BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code Sections 51175 Through 51189, Health and Safety Code Sections 13108.5 and 13132.7, As Added or Amended by Statutes of 1992, Chapter 1188, Statutes of 1994, Chapter 843, and Statutes of 1995, Chapter 333 And filed December 29, 1997; By the City of Redding, Claimant.	NO. CSM – 97-TC-13 *Very High Fire Hazard Severity Zones* PROPOSED 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 April 29, 1999)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates was adopted on April 29, 1999.

This Decision shall become effective on April 30, 1999.

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PAULA HIGASHI, Executive Director

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PROPOSED STATEMENT OF DECISION

On March 25, 1999 and April 29, 1999, the Commission on State Mandates (Commission) heard this test claim during regularly scheduled hearings. Ms. Pam Stone and Mr. Allan Burdick appeared on behalf of the claimant, the City of Redding, and the California Association of Counties. Mr. Stephen Eckard, Fire Marshal for the City of Redding, Mr. Ken Wagner, Fire Chief for the City of Redding and Mr. Steve Strong, Finance Officer for the City of Redding; appeared on behalf of the claimant. Ms. Wendy Breckon, Legal Counsel, appeared for the Department of Forestry and Fire Protection. Ms. Joan Jennings, Chief of Fire Prevention, appeared for the Office of the State Fire Marshal. Mr. James Apps appeared for the Department of Finance.

At the hearings, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

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

The Commission, by a vote of 4 to 2, approved this test claim.

BACKGROUND AND FINDINGS OF FACT

Test Claim Legislation

In an effort to reduce the spread of uncontrolled fires, the Legislature enacted the test claim legislation requiring the identity of "very high fire hazard severity zones" throughout the state. Government Code section 51175 describes the legislative intent as follows:

> "(a) Fires are extremely costly, not only to property owners and residents, but also to local agencies. Fires pose a serious threat to the preservation of the public peace, health, or safety. Since fires ignore civil boundaries, it is necessary that cities, counties, special districts, state agencies and federal agencies work together to bring raging fires under control. Preventive measures are therefore needed to ensure the preservation of the public peace, health, or safety.
>
> "(b) The prevention of fires is not a municipal affair,....but is instead, a matter of statewide concern. It is the intent of the Legislature that this chapter apply to all local agencies, including, but not limited to, charter cities, charter counties, and charter cities and counties. This subdivision shall not limit the authority of a local agency to impose more restrictive fire and panic safety requirements, as otherwise authorized by law."

Government Code section 51176 further provides the following:

> "The purpose of this chapter is to classify lands in the state in accordance with whether a very high fire hazard is present so that public officials are able to identify measures that will retard the rate of spread, and reduce the potential intensity, of uncontrolled fires that threaten to destroy resources, life, or property, and to require that those measures are taken."

Pursuant to Government Code section 51178, the State Director of Forestry and Fire Protection is required to identify areas in the state as "very high fire hazard severity zones" and send a transmittal identifying the "very high fire hazard severity zones" to affected local agencies within 30 days. Section 51178 requires the State to identify such zones in 15 specified counties by January 1, 1995. [1] Identification of "very high fire hazard severity zones" in all other counties was to be completed by the State by January 1, 1996.

Within 30 days following the receipt of the transmittal from the State that identifies "very high fire hazard severity zones", local agencies are required to make the information available for public review in a format that is "understandable and accessible to the general public, including, but not limited to, maps." (Gov. Code, § 51178.5.[2])

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[1] The 15 counties specified in section 51178 are Alameda, Contra Costa, Los Angeles, Marin, Napa, Orange, Riverside, San Bernardino, San Francisco, San Mateo, Santa Barbara, Santa Clara, Solano, Sonoma, and Ventura.

[2] Government Code section 51178.5 was enacted as an urgency measure and became effective on September 27, 1994. (Stats. 1994, c. 843.)

