa Clara County ALUC also receives "voluntary" referrals for major and minor projects within the ALUCP area.

[31] Claimant's comments on the draft staff analysis, dated January 22, 2010.

[32] DOF comments on the Test Claim, p. 1.

airport are not reimbursable because, based on the language of the statute (Stats. 2002, ch. 971), the mandate is contingent upon federal funding being made available through an agreement with the Governor's Office of Planning and Research (OPR).[33]

DOF submitted comments on the test claim amendment 08-TC-05.[34] DOF states:

> DOF believes that the [Public Utility Code] statutes cited do not directly impose requirements on the claimant. The [c]omissions are independent bodies, separate from the counties, and have fee authority to carry out the specified activities, including reviewing and amending the [ALUCPs]. Providing staff assistance, as well as coverage of usual and necessary operating expenses of [c]omissions, are not state mandates because legislation establishing the expenses as county obligations predates January [1,]1975. These are not new programs or increased levels of service imposed on the counties, and claims for reimbursement activities do not meet the statute of limitations pursuant to the Government Code.[35]

Additionally, DOF asserts that because neither the claimant nor the ALUCs are authorized to be a lead agency for purposes of CEQA, the performance of environmental reviews pursuant to CEQA is not a reimbursable mandate. [36]
Moreover, DOF adds, the "claims for reimbursement activities do not meet the statute of limitations pursuant to the Government Code."[37]
DOF also submitted comments which concur with the draft staff analysis for the following reasons:

- Several statutes pled in the test claim predate January 1, 1975.
- The statutes pled were the subject of a previous decision in CSM 4507.
- No new activities were required of counties since 1972.
- Increased costs of the test claim statutes resulted from a shift between local agencies; not between the state and local agencies.[38]

Department of Transportation's (DOT's) Position

DOT, in its comments dated October 22, 2003, states that section 21671.5, subdivision (c) requires that all expenses and costs by the ALUC be provided by its county and reimbursement

---

[33] Ibid.

[34] DOF Comments on the Test Claim Amendment, dated July 17, 2009.

[35] *Id*, p. 1.

[36] *Id*.

[37] *Id*. Staff interprets this statement to mean that DOF believes that the additional statutes pled in the test claim amendment (08-TC-05) were not pled within the statute of limitations provided in Government Code section 17551.

[38] DOF comments on the draft staff analysis, January 22, 2010, p. 1.

of the test claim is thus prohibited by statute.[39] DOT also submitted comments on the test claim amendment on December 10, 2009, in which it states:

- "Many of the issues raised by the claimant regarding . . . . sections 21670 and 21675 are jurisdictionally barred as the Commission already ruled on these issues in a final decision issued in CSM 4507."[40]
- "The Department concurs with the staff that none of the activities claimed under 21675 and 21676 are to be performed by the claimant."[41]
- "Of importance is the staff's distinction between the creation of the [ALUC] and the activities of an [ALUC]."[42]
- "The Department concurs with the staff that even though the county may have increased costs as a result of the duties imposed by an [ALUC], increased costs alone to not result in a state mandate."[43]
- Section 21682, authorizes Aeronautics Fund money to be paid to public entities that own and operate an airport and such public entities may include ALUCs and that money may be used for updating ALUCPs pursuant to section 21675.[44]
- Section 21675 pre-dates 1975.[45]

COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution recognizes the state constitutional restrictions on the powers of local government to tax and spend. "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[46] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[47] In addition, the required activity or task must be new, constituting a "new

[39] DOT comments on the Test Claim, October 22, 2003, p. 3.

[40] DOT comments on the Test Claim Amendment, December 8, 2009, p. 1.

[41] *Id*, p. 2.

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id, p. 3.*

[46] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[47] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

program," or it must create a "higher level of service" over the previously required level of service.[48]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local entities or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[49] To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.[50] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[51] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[52]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[53] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[54]

The analysis addresses the following issues:

- **Does the Commission have jurisdiction to address statutes or issues that have already been addressed in a final decision of the Commission?**
- **Do the test claim statutes mandate a new program or higher level of service within the meaning of Article XIII B, section 6 of the California Constitution?**

There are five statutory sections pled in this test claim, Public Utilities Code sections 21670, 21671.5, 21675 and 21676 and Public Resources Code section 21080. The claimant alleges that the following activities are required by the test claim statutes:

---

[48] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.)*; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3rd 830, 835 *(Lucia Mar)*.

[49] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra.*

[50] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[51] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[52] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[53] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[54] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

- Review and revise ALUCPs which includes CEQA compliance. (§ 21675, subd. (a) and Pub. Resources Code, § 21080.0[55]
- Review and act on referrals, (§ 21676.)[56]
- Provide staff assistance and other resources. (§ 21671.5)[57]

Issue 1: The Commission does not have jurisdiction to address section 21670 as amended by Statutes 1994, chapter 644 or to address the activity of developing the ALUCP by June 30, 1991 as required by section 21675, because these statutes and activities were the subject of a final decision of the Commission in CSM 4507.

As discussed above, CSM 4507 is an approved test claim, which is a final adjudication of the Commission acting in its quasi-judicial capacity, awarding reimbursement for duties imposed on counties pursuant to section 21670. Specifically, the Commission found that the reimbursable activities imposed by sections 21670 and 21670.1 were limited to the following:

> Those costs incurred after January 1, 1995, the operative date of the test claim legislation, for *the establishment or re-establishment of an airport land use commission, or one of the alternative approaches*, pursuant to sections 21670 and 21670.1 of the Public Utilities Code.[58]

The Commission also found in CSM 4507 that the development of the ALUCP was not a new state-mandated program or activity, because those plans had long been required by section 21675, and were to have been completed by June 30, 1991 (or June 30, 1992, under specified circumstances), pursuant to section 21671.5, subdivision (a). These code sections have been pled again in this test claim (03-TC-12 and 08-TC-05). An administrative agency does not have jurisdiction to rehear a decision that has become final.[59] A party to a final adjudication of an administrative agency is collaterally estopped from relitigating the issues if (1) the agency acted in a judicial capacity, (2) it resolved the disputed issues, and (3) all parties had the opportunity to fully and fairly litigate the issues.[60] Each of these elements was met for CSM 4507.