Within 120 days following the receipt of the State's recommendation to designate an area a "very high fire hazard severity zone", the local agency "shall" adopt an ordinance designating the zone and describing the standards imposed by the test claim legislation, unless exempted. An ordinance adopted by the local agency that conforms to the Model Ordinance adopted by the State Fire Marshal is presumed to be in compliance with the test claim legislation. A local agency is exempt from the requirement to adopt such an ordinance if the local agency adopted an ordinance, on or before December 31, 1992, imposing standards that are equivalent to or more restrictive than the standards imposed by the test claim legislation and the Model Ordinance. (Gov. Code, § 51179, subds. (a), (e), and (f).)

Government Code section 51179, subdivisions (b) and (c), further provides that a local agency "may, at its discretion," include or exclude areas within its jurisdiction as part of the "very high fire hazard severity zone" by making a finding, supported by substantial evidence on the record. Any discretionary changes made by the local agency to the recommendations of the state are final, and cannot be rebutted by the state. (Gov. Code, § 51179, subd. (d).)

The State Director of Forestry and Fire Protection is required to periodically review, every five years, the areas in the state identified as "very high fire hazard severity zones", and as necessary, make further recommendations regarding those areas. (Gov. Code, § 51181.) If additional areas are identified and added to a "very high fire hazard severity zone", the local agency is required to perform the activities prescribed by Government Code sections 51178 and 51179; i.e., make the information available for public review and adopt an ordinance, unless exempted.

The test claim legislation also imposes vegetation maintenance requirements on persons that own, lease, control, operate or maintain structures in or adjoining an area designated as a "very high fire hazard severity zone". These requirements include maintaining a firebreak 30 feet around a structure by removing all flammable vegetation and combustible growth, maintaining overhanging trees by removing dead or dying wood, and maintaining screens over chimney and stovepipe outlets. (Gov. Code, § 51182.)

Violation of any of the maintenance requirements imposed by Government Code section 51182 is punishable as either an infraction or a misdemeanor (Gov. Code, § 51185), and "may" be considered a public nuisance by the local agency (Gov. Code, § 51187). If a violation occurs, the local agency is required to notify the owner of the property to correct the condition. If the owner fails to correct the condition, the local agency "may" cause the corrections to be made. The expenses incurred by the local agency in correcting the condition "shall" become a lien on the property. (Gov. Code, § 51186.)

In addition to the vegetation maintenance requirements, the test claim legislation requires the State Fire Marshal and the State Director of Forestry and Fire Protection to prepare and adopt a Model Ordinance that provides for "comprehensive space and structure defensibility" by July 1, 1996. The ordinance would include sections on design and construction requirements that use fire resistant materials. Copies of the adopted Model Ordinance must be transmitted to the local agencies in every jurisdiction that contains a "very high fire hazard severity zone".

Finally, Health and Safety Code sections 13108.5 and 13132.7 establish standards for roof coverings and openings into attic areas of buildings within "very high fire hazard severity zones", and requires the State Building Standards Commission to adopt regulations describing the standards.

Issue: **Does the test claim legislation, which establishes "very high fire hazard severity zones" within local jurisdictions, impose a new program or higher level of service upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and section 17514 of the Government Code?**

In order for a statute to impose a reimbursable state mandated program, the statutory language must direct or obligate an activity or task upon local governmental agencies. In addition, the required activity or task must be new or create an increased or higher level of service over the former required level of service. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately prior to the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated, and impose "costs mandated by the state".[3]

As indicated above, the test claim legislation imposes a series of activities for the identification and maintenance of "very high fire hazard severity zones". The claimant contended that the test claim legislation imposes the following mandated activities:

- Adoption of the "very high fire hazard severity zone" map;
- Preparation and adoption of the required ordinance; and
- Development, implementation and evaluation of a fire prevention, or vegetation management program.

The activities performed by local agencies under the test claim legislation are described below.

Making the Information Contained in the State's Recommendation Identifying "Very High Fire Hazard Zones" Available for Public Review is a Reimbursable State Mandated Activity

Government Code section 51178.5 requires local agencies to make the information contained in the State's recommendation identifying an area as a "very high fire hazard severity zone" available for public review within 30 days of receipt of the transmittal from the State. Furthermore, local agencies are required to present the information in a format that is "understandable and accessible to the general public, including, but not limited to, maps." This requirement is imposed on local agencies following the State's initial determination of the areas identified as "very high fire hazard severity zones" and when new areas are identified as high fire zones upon the State's periodic review.

[3] *County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46, 56; *City of Sacramento* v. *State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 835; and Gov. Code, § 17514.

The Commission found that making the information contained in the State's recommendation available to the public in an understandable and accessible manner including, but not limited to, maps, is an activity performed by local agencies that carry out a basic governmental function by providing a service to the public. Such activities are not imposed on state residents generally.

The Department of Forestry and Fire Protection contended, however, that this activity does not constitute a new program or higher level of service. The Department argued that the Public Records Act, beginning with Government Code section 6250, imposes a *preexisting* duty upon local agencies to make information regarding the conduct of public business available for public review. In this case, the "public business" is the identification of areas designated as "very high fire hazard severity zones".

In 1968, the Legislature enacted the Public Records Act. The Public Records Act is intended to make public access to governmental records a fundamental right.[4] The Act requires public records to be open for inspection by the public at all times during the office hours of the state or local agency.[5] The court has defined "public records" to include any writing containing information relating to the conduct of the public's business that is prepared, owned, used or retained by any state or local agency, regardless of the physical form or characteristics of the writing.[6] The Act also authorizes state and local agencies to assess fees covering the direct costs of duplication when a public record request is made.[7]

In the present case, the test claim legislation requires local agencies to make the information contained in the State's recommendation available to the public in an understandable and accessible manner including, but not limited to, maps. The Commission agreed that making the information regarding the areas designated as "very high fire hazard severity zones" available to the public complies with the Public Records Act.

However, the Commission found that local agencies would not be compelled to make this information available to the public in an understandable and accessible manner if the new program had not been created by the state.

Before the enactment of the test claim legislation, the Department of Forestry was required to designate fire hazard severity zones within state responsibility areas.[8] The phrase "state responsibility area" is defined as an area of the state in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state.[9] Private owners of land designated as high fire zones in state responsibility areas were required to follow specified fire prevention and vegetation maintenance

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[4] Gov. Code, § 6250; *Wilson* v. *Superior Court* (1996) 52 Cal.App.4th 1136, review denied.

[5] Gov. Code, § 6253.

[6] *Poway Unified School Dist.* v. *Superior Court* (1998) 62 Cal.App.4th 1496, review denied.

[7] Gov. Code, 6253, subd. (b).

[8] Pub. Res. Code, § 4201 et al.

[9] Pub. Res. Code, §§ 4102 and 4125.

requirements. Violation of the fire prevention requirements constituted either an infraction or misdemeanor. [10]

However, areas within a local agency's jurisdiction were not designated or zoned for fire hazards by the Department of Forestry prior to the test claim legislation. In addition, the required fire prevention practices did not apply to landowners in local responsibility areas. The test claim legislation changed that practice and made fire prevention a "statewide concern". The Commission determined that now, owners of all areas zoned as a very high fire hazard in the state must comply with the fire prevention and vegetation maintenance requirements to avoid criminal penalties.

Accordingly, the Commission found that making the information contained in the State's recommendation available to the public in an understandable and accessible manner including, but not limited to, maps, constitutes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

The Commission further found that any fees received by the local agency under the Public Records Act for providing the "very high fire hazard severity zone" information to the public be identified as an offset in the Parameters and Guidelines.

Adoption of an Ordinance Is a Reimbursable State Mandated Activity

Government Code section 51179, subdivision (a), provides that within 120 days following the receipt of the State's recommendation to designate an area a "very high fire hazard severity zone", the local agency is required to adopt an ordinance, consistent with the Model Ordinance developed by the Department of Forestry and Fire Protection, designating the zone and describing the maintenance standards imposed by the test claim legislation, unless exempted. A local agency is exempt from the requirement to adopt such an ordinance if the local agency adopted an ordinance, on or before December 31, 1992, imposing standards that are equivalent to or more restrictive than the standards imposed by the test claim legislation.

Subdivision (b) of section 51179 authorizes a local agency to exclude an area identified by the State as a "very high fire hazard severity zone" following a finding supported by substantial evidence in the record that the maintenance requirements provided in section 51182 are not necessary for effective fire protection within that area. The exclusions made by the local agency are final and not rebuttable.[11]

The claimant contended that adopting an ordinance is a reimbursable state mandated activity. The Department of Forestry and Fire Protection disagreed. The Department contended that compliance with Government Code section 51179 is solely within the discretion of the local agency since a local agency can "repudiate the CDF director's recommendations and exclude such areas".