Claimant states that "the draft staff analysis erroneously asserts that the mandates imposed by section 21670 were conclusively addressed in CSM 4507." Claimant explains that CSM 4507 failed to "address the newly-imposed requirement in the last section of section 21675,

---

[55] Test Claim Amendment, 08-TC-05, p. 2.

[56] *Id*, p. 3. Note that this activity includes reviewing local agency amendments to general plans and specific plans and adoption of or approval of zoning ordinances or building regulations within a 60-day time period.

[57] *Id.*

[58] CSM 4507, Corrected Statement of Decision, adopted July 31, 1997, p. 8, emphasis added.

[59] *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407. *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143.

[60] *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521 (*Carmel Valley*).

subdivision (a) to amend and update the [ALUCP]."[61] However, the requirements of section 21670 only address the establishment of the ALUC, while the requirements of section 21675 address the preparation and review of and amendments to an ALUCP.[62] Although the activity imposed by section 21675, subdivision (a), to require that the ALUCP "be reviewed as often as necessary to accomplish its purposes, but shall not be amended more than once in any calendar year" was not addressed in CSM 4507, the draft staff analysis and this final staff analysis specifically address this activity.[63] All of the activities imposed by section 21670, as amended by Statutes 1994, chapter 644, were conclusively addressed in CSM 4507, and therefore, the Commission does not have jurisdiction to make findings on that statute.[64]

Claimant also states that it was not a party to CSM 4507.[65] However, test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.[66] "'Test claim' means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state."[67] Part 7 of division 4 of title 2 of the Government Code, "State Mandated Costs" "establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies. . . ." Thus, a test claim is like a class action.[68] Claimant had the opportunity to participate in CSM 4507 but did not avail itself of that opportunity. When CSM 4507 was filed in December 1995, section 1182.2 of the Commission's regulations was in place and provided that "any person may submit comments in writing on any agenda item." Moreover, pursuant to the Bagley-Keene Open Meeting Act of 1967, claimant had the opportunity to attend and provide written or oral comments at the Commission meetings on CSM 4507. Government Code section 17500 explicitly states that the test claim procedure is designed to avoid a multiplicity of proceedings to address the same issue. Once a decision of the Commission becomes final and has not been

---

[61] Claimant's comments on the draft staff analysis, *supra,* p. 3.

[62] The requirement in section 21675 to prepare an ALUCP was imposed by Statutes 1970, chapter 1182. A deadline of July 1, 1991 for adopting the ALUCP was added to section 21675.1, subdivision (a) by Statutes 1989, chapter 306, since some ALUCs had not prepared one over the 20-year period that it had been required. Note also that section 21675 has been amended a number of times since 1975, including by Statutes 1987, chapter 1018, which required ALUCs to review their ALUCPs.

[63] Draft staff analysis, 03-TC-12 and 08-TC-05, p. 23.

[64] See CSM 4507, Corrected Statement of Decision, adopted July 31, 1997 and CSM 4507, parameters and guidelines, adopted December 17, 1998.

[65] Claimant's comments on the draft staff analysis, *supra,* p. 4.

[66] Government Code sections 17521 and 17557; Also, see generally, *Kinlaw v. State of California* (1991) 54 Cal. 3d 326; *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1200-1201.

[67] Government Code section 17521.

[68] See *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 872, Fn. 10, where the court agrees with the California School Boards Association that a test claim is like a class action.

set aside by a court pursuant to a petition for writ of administrative mandamus (Code Civ. Proc., § 1094.5), it is not subject to collateral attack.[69] Thus, Claimant is bound by the findings in CSM 4507. The Commission may not address issues that were conclusively addressed in that test claim.

Therefore, the Commission finds that it does not have jurisdiction over section 21670 as amended by Statutes 1994, chapter 644 or over section 21675, with regard to the activity of developing the ALUCP by June 30, 1991, as required by sections 21675 and 21675.1, because these statutes and activities were the subject of a final decision of the Commission in CSM 4507.

Issue 2: The remaining test claim statutes do not mandate a new program or higher level of service within the meaning of Article XIII B, Section 6 of the California Constitution.

A. **There are legal arguments on both sides of the issue of whether the activities that counties are required to perform are newly mandated by the test claim statutes. However, no finding is required on this point because any increased costs resulting from the test claim statutes occur as a result of a cost shift between local entities, not a cost shift between the state and county. Thus the test claim statutes do not mandate a new program or higher level of service**.

In 1987, the California Supreme Court in *County of Los Angeles v. State of California* expressly stated that the term "higher level of service" must be read in conjunction with the phrase "new program." Both are directed at *state-mandated increases in the services* provided by local agencies.[70] In 1990, the Second District Court of Appeal decided the *Long Beach Unified School District* case, which challenged a test claim filed with the Board of Control on executive orders issued by the Department of Education to alleviate racial and ethnic segregation in schools.[71] The court determined that the executive orders did not constitute a "new program" since schools had an existing constitutional obligation to alleviate racial segregation.[72] However, the court found that the executive orders constituted a "higher level of service" because the requirements imposed by the state went beyond constitutional and case law requirements. The court stated in relevant part the following:

> The phrase "higher level of service" is not defined in article XIII B or in the ballot materials. [Citation omitted.] A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service. [Citation omitted.] However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because the requirements go beyond constitutional and case law requirements. . . .While these steps fit within the "reasonably feasible" description of [case law], the point is that these steps are no longer merely

[69] *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

[70] *County of Los Angeles, supra,* 43 Cal.3d at page 56.

[71] *Long Beach Unified School District, supra,* 225 Cal.App.3rd 155.

[72] *Id,* p. 173.

being suggested as options which the local school district may wish to consider but are *required acts*. *These requirements constitute a higher level of service*. We are supported in our conclusion by the report of the Board to the Legislature regarding its decision that the Claim is reimbursable: "Only those costs that are above and beyond the regular level of service for like pupils in the district are reimbursable."[73]

Thus, in order for the test claim statutes to impose a new program or higher level of service, the Commission must find that the state is imposing new required acts or activities on counties beyond those already required by law.

1. **Sections 21675, 21676, post-1975 amendments to section 21671.5, and Public Resources Code section 21080 do not require counties to perform any activities**

Section 21675

With respect to section 21675, claimant requests reimbursement to review and amend comprehensive land use plans (i.e. ALUCPs).[74] However, based on the plain language of section 21675, ALUCs are required to perform these activities, but counties are not. Section 21675 provides:

> (a) *Each commission shall* formulate an airport land use compatibility plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission's airport land use compatibility plan shall include and shall be based on a long-range master plan or an airport layout plan, as determined by the Division of Aeronautics of the Department of Transportation, that reflects the anticipated growth of the airport during at least the next 20 years. In formulating an airport land use compatibility plan, the commission may develop height restrictions on buildings, specify use of land, and determine building standards, including soundproofing adjacent to airports, within the airport influence area. The airport land use compatibility plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.
>
> (b) *The commission shall include*, within its airport land use compatibility plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding any military airport for all of the purposes specified in subdivision (a). The airport land use compatibility plan shall be consistent with the safety and noise standards in the Air Installation Compatible Use Zone

[73] *Ibid*, emphasis added. See also, *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1193-1194, where the Second District Court of Appeal followed the earlier rulings and held that in the case of an existing program, reimbursement is required only when the state is divesting itself of its responsibility to provide fiscal support for a program, or is forcing a new program on a locality for which it is ill-equipped to allocate funding.

[74] Test Claim, page 6.

prepared for that military airport. This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any military airport.

(c) The airport influence area *shall be established by the commission* after hearing and consultation with the involved agencies.

(d) The *commission shall submit* to the Division of Aeronautics of the department one copy of the airport land use compatibility plan and each amendment to the plan.

(e) If an airport land use compatibility plan does not include the matters required to be included pursuant to this article, the Division of Aeronautics of the department shall notify *the commission responsible for the plan*. (Emphasis added.)

Thus the ALUC is required by section 21675 to perform the following activities:

- Formulate an airport land use compatibility plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, including the area surrounding any military airport, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general.
- The plan shall include and be based on a long-range master plan or airport layout plan, as determined by the Division of Aeronautics of the Department of Transportation, that reflects the anticipated growth of the airport during at least the next 20 years.
- The plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.
- Establish the airport influence area after hearing and consultation with involved agencies.
- Submit to the Division of Aeronautics of the Department of Transportation one copy of the plan and each amendment to the plan.

Section 21676

With respect to section 21676, claimant requests reimbursement "to review and act on referrals"[75] which includes:

- Review local agencies' amendments of general plans and specific plans within a 60-day time period.
- Review local agencies' adoption of or approval of zoning ordinances or building regulations within a 60-day time period.

Section 21676 provides:

(a) Each local agency whose general plan includes areas covered by an airport land use compatibility plan shall, by July 1, 1983, submit a copy of its plan or

[75] Test Claim Amendment, 08-TC-05, p.3.

specific plans to the airport land use commission. The *commission shall* determine by August 31, 1983, whether the plan or plans are consistent or inconsistent with the airport land use compatibility plan. If the plan or plans are inconsistent with the airport land use compatibility plan, the local agency shall be notified and that local agency shall have another hearing to reconsider its airport land use compatibility plans. The local agency may propose to overrule the commission after the hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the local agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the local agency governing body may act without them. The comments by the division or the commission are advisory to the local agency governing body. The local agency governing body shall include comments from the commission and the division in the final record of any final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(b) Prior to the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the airport land use commission pursuant to Section 21675, the local agency shall first refer the proposed action to the commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The local agency may, after a public hearing, propose to overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the local agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the local agency governing body may act without them. The comments by the division or the commission are advisory to the local agency governing body. The local agency governing body shall include comments from the commission and the division in the public record of any final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(c) Each public agency owning any airport within the boundaries of an airport land use compatibility plan shall, prior to modification of its airport master plan, refer any proposed change to the airport land use commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The public agency may, after a public hearing, propose to overrule the commission by a two-thirds

vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the public agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the public agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the public agency governing body may act without them. The comments by the division or the commission are advisory to the public agency governing body. The public agency governing body shall include comments from the commission and the division in the final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(d) Each commission determination pursuant to subdivision (b) or (c) shall be made within 60 days from the date of referral of the proposed action. If a commission fails to make the determination within that period, the proposed action shall be deemed consistent with the airport land use compatibility plan.

Section 21676 requires the ALUC to review amendments to the general or specific plans, and proposed zoning ordinances or building regulations of local agencies within the planning boundary established by the ALUC within 60 days from the date of referral of the proposed action. In addition, the ALUC is required to review any proposed changes to an airport master plan of any public agency owning an airport within the boundaries of the ALUC within 60 days from the date of referral of the proposed action.

Section 21676 does require local agencies to submit their general plans, specific plans, zoning ordinances and building regulations to the ALUC, but those activities have not been pled in this test claim. However, even if those activities had been pled, they would not be reimbursable because local agencies have authority to impose fees on projects within their jurisdiction which may be imposed for purposes of updating general plans and other planning documents pursuant to Government Code section 66014, and pursuant to their police power under article XI, section 7 of the California Constitution.[76] Based on the plain language of section 21676, counties are not required to "review and act on referrals" which is the only section 21676 activity pled.

Based on a plain meaning reading of sections 21675 and 21676 the following activities are imposed on ALUCs, not counties:

- The plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.

[76] See Government Code section 66014 and *Collier v. San Francisco* (2007) 151 Cal.App.4th 1326, page 1353, review denied.

- The ALUCP must include the area within the jurisdiction of the ALUC surrounding any military airport and be consistent with the safety and noise standards in the Air Installation Compatible Use Zone prepared for that military airport.[77]
- Submit to the Division of Aeronautics of the Department of Transportation one copy of the plan and each amendment to the plan.
- Review amendments to the general or specific plans, and proposed zoning ordinances or building regulations of local agencies within the planning boundary established by the ALUC within 60 days from the date of referral of the proposed action.
- Review any proposed changes to an airport master plan of any public agency owning an airport within the boundaries of the ALUC within 60 days from the date of referral of the proposed action.