The Commission disagreed with the Department's argument.

The Commission recognized that there is no question that Government Code section 51179, subdivision (b), authorizes local agencies to exclude areas from the zones

[10] Pub. Res. Code, §§ 4291 and 4291.1

[11] Gov. Code, § 51179, subd. (d).

recommended by the State. However, the Commission found that the choice to "opt-out" an area from the recommended zone does *not* eliminate the requirement to identify and designate by ordinance the zones identified by the State.

The "opt-out" provision in Government Code section 51179, subdivision (b), specifically states the following:

> "(b) A local agency may, at its discretion, exclude areas from the requirements of Section 51182 [maintenance requirements imposed on landowners] an area identified as a very high fire hazard severity zone by the director within the jurisdiction of the local agency, following a finding supported by substantial evidence in the record that the requirements of Section 51182 are not necessary for effective fire protection within the area."

Subdivision (b) does *not* state that once an area is excluded by the local agency, the local agency is exempt from the requirement of adopting an ordinance.

Instead, the Commission determined that the *only* way for a local agency to be exempt from the requirement to adopt an ordinance is if the local agency has an ordinance imposing equivalent or more restrictive standards already in place. Government Code section 51179, subdivision (a), states in relevant part the following:

> "(a) A local agency *shall* designate, by ordinance, very high fire hazard severity zones in its jurisdiction within 120 days of receiving recommendations from the director. . . . ***A local agency shall be exempt from this requirement if*** *ordinances of the local agency, adopted on or before December 31, 1992, impose standards that are equivalent* to*, or more restrictive than, the standards imposed by this chapter*." (Emphasis added.)

Moreover, on June 9, 1995, the Department of Forestry and Fire Protection issued a letter to local agencies informing them of the areas within their boundaries that met the criteria for "very high fire hazard severity zones" and of the "*requirement*" to adopt an ordinance. That letter states the following:

> "Your staff has assisted in identifying one or more areas that meet the criteria as a Very High Fire Hazard Severity Zone (VHFHSZ), and our local CDF or County Fire Department representative has signed off on the correctness of the evaluation. ***You are now required under the law to adopt an ordinance*** *within 120 days of the receipt of this letter. The law requires the following in the zones....*"

The Commission found that the letter issued by the Department of Forestry and Fire Protection on June 9, 1995 constitutes an executive order under Government Code

section 17516.[12] The text of the letter supports the conclusion that adopting an ordinance is a state mandated activity.[13]

Thus, the Commission found that adopting an ordinance, consistent with the Model Ordinance adopted by the State Fire Marshal, which designates the "very high fire hazard severity zones" and describes the required maintenance standards in those designated areas constitutes a reimbursable state-mandated activity.

Including or Excluding Areas From the "Zone" Is Not a Reimbursable State Mandated Activity

As indicated above, the local agency "*may, at its discretion*", include or exclude an area from the zone following a finding supported by substantial evidence in the record that the requirements for 'very high fire hazard severity zones" are either necessary, or not necessary, for the specified area.

The Commission found that since the option to exclude or include an area is purely within the discretion of the local agency, the costs incurred in making a finding supported by substantial evidence in the record would be borne entirely by the local agency and is, thus, not a reimbursable state mandated activity.

Enforcement of the Vegetation Maintenance Requirements Is Not a Reimbursable State Mandated Activity

Government Code section 51182 imposes vegetation maintenance requirements on persons that own, lease, control, operate, or maintain structures in or adjoining an area designated as a "very high fire hazard severity zone". Violation of any of the maintenance requirements is punishable as either an infraction or a misdemeanor (Gov. Code, § 51185), and "may" be considered a public nuisance by the local agency pursuant to Government Code section 38773 (Gov. Code, § 51187). If a violation occurs, the local agency is required to notify the owner of the property to correct the condition. If the owner fails to correct the condition, the local agency "may" cause the corrections to be made. The expenses incurred by the local agency in correcting the condition "shall" become a lien on the property. (Gov. Code, § 51186.)