Therefore, sections 21675 and 21676 do not mandate a new program or higher level of service on counties.

Section 21671.5

Section 21671.5; as amended by Statutes 1989, chapter 306, Statutes 1990, chapter 1572, Statutes 1991, chapter 140, and Statutes 2002, chapter 438, though pertaining to counties, does not require counties to perform any activities for the following reasons:

- Statutes 1989, chapter 306 amended the language concerning meetings to specify that "a majority of the [ALUC] shall constitute a quorum for the transaction of business" and added the requirement that "no action shall be taken by the [ALUC] except by a recorded vote of a majority of the full membership."[78] Statutes 1989, chapter 306 also added subdivision (f), authorizing ALUCs to establish a schedule of fees for reviewing and processing proposals and for providing copies of ALUCPs. However, Statutes 1989, chapter 306 did not impose any new required activities on counties.
- Statutes 1990, chapter 1572 amended section 21671.5, subdivision (f) to require the ALUC to follow the procedures laid out in Government Code section 66016 when adopting a fee and to prohibit an ALUC from imposing such fees if, after June 30, 1991, it has not adopted an ALUCP. The Statutes 1990, chapter 1572 requirements are imposed on ALUCs and do not require counties to perform any activities.

---

[77] DOF argued in its comments that unless federal funding is provided, these activities are not mandated. Statutes 2002, chapter 971, which added the requirements regarding military airports, added an uncodified provision, section 8 of Senate Bill 1233 (Knight), which states with regard to amendments to the Government Code: "[a] city or county shall not be required to comply with the amendments made by this act to sections 65302, 65302.3, 65560, and 65583 of the Government Code, relating to military readiness activities, military personnel, military airports, and military installations. . ." until an agreement is entered into between the federal government and OPR to fully reimburse all claims approved by the Commission on State Mandates and the city or county undertakes its next general plan revision. However, the Commission does not need to reach this issue.

[78] Section 21671.5, subdivision (e), as amended by Statutes 1989, chapter 306.

- Statutes 1991, chapter 140 amended section 21671.5 to limit an ALUCs ability to impose fees pursuant to subdivision (f) to those ALUCs that have undertaken preparation of their ALUCPs and after 1992, to those ALUCs that have completed their ALUCPs. Statutes 1991, chapter 140 did not impose any new activities on counties.
- Statutes 2002, chapter 438 expanded the fee authority under subdivision (f) and added subdivision (g) to authorize the continued imposition of the subdivision (f) fees by ALUCs that have yet to complete their ALUCP if specified requirements have been met. Statutes 2002, chapter 438 did not impose any new activities on counties.

None of these post-1975 amendments require counties to perform activities. Based upon the above legislative history and plain meaning of the relevant test claim statutes, the Commission finds that section 21671.5 as amended by Statutes 1989, chapter 306, Statutes 1990, chapter 1572, Statutes 1991, chapter 140 and Statutes 2002, chapter 438 do not mandate a new program or higher level of service on counties.

Public Resources Code Section 21080

Public Resources Code section 21080 specifies which projects are subject to CEQA and lists exemptions to CEQA. It does not direct any action. The Commission finds that the plain language of Public Resources Code section 21080 does not require counties to perform any activities. Public Resources Code section 21080 provides:

> Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division. . . .[List of CEQA exemptions omitted.]

The Commission only has jurisdiction to make findings on statutes and executive orders pled in a test claim or an amendment thereto. The statutes and executive orders pled for any given test claim are required to be listed in box 4 of the test claim form and are then included in the caption on page one of the Notice of Complete Test Claim Filing , draft staff analysis, final staff analysis and Statement of Decision, as well as on the notice and agenda. Statutes and executive orders not included in box 4 are not pled.[79] Since only Public Resources Code section 21080 was pled, the Commission may only make a finding on that Public Resources Code section.

The Commission finds that sections 21675 and 21676 as amended by Statutes 1980, chapter 725, Statutes 1981, chapter 714, Statutes 1982, chapter 1041, Statutes 1984, chapter 1117, Statutes 1987, chapter 1018, Statutes 1989, chapter 306, Statutes 1990, chapter 563, and Statutes 2002, chapters 438 and 971; section 21671.5 as amended by Statutes 1989, chapter 306, Statutes 1990, chapter 1572, Statutes 1991, chapter 140 and Statutes 2002, chapter 438; and, Public Resources Code section 21080 as added or amended by Statutes 1983, chapter 872, Statutes 1985, chapter 392, Statutes 1993, chapter 1131, Statutes 1994, chapter 1230, and,

[79] See Government Code section 17553; sections 1183, subdivision (d) and 1183.02, subdivision (c) of the Commission's regulations; and, Commission on State Mandates Test Claim Form adopted pursuant to Government Code section 17553, box 4.

Statutes 1996, chapter 547, do not require claimant to perform any of the activities pled, and thus do not mandate a new program or higher level of service on counties. Therefore, the costs claimed by the county under these statutes are not reimbursable. With regard to claimant's assertion that 21671.5, subdivision (c) effectively makes counties responsible for the activities ALUCs are required to perform pursuant to sections 21675 and 21676, that issue is addressed under "3." below, which addresses activities imposed by section 21671.5, subdivision (c).

2. ALUCs are not eligible to claim reimbursement under article XIII B, section 6 of the California Constitution.

As claimant argues, an ALUC is an independent body, separate from the county.[80] The ALUC, has several powers and duties listed in section 21674. Since 1975, several statutes have imposed new or expanded requirements on ALUCs. However, the ALUC is not an eligible claimant and cannot seek reimbursement under article XIII B, section 6 of the California Constitution.

Article XIII B, section 6 requires reimbursement only to local entities that are subject to the tax and spend limitations of article XIII A and B of the California Constitution. Article XIII B, section 6 requires, with exceptions not relevant to this issue, that whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse the local government for the costs of the new program or higher level of service. In *County of San Diego,* the Supreme Court explained that section 6 represents a recognition that together articles XIII A and XIII B severely restrict the taxing and spending powers of local agencies.[81] The purpose of section 6 is to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities *because they are subject to taxing and spending limitations under articles XIII A and XIII B.*[82]

As determined by the courts, article XIII B, section 6 does not require reimbursement when the expenses incurred by the local entity are recoverable from sources other than tax revenue; i.e., service charges, fees, or assessments.[83] A local entity cannot accept the benefits of an exemption from article XIII B's spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.[84] Thus, a local entity must be subject to the tax and spend limitations of articles XIII A and XIII B to be eligible for reimbursement of costs

---

[80] Test Claim Amendment, supra, p. 8.

[81] *County of San Diego supra,* 15 Cal.4th at page 81.

[82] *Ibid*. See also, *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 980-981, 985 (*Redevelopment Agency*); and C*ity of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 280-281 (*City of El Monte*).

[83] *County of Fresno v. State of California* (1991) 53 Cal.3d 482. 486-487; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

[84] *City of El Monte,* supra, at p. 282.

incurred to implement a "program" under section 6.[85] Reimbursement is required only when the costs in question can be recovered solely from "proceeds of taxes," or tax revenues.[86]

ALUCs do not have the power to levy tax revenues to pay for their expenses. Rather, section 21671.5, subdivision (f) authorizes ALUCs to impose fees on proponents of actions, regulations or permits sufficient to cover the costs of complying with division 3.5 which includes all of the mandatory activities imposed by the test claim statutes on ALUCs. Section 21671.5, subdivision (f) provides:

> The commission may establish a schedule of fees *necessary to comply with this article*. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to section 66016 of the Government Code. Except as provided in subdivision (g), after June 30, 1991, a commission that has not adopted the airport land use compatibility plan required by section 21675 shall not charge fees pursuant to this subdivision until the commission adopts the plan.[87] (Emphasis added.)

In addition, the "usual and necessary operating expenses" of an ALUC are paid by the county served by the ALUC.[88]

Therefore, the Commission finds ALUCs cannot be reimbursed (nor can reimbursement be claimed on their behalf) because ALUCs are not subject to the tax and spend limitations of articles XIII A and XIII B and thus, they are not eligible for reimbursement of costs incurred to implement a "program" under article XIII B, section 6 of the California Constitution.

3. The plain language of section 21671.5 requires counties to perform some activities; however, the costs of those activities have been shifted between two local entities and not from the state to the county

a. The plain language of section 21671.5 requires counties to perform some activities

Claimant argues:

> This mandate [i.e. § 21671.5, subd. (c).],[89] insofar as it relates to the county resources required to assist an ALUC in the review and update of its [ALUCP] (including environmental review under CEQA) and the processing of referrals related to the review of local agencies' amendments of their general plans, specific plans, and adoption or approval of zoning ordinances or building

[85] See *Redevelopment Agency*, supra, 55 Cal.App.4th 976, 985-987.

[86] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

[87] Section 66016 requires that the fees must be adopted by ordinance or resolution, after providing notice and holding a public hearing.

[88] Section 21671.5, subdivision (c).

[89] See Test Claim Amendment, 08-TC-05, p. 5. Note that claimant cites to section 21670, subdivision (b) but it is clear from context and from the quoted language that claimant intends to cite to section 21671.5, subdivision (c).

regulations within a 60-day time period, was not considered as part of the San Bernardino County test claim.[90] The staff time and other resources that a county must absorb in relation to these mandated activities are significant. For example, individuals in various County of Santa Clara departments are responsible for providing services to the ALUC, including the Planning Office, County Counsel, and Clerk of the Board. Thus the total costs of this program are reimbursable.

Section 21671.5 provides:

> (a) Except for the terms of office of the members of the first commission, the term of office of each member shall be four years and until the appointment and qualification of his or her successor. The members of the first commission shall classify themselves by lot so that the term of office of one member is one year, of two members is two years, of two members is three years, and of two members is four years. The body that originally appointed a member whose term has expired shall appoint his or her successor for a full term of four years. Any member may be removed at any time and without cause by the body appointing that member. The expiration date of the term of office of each member shall be the first Monday in May in the year in which that member's term is to expire. Any vacancy in the membership of the commission shall be filled for the unexpired term by appointment by the body which originally appointed the member whose office has become vacant. The chairperson of the commission shall be selected by the members thereof.
>
> (b) Compensation, if any, shall be determined by the board of supervisors.
>
> (c) Staff assistance, including the mailing of notices and the keeping of minutes and necessary quarters, equipment, and supplies shall be provided by the county. The usual and necessary operating expenses of the commission shall be a county charge.
>
> (d) Notwithstanding any other provisions of this article, the commission shall not employ any personnel either as employees or independent contractors without the prior approval of the board of supervisors.
>
> (e) The commission shall meet at the call of the commission chairperson or at the request of the majority of the commission members. A majority of the commission members shall constitute a quorum for the transaction of business. No action shall be taken by the commission except by the recorded vote of a majority of the full membership.
>
> (f) The commission may establish a schedule of fees necessary to comply with this article. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to Section 66016 of the Government Code. Except as provided in subdivision (g), after June 30, 1991, a commission that has not adopted the airport land use compatibility plan

[90] Claimant is referring to CSM 4507.

required by Section 21675 shall not charge fees pursuant to this subdivision until the commission adopts the plan.

(g) In any county that has undertaken by contract or otherwise completed airport land use compatibility plans for at least one-half of all public use airports in the county, the commission may continue to charge fees necessary to comply with this article until June 30, 1992, and, if the airport land use compatibility plans are complete by that date, may continue charging fees after June 30, 1992. If the airport land use compatibility plans are not complete by June 30, 1992, the commission shall not charge fees pursuant to subdivision (f) until the commission adopts the land use plans.

Section 21671.5, subdivision (a) specifies terms of office for ALUC members. Subdivision (e) dictates how meetings shall be called and the number of votes needed for the ALUC to take action. Subdivisions (f) and (g) provide fee authority to the ALUC and set limits on that authority. Based on the plain language of section 21671.5, subdivisions (b), (c) and (d), staff finds that section 21671.5 requires counties to perform only the following activities:

- Determine compensation of ALUC members, "if any". (§ 21671.5 subd. (b).)
- Provide staff assistance, including the mailing of notices and keeping of minutes. (§ 21671.5 subd. (c).)
- Provide necessary quarters. (§ 21671.5 subd. (c).)
- Provide equipment. (§ 21671.5 subd. (c).)
- Provide supplies. (§ 21671.5 subd. (c).)
- The usual and necessary operating expenses of the commission shall be a county charge. (§ 21671.5 subd. (c).)