The claimant contended that Government Code section 51186 imposes a reimbursable state mandated activity on local agencies by requiring local agencies to notify property

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[12] Government Code section 17516 defines "executive order" as "*any* order, plan, requirement, rule or regulation" issued by a state agency.

[13] The Department of Forestry and Fire Protection disagreed stating the following: "….even if the letter were to be construed as an 'order, plan, requirement, rule, or regulation', it would be void *ab initio* inasmuch as the Legislature clearly did not delegate the authority to CDF or its director to 'issue' such an 'order, plan, requirement, rule, or regulation. Given that such a reputed 'executive order' would be a nullity, neither CDF nor its director could possibly compel a local agency to adopt an ordinance designating any area as a very high fire hazard severity zone pursuant to § 51179, nor can there be said to have been a state-mandated activity."

However, the Commission found that the content of the letter issued by the Department of Forestry and Fire Protection on June 9, 1995, is consistent with the requirements imposed by Government Code section 51179, subdivision (a). Moreover, the courts have held that a state agency's interpretation of a statute is given great weight. (*Yamaha Corp. of America* v. *State Board of Equalization* (1998) 19 Cal.4th 1.)

owners if there is a violation of the maintenance requirements. The claimant stated that in order to "discharge its mandated duty to notify property owners of record if there is a violation, there must be an inspection program."

The Commission disagreed and found that enforcement of the vegetation maintenance requirements, including the inspection of property and notification to property owners of a violation, does *not* constitute a reimbursable state mandated activity.

Government Code section 17556, subdivision (g), establishes the "crimes and infractions" exception to reimbursement. That section provides that "the Commission shall *not* find "costs mandated by the state"....if the test claim legislation creates a new crime or infraction."

In the present case, the test claim legislation creates a new crime or infraction by making violation of the vegetation maintenance requirements either an infraction or a misdemeanor. Thus, the Commission found that the enforcement by the local agency of the maintenance standards set forth in Government Code section 51182 is exempt from reimbursement under the "crimes and infractions" exception.

Moreover, Government Code section 17556, subdivision (d), establishes the "fee authority" exception to reimbursement. That section provides that there are no "costs mandated by the state" when the local agency has the authority to impose charges, fees, or assessments sufficient to pay for the mandated program.

In this case, the test claim legislation authorizes local agencies to consider a violation of the maintenance standards a public nuisance under Government Code section 38773. Government Code section 38773 authorizes local agencies to abate the nuisance *at the expense* of the person creating, causing, committing or maintaining the nuisance.[14] Thus, the Commission found that if the local agency enforces the maintenance standards set forth in Government Code section 51182 by abating the nuisance, then the costs incurred can also be excluded under the "fee authority" exception to reimbursement.

Finally, the claimant cited a statement in the Legislative Counsel's Digest of the test claim legislation to support its contention that notifying property owners of violations, as required by Government Code section 51186, constitutes a reimbursable state mandated activity. Government Code section 17575 requires the Legislature's Counsel to determine whether a proposed bill mandates a new program or higher level of service pursuant to Article XIII B, section 6. Here, Legislative Counsel determined the following:

> "This bill would require local agencies to notify owners or property of violation and would authorize local agencies to correct the conditions and make a lien upon the property, as prescribed. By creating these requirements, this bill would impose a state-mandated local program."

[14] Government Code section 38773, which provides that " [t]he legislative body may provide for the summary abatement of any nuisance at the expense of the persons creating, causing, committing, or maintaining it and by ordinance may make the expense of abatement of nuisances a lien against the property on which it is maintained and a personal obligation against the property owner...."

Under Government Code section 17579, when the Legislative Counsel makes such a determination, the enacted statute must contain language providing that "*if* the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code." This language can be found in Section 4 of the test claim legislation.