One of the above requirements is that the county is to "provide staff assistance, including the mailing of notices and keeping of minutes." Claimant asserts that this requirement includes providing substantive and procedural assistance from planners, GIS technicians, county counsel and the costs associated with ALUCP amendments and the environmental review of ALUCP amendments required by CEQA. However, the doctrine of *ejusdem generis* provides "that if the Legislature intends a general word to be used in its unrestricted sense, it does not also offer as examples peculiar things or classes of things since those descriptions then would be surplusage."[91] "*Ejusdem generis* applies whether specific words follow general words in a statute or vice versa. In either event, the general term or category is 'restricted to those things that are similar to those which are enumerated specifically.'"[92] Although "the phrase 'including, but not limited to' is a phrase of enlargement," the use of this phrase does not conclusively demonstrate that the Legislature intended a category to be without limits.[93] In *Dyna-Med*, the California Supreme Court held that, despite the phrase "including, but not

[91] *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters* (1979) 25 Cal.3d 317, 331, FN10.

[92] *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1160.

[93] *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391.

limited to," the California Fair Employment and Housing Act (Gov. Code, § 12900 *et seq*.) does not authorize the Fair Employment and Housing Commission to award punitive damages, because punitive damages are different in kind from the corrective and equitable remedies provided.[94]

Because "mailing of notices" and "keeping of minutes" are the typical tasks of a local entity secretary, other typically secretarial activities might also be included in the requirement to "provide staff assistance including the mailing of notices and the keeping of minutes." However, professional services, such as the services of planners and attorneys are of a different kind, and there is no evidence that the Legislature intended for counties to be required to provide them. In fact, with regard to planners, there is very clear legislative intent for ALUCs to impose fees to cover the costs of all of the airport land use planning activities. Therefore, the Commission finds that, with regard to the claimed requirement to "provide staff assistance and other resources," this activity does not include providing "substantive and procedural assistance from planners, GIS technicians, county counsel. . . .for. . . .[ALUCP] amendments" or "the costs associated with the environmental review of [ALUCP] amendments required by CEQA" beyond "the mailing of notices and the keeping of minutes" and possibly other related secretarial activities."

Finally, the Commission has not found any requirement in the law for the county to "assist an ALUC in the review and update of its [ALUCP] (including environmental review under CEQA) and the processing of referrals related to the review of local agencies' amendments of their general plans, specific plans, and adoption or approval of zoning ordinances or building regulations within a 60-day time period." As stated above, these are activities imposed solely on the ALUC pursuant to sections 21675 and 21676 and there is no language in those statutes, or any of the other test claim statutes, which requires counties to perform these activities. Likewise, as discussed above, ALUCs have sufficient fee authority under section 21671.5, subdivision (f) to cover all of the expenses related to those 21675 and 21676 activities, including costs for any county staff that they may wish to utilize pursuant to a voluntary agreement with the county. To the extent that the county performs activities beyond those required by state law, those activities are not state mandated and not reimbursable. The Commission finds that the only activities related to ALUCs that the state requires counties to perform are the following activities required by section 21671.5:

- Determine compensation of ALUC members, "if any". ((§ 21671.5 subd. (b).)
- Provide staff assistance, including the mailing of notices and the keeping of minutes (§ 21671.5 subd. (c).) This does not include providing substantive and procedural assistance from planners, GIS technicians, county counsel or the costs associated with ALUCP amendments or the environmental review of ALUCP amendments required by CEQA beyond the mailing of notices and the keeping of minutes and related secretarial activities.
- Provide necessary quarters. (§ 21671.5 subd. (c).)
- Provide equipment. (§ 21671.5 subd. (c).)
- Provide supplies. (§ 21671.5 subd. (c).)

[94] *Id* at pp. 1387-1389.

- The usual and necessary operating expenses of the commission shall be a county charge. (§ 21671.5 subd. (c).)[95]

b. The activities required of the counties by section 21671.5 were enacted before January 1, 1975.

The activities required of the counties by section 21671.5, subdivisions (b) and (c) were enacted before January 1, 1975. Specifically:

- The requirement for counties to provide "[s]taff assistance, including the mailing of notices and the keeping of minutes and necessary quarters, equipment. . . ." was enacted by Statutes 1967, chapter 852.
- The requirement that "[t]he usual and necessary operating expenses of the commission shall be a county charge" was enacted by Statutes 1972, chapter 419.
- The requirement for the County Board of Supervisors to determine ALUC member "compensation, *if any*" was added by Statutes 1967, chapter 852.
- The requirement for the County Board of Supervisors to determine whether to approve the ALUCs decision to employ any personnel as employees or independent contractors was added by Statutes 1972, chapter 419.

The relevant portion of Article XIII B, section 6, subdivision (a) of the California Constitution provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not provide a subvention of funds for the following mandates: . . . .
>
> (3) Legislative mandates enacted prior to January 1, 1975. . . .

Claimant, however, argues Statutes 1993, chapter 59 made the establishment of an ALUC discretionary. Thus, all related statutes would have been down-stream activities triggered by an underlying discretionary decision to establish an ALUC, until the Legislature passed Statutes 1994, chapter 644, mandating the establishing of ALUCs, making all of the requirements imposed on ALUCs mandatory. Based on this line of reasoning, claimant argues that all activities required by the test claim statutes, including those imposed by pre-1975 statutes, would impose a new program or higher level of service because of the 1994 statute.