However, the Commission recognized that the findings by the Legislative Counsel are *not* determinative or controlling of the ultimate issue as to whether the test claim legislation constitutes a reimbursable state mandated program under article XIII B, section 6. Rather, the Commission has the sole and exclusive authority for deciding this issue under article XIII B, section 6 of the California Constitution and section 17514 of the Government Code.[15]

Based on the foregoing authorities, the Commission found that enforcement of the vegetation maintenance requirements imposed by Government Code section 51182, including inspection of property and notification of violations, does *not* constitute a reimbursable state mandated activity.

Enforcement of Roof and Attic Opening Standards Is Not a Reimbursable State Mandated Activity

Health and Safety Code sections 13108.5 and 13132.7 establish standards for roof coverings and openings into attic areas of buildings within "very high fire hazard severity zones". These sections also require the State Fire Marshal to propose and the State Building Standards Commission to adopt regulations describing the roof and attic standards. The local agencies are required to enforce these regulations.[16]

The Commission found that enforcement by the local agency of the standards for roof coverings and attic openings does *not* constitute a reimbursable state mandated program.

Health and Safety Code section 17995 provides that any person who violates the provisions of the State Building Standards Code is guilty of a misdemeanor. Thus, the Commission found that enforcement of the roof and attic opening standards proposed by the State Fire Marshal and adopted by the State Building Standards Commission is excluded from reimbursement under the "crimes and infractions" exception to reimbursement provided in Government Code section 17556, subdivision (g).

Development, Implementation and Evaluation of a Fire Prevention, or Vegetation Management Program is not Required by the State

The claimant contended that the test claim legislation and the State Fire Marshal's Model Ordinance requires local agencies to develop, implement and evaluate a fire prevention, or vegetation management program. Based on this contention, the claimant developed a

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[15] *City of San Jose* v. *State of California* (1996) 45 Cal.App.4th 1802, 1817-1818; *Kinlaw* v. *State of California* (1991) 54 Cal.3d 326, 333; and Government Code section 17552 which states that "[t]his chapter [Chapter 4 entitled "Identification and Payment of Costs Mandated by the State] shall be the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution."

[16] Health and Safety Code section 13108.5, as amended by Chapter 1188, Statutes of 1992

self-inspection program requiring owners of property in very high fire hazard zones to conduct an inspection on their property and to make any necessary corrections. After the owner's inspection, the owner is required to return the self-certification form to the claimant. If the owner of the property does not respond after a second request to inspect, the claimant conducts an on-site inspection and, if necessary, leaves notice requesting immediate action. The claimant's program also includes a random inspection of properties. In order to implement the self-inspection program, the claimant mails self-certification forms and letters, responds to requests from recipients, conducts on-site inspections, and maintains a record of which properties have complied with the program.

The claimant supported its contention that the development and implementation of a fire prevention program is required as follows:

> "The first paragraph of the Model Ordinance states that it is an ordinance requiring the Fire Chief and the Local Official designated '...to enforce the requirements of Section 3202, Title 24, California Code of Regulations, 1991 Edition or Subsequent later editions.' Further, Section 1 of the Model Ordinance, the last sentence states: 'Preventive measures are therefore needed to ensure the preservation of the public peace, health, or safety.' The City contends that preventive measures mean it needs to implement a program and not just adopt an ordinance. Since the owners of property in very high fire hazard severity zones must meet requirements that are greater than property owners in all other areas, the City believes it must notify each owner and request the owners take the necessary actions to achieve compliance."

The Department of Finance and the Department of Forestry and Fire Protection contended that development and implementation of a prevention program is optional and not mandated by the state.

The Commission found that the development and implementation of a fire prevention program is *not* mandated by the state. The Commission determined that neither the test claim legislation, nor the State Fire Marshal's Model Ordinance, requires a local agency to develop or implement a fire prevention program.

The Model Ordinance states in the first paragraph the following:

> "An ordinance of the city (or county or district) of ____ requiring the fire chief to designate very high fire hazard severity zones and the local official designated by § 13146, Health and Safety Code to enforce the requirements of section 3203, Title 24, California Code of Regulations, 1991 edition or subsequent editions." [17]

[17] Health and Safety Code section 13146 currently provides the following:

"The responsibility for enforcement of building standards adopted by the State Fire Marshal and published in the California Standards Code relating to fire and panic safety and other regulations of the State Fire Marshal shall be as follows:

The first paragraph of the Model Ordinance simply requires local agencies to enforce the standards proposed by the State Fire Marshal in "section 3203, Title 24, California Code of Regulations" relating to roof coverings within very high fire hazard severity zones. These standards are now codified in section 1503 of the 1994 Uniform Building Code[18], which provides the following:

> "Roof Coverings within Very High Fire Hazard Severity Zones. Unless governed by more stringent requirements of this code or local government regulation, all new structures, and every existing structure within very high fire hazard severity zones designated by the California Department of Forestry and Fire Protection, and all new structures, and every existing structure within very high fire hazard severity zones designated by a local agency, shall have at least a Class B roof covering."

Moreover, the claimant referred to section 1 of the Model Ordinance to suggest that it imposes the requirement upon local agencies to develop and implement a program. Section 1 of the Model Ordinance provides the following:

> "Fires are extremely costly, not only to property owners and residents, but also to local agencies. Fires pose a serious threat to the preservation of the public peace, health, or safety. Since fires ignore civil boundaries, it is necessary that cities, counties, special districts, state agencies, and federal agencies work together to bring fires under control. Preventive measures are therefore needed to ensure the preservation of the public peace, health, or safety."

The Commission determined that section 1 of the Model Ordinance does not require local agencies to implement a fire prevention program. Rather, the Commission found that section 1 simply restates the legislative intent, as expressed in Government Code sections 51175 and 51176, of the test claim legislation.

Thus, the Commission found that developing, implementing and evaluating a fire prevention, or vegetation management program, are not activities required by the state.

"(a) The city, county, or city and county with jurisdiction in the area affected by the standard or regulation shall delegate the enforcement of the building standards relating to fire and panic safety and other regulations of the State Fire Marshal as they relate to R-3 dwellings...., to either of the following:

"(1) The chief of the fire authority of the city, county, or city and county, or his or her authorized representative.

"(2) The chief building official of the city, county, or city and county, or his or her authorized representative." (Added by Stats.1945, c. 1173; last amended by Stats.1992, c. 661

[18] In 1995, Health and Safety Code section 18938 was amended to provide that building standards filed with the Secretary of State and approved by the State Building Standards Commission shall not be published in the California Code of Regulations. Thus, Title 24 of the California Code of Regulations no longer exists. Instead, approved building standards become effective 180 days after publication in the Uniform Building Code.

Sending Additional Notification of the Maintenance Requirements is Reasonably Necessary to Comply with the Mandate

The Commission also considered the claimant's argument that sending an annual notification prior to the fire season in conjunction with a self-certification form to owners and occupiers of property within very high fire hazard severity zones is reasonably necessary to comply with the mandate.

The Commission recognized that although an activity may not be expressly required by test claim legislation, section 1183.1 of the Commission's regulations states that a "description of the most reasonable methods of complying with the mandate" shall be included in the parameters and guidelines of approved test claims.

Consequently, in order for the Commission to find that sending a separate annual notification and self-certification forms regarding the maintenance requirements to property owners and occupiers is a reimbursable state mandated activity, the Commission was required to first determine that this activity is reasonably necessary to comply with the mandate. These issues are addressed below.

Existing Law Requires Local Agencies to Notify Property Owners When the Local Agency Adopts an Ordinance

In order to satisfy the legislative intent of the test claim legislation, the Legislature imposed the following maintenance requirements on property owners and occupiers of property located within a "very high fire hazard severity zone":

1. With limited exceptions, maintain a firebreak by removing and clearing away, for a distance of not less than 30 feet on each side of a dwelling or to the property line, all vegetation and combustible growth.
2. Maintain an additional firebreak up to 100 feet on each side of a dwelling or to the property line if the local agency finds that a finds that a firebreak of 30 feet is insufficient for reasonable fire safety.
3. Remove portions of trees that extend within 10 feet of the outlet of a chimney or stovepipe.
4. Maintain any tree adjacent to or overhanging any building free of dead or dying wood.
5. Maintain the roof of any structure free from leaves, needles or dead vegetative growth.
6. Provide and maintain a screen over the outlet of every chimney or stovepipe that is attached to any device that burns any solid or liquid fuel.[19]

The claimant contended that the "most reasonable method of notifying property owners and occupiers of this mandate and its requirement, is to provide an annual notification prior to the beginning of the fire season." The claimant further stated that "by sending the information in conjunction with a self-certification form, the Fire Department is

[19] Gov. Code, § 51182, subd. (a).

informed that the property owners and occupiers have actual knowledge of the requirements imposed on them."