From January 1, 1994 to January 1, 1995, there was no requirement in law to establish an ALUC. Statutes 1993, chapter 59 made the establishment of an ALUC (and several other unrelated state-mandated local programs) discretionary. With regard to the establishment of ALUCs, it did so by changing the word "shall" to the word "may" in three sentences in section 21670, subdivision (b). The following is the language of relevant portion of section 21670,

[95] Even if the Commission were to adopt claimant's expansive interpretation of section 21671.5, subdivision (c), it would not make the pre-1975 requirements of section 21671.5, subdivision (c) reimbursable, because the requirements of section 21671.5 were enacted prior to January 1, 1975.

subdivision (b), as amended by Statutes of 1993, chapter 59, with deletions in strike out and additions in underline:

> (b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline ~~shall~~ may establish an airport land use commission. Every county in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, ~~shall~~ may establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from the requirement. The board ~~shall~~ may, in this event, transmit a copy of the resolution to the Director of Transportation.

Prior to the enactment of Statutes 1993, chapter 59, the establishment of ALUCs was required by section 21670. By changing the word "shall" to the word "may," the Legislature eliminated the requirement to establish an ALUC. However, the Legislature did not make any changes to section 21675, 21676 or 21671.5-those sections remained intact. Nor did the Legislature eliminate the existing ALUCs or give counties authority to do so on their own. In fact, many ALUCs, including the Santa Clara County ALUC remained in place during 1994 (the one year gap in the requirement to establish an ALUC) and did not disband.[96] The argument can be made that requirements imposed on counties by section 21671.5 are not new. They were required by pre-1975 law and pursuant to Article XIII B, subdivision (a)(3), are not reimbursable.

However, even if claimant's arguments are legally correct on this point, reimbursement is still not required. There has been no shift in costs from the state to the counties. Rather, the costs of the county-required activities have been shifted to the county from the ALUC-another local entity. Pursuant to *City of San Jose v. State of California,* reimbursement is not required.[97]

> *c. Any increased costs resulting from the test claim statutes occur as a result of a cost shift between local entities, not a cost shift between the state and county,*

---

[96] See County of Santa Clara Board of Supervisors June 8, 2004 Agenda, Item 65 and Attachments A-D, adopting ALUC fees pursuant to section 21671.5, subdivision (f). Note that according to DOT's Division of Aeronautics: "a county board of supervisors [on its own] does not have the authority to unilaterally eliminate an ALUC." In order "[t]o disband an ALUC. . . .the actions which were taken to create the ALUC in the first place would need to be reversed. For most ALUCs, this would mean that majorities of the board of supervisors of the county (or counties in the case of multi-county ALUCs), the selection committee of city mayors, and the selection committee of public airport managers would each have to terminate their appointments of individual commissioners and the disbanding of the commission itself." (*California Airport Land Use Planning Handbook*, State of California, Department of Transportation, Division of Aeronautics (January 2002), p. 1-10.)

[97] *City of San Jose , supra,* 45 Cal.App.4th 1802.

thus the test claim statutes do not mandate a new program or higher level of service.

Though the activities required of ALUCs have increased since 1975 thus indirectly increasing the costs that counties are required to incur pursuant to section 21671.5, there has been no shift in fiscal responsibility from the state to the counties. Rather, there has been an increase in activities required of the ALUC and a commensurate expansion of the ALUC's fee authority sufficient to cover the costs of the ALUC activities. However, to the extent an ALUC decides not to fully exercise its statutory fee authority to cover all of the expenses, it shifts its costs to the county. Therefore, the primary holding of *City of San Jose* is directly on point for this analysis: "Nothing in article XIII B prohibits the shifting of costs between local governmental entities."[98]

In the case of *Lucia Mar*, the Supreme Court recognized that a "new program or higher level of service" within the meaning of article XIII B, section 6 could include a shift in costs from the state to a local entity for a required program.[99] Article XIII B, section 6, subdivision (c) requires reimbursement when the Legislature transfers from the state to local government "complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."

However, the cost shift here is not from the *state* to the county but from the *ALUC* to the county. Moreover, the shift is not new. Since 1967, counties have been responsible for providing the necessary and usual operating expenses of ALUCs.[100] The Sixth District Court of Appeal in *City of San Jose v. State of California*, [101] addressed the issue of a cost shift among local entities. In that case, the test claim statutes authorized counties to charge cities and other local entities the costs of booking into county jails persons who had been arrested by employees of the cities or local entities.[102] The court rejected the City's reliance on the holding of *Lucia Mar*, stating:

> The flaw in City's reliance on *Lucia Mar* is that in our case the shift in funding is not from the State to the local entity but from county to city. In *Lucia Mar*, prior to the enactment of the statute in question, the program was funded and operated entirely by the state. Here, however, at the time [the test claim statute] was enacted, and indeed long before that statute, the financial and administrative responsibility associated with the operation of county jails and detention of prisoners was borne entirely by the county.[103]

The City of San Jose also unsuccessfully argued that, although counties have traditionally borne those expenses, "they do so only in their role as agents of the State."[104] However, the

---

[98] *City of San Jose, supra,* 45 Cal.App.4th 1802, 1815.

[99] *Lucia Mar, supra,* 44 Cal.3d 830, 836.

[100] Section 21671.5, as adopted by Statutes 1967, chapter 852.

[101] *City of San Jose , supra,* 45 Cal.App.4th 1802.

[102] *Id*, p. 1806.

[103] *Id.* at 1812.

[104] *Id.* at 1814.

court noted that characterizing the county as an agent of the state "is not supported by recent case authority, nor does it square with definitions particular to subvention analysis."[105] The court pointed out that fiscal responsibility for the program in question had long rested with the county and not with the state.[106] In the instant case, counties have similarly had sole fiscal responsibility for the "necessary and usual operating expenses" of the ALUCs since their inception.[107]

As discussed above, since ALUCs are not subject to the tax and spend limitations imposed by the California Constitution, they are not eligible to claim reimbursement under Article XIII B, section 6 of the California Constitution. Moreover, as previously noted, the section 21671.5 requirement that the "usual and necessary operating expenses of the commission shall be a county charge" has long been a county cost. The cases are clear that increasing *costs* of providing services cannot be equated with requiring an increased level of service under a section 6 analysis.[108]

Though the activities required to be performed by ALUCs have increased since 1975, thus increasing the costs that counties are required to incur pursuant to section 21671.5, the Legislature has also increased ALUC fee authority to cover the costs of compliance with division 3.5. The plain meaning of section 21671.5, subdivision (f) demonstrates that ALUCs have fee authority sufficient to cover the costs of performing the activities imposed on them by the test claim statutes.