The Commission noted that the six maintenance requirements are specified in the Model Ordinance adopted by the State Fire Marshal and *must* be included in the ordinance adopted by the local agency after receiving the State's recommendation designating the "very high fire hazard severity zones" in the local agency's jurisdiction.[20]

The Commission found that when a county or city adopts an ordinance, such as the one required by the test claim legislation, existing law requires the local agency to notify the public of the ordinance by publishing the ordinance or a summary of the ordinance in the local agency's newspaper. If a county does not publish a newspaper, the county is required to post the ordinance or a summary thereof in a prominent location in the board of supervisors' chambers within 15 days after adoption. The ordinance must remain posted for one week. Similarly, if a city does not publish a newspaper, the city is required to post the ordinance or a summary thereof in at least three public places in the city, or publish the ordinance or a summary in the county newspaper of general circulation.[21] Accordingly, the Commission found that the public receives notice of the test claim requirements through pre-existing due process requirements imposed on local agencies following the adoption of an ordinance.

In addition, the Commission noted that existing law authorizes, but does not require, local agencies to impose a duty on sellers of property to disclose local ordinance requirements when property is bought and sold.[22] Accordingly, the Commission found that new property owners *may* receive additional notice of the test claim requirements when purchasing property *if* the local agency elects to require such disclosure.

Therefore, *if* the claimant's theory that additional notification of the maintenance requirements is reasonably necessary to comply with the mandate was adopted by the Commission, then property owners and occupiers would receive notice of the test claim requirements when

- the local agency adopts an ordinance 120 days after the State designates very high fire hazard zones within the jurisdiction,
- the property sells, *if* the local agency elects to require such disclosure, and when
- the local agency mails its annual notification.

The Commission found that sending additional notification of the maintenance requirements is reasonably necessary to comply with the mandate to ensure actual notification to property owners and occupiers.

[20] Gov. Code, § 51179.

[21] Gov. Code, §§ 25124 and 36933.

[22] Civ. Code, §, 1102.6a.

Mailing and Processing Self-Certification Forms, in Addition to the Annual Mailer, to Ensure Compliance of the Test Claim Legislation Falls Under Government Code Section 17556, Subdivision (g), and is Not Reimbursable

As noted earlier, Government Code section 17556, subdivision (g), provides that "the Commission shall not find 'costs mandated by the state'. . . . if the test claim legislation creates a new crime or infraction. In the present case, the test claim legislation creates a new crime or infraction by making violation of the six maintenance requirements either an infraction or a misdemeanor.

The claimant agreed that enforcement by the local agency of the maintenance standards is exempt from reimbursement under Government Code section 17556, subdivision (g). However, the claimant believed that enforcement begins after the second annual mailings do not result in the return of the self-certification form.

The Commission disagreed with the claimant. Webster's Third New World International Dictionary defines "enforce" as follows: " 'Enforce' refers to requiring operation, *observance*, or protection *of laws*, orders, contracts, and agreements by authority."[23] (Emphasis added.)

In the present case, the claimant issued on a yearly basis a self-certification form to property owners and occupiers in addition to the annual notification "so that property owners and occupiers certify that they have, in fact, *complied* with the [law]." If the first self-certification form is not returned to the claimant, the claimant issues a second self-certification form.

The Commission found that ensuring compliance with the law by way of a self-certification *is* enforcement; i.e., requiring operation, *observance*, or protection *of laws*, orders, contracts, and agreements by authority. Thus, the Commission found that the activities required to process the self-certification form, including the receipt of the original forms and the issuance of second mailings, fall within Government Code section 17556, subdivision (g), and are therefore *not* reimbursable.

CONCLUSION

Based on the foregoing, the Commission concluded that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reimbursable state mandated activities:

- Making the information contained in the State's recommendation identifying an area as a "very high fire hazard severity zone" available