According to the California Supreme Court: "[w]hen interpreting a statute, our primary task is to determine the Legislature's intent. [Citation.] In doing so we turn first to the statutory language, since the words the Legislature chose are the best indicators of its intent."[109] Further, our Supreme Court has noted: "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature. . ."[110] Subdivision (f) specifically authorizes the imposition of "fees necessary to comply with this article". "This article" encompasses all of Article 3.5 which includes subdivisions 21675 and 21676 as amended by the test claim statutes. The language is clear and unambiguous. Thus, 21671.5 as amended by Statutes 1991, chapter 140 provides fee authority for the mandated activities. Legislative history supports this conclusion. Section 21671.5, subdivision (f) was amended by Statutes 1991, chapter 140 (S.B. 532) as follows:

> (f) The commission may establish a schedule of fees ~~for reviewing and processing proposals and for providing the copies of land use plans, as required by subdivision (d) of section 21675~~ necessary to comply with this article. Those

---

[105] *Ibid.*

[106] *Id.* at 1815.

[107] Section 21671.5, as adopted by Statutes 1967, chapter 852.

[108] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 876-877 (citing *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190).

[109] *Freedom Newspapers, Inc v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826.

[110] *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.

> fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to section 66016 of the Government Code. Except as provided in subdivision (g), after June 30, 1991, a commission that has not adopted the airport land use compatibility plan required by section 21675 shall not charge fees pursuant to this subdivision until the commission adopts the plan. (Deletions in strikeout and additions in underline.)

Prior to this amendment, fees imposed under section 21671.5, subdivision (f) were limited to fees "for reviewing and processing proposals and for providing the copies of land use plans, as required by subdivision (d) of section 21675."

The language "fees necessary to comply with this article" was proposed by the Assembly Committee on Local Government analysis of SB 532 which says:

> SB 1333 (Dills) Chapter 459, Statutes 1990, suspended numerous mandates, including the mandate relating to airport land use planning during 1990-91, and there were no subsequent reimbursements. Because the Legislature also provided fee authority in SB 1333 to cover costs associated with the various suspended mandates, should the existing fee authority in Airport Land Use Planning Law for reviewing and processing proposals be similarly revised to cover all airport land use planning activities?[111] (Emphasis in original.)

Similarly, the Senate Floor Analysis states that Assembly amendments "[a]llow[] the schedule of fees adopted by an airport land use commission to be those necessary to carry out the provisions of law relating to its land use planning instead of [just for] reviewing and processing proposals."[112]

However, the Santa Clara County ALUC, with the concurrence of both the County Board of Supervisors' Housing, Land Use, Environment, and Transportation Commission and the full Board of Supervisors have chosen not to impose fees for full cost recovery, based on a policy decision "to avoid deterring jurisdictions from referring projects and thus diminishing appropriate land use planning around the County's airports."[113] Thus the fact that the ALUC is not imposing fees to fully recover the costs of compliance with Division 3.5 is not based on a lack of sufficient fee authority, but rather a policy decision of the ALUC and the claimant, Santa Clara County, to encourage more submittals than are required under state law.

The claimant has allegedly provided substantial funding to the Santa Clara ALUC during the course of the potential reimbursement period; though there is no evidence in the record regarding what specific activities this funding was provided or used for.[114] However, it appears that the county has been providing funding and staffing to the ALUC in excess of the

---

[111] Assembly Committee on Local Government analysis of SB 532, as amended May 14, 1991, page 3.

[112] Senate Floor Analysis (Unfinished Business), SB 532 (Bergeson), as amended June 27, 1991, page 1.

[113] Santa Clara County Board of Supervisors Agenda Item 65, June 8, 2004, p. 3.

[114] See Test Claim Amendment (08-TC-05), p. 5 and p. 12.

"basic level" or what is required by state law. With regard to the Santa Clara County Board of Supervisors' adoption of ALUC fees pursuant to section 21671.5, subdivision (f), its agenda dated June 8, 2004 states: "if project referral fees are not adopted, ALUC staffing may or may not be supported by General Fund and may require reduction to a basic level of support such as posting meeting agenda, preparing meeting minutes, and county counsel consultation only when necessary." [115] Thus claimant has voluntarily chosen to provide funds and services to its ALUC in excess of what is required according to claimant's own interpretation of state law.

Additionally, Appendix (D) of the same agenda, which lays out four different options with regard to the adoption of fees, lists ALUCP amendments (called CLUP revisions in that document), "GIS support, workshop staffing and reproduction etc." as "other 'voluntary' activities" which may or may not be funded with county General Fund dollars. This language implies that the funding provided by the county prior to the adoption of the fees in 2004 was in excess of the "basic level of support" (i.e. the level of support required by state law). It is within the county's discretion to provide such additional funding and services to the ALUC, if it determines that the provision of such funding and services is in the interests of the county and its residents. However, such non-mandated costs are not reimbursable by the state. It is well-established that local entities are not entitled to reimbursement for all increased costs, but only those costs resulting from a new program or higher level of service imposed on them by the state.[116]

Based on the above analysis, the Commission finds that any increased costs resulting from the test claim statutes occur as a result of a cost shift between local entities, not a cost shift between the state and county. Thus the test claim statutes do not mandate a new program or higher level of service.

CONCLUSION

The Commission concludes that the test claim statutes do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution because:

1. The Commission does not have jurisdiction over section 21670 as amended by Statutes 1994, chapter 644 or over the activity of developing the ALUCP required by Section 21675 by June 30, 1991, because these statutes and activities were the subject of a final decision of the Commission in CSM 4507.
2. Any increased costs resulting from the test claim statutes occur as a result of a cost shift between local entities, not a cost shift between the state and county. Thus the test claim statutes do not mandate a new program or higher level of service.

[115] See Santa Clara Board of Supervisors Agenda Item 65, June 8, 2004, p. 3.

[116] *County of Los Angeles*, supra, 110 Cal.App.4th 1176, 1189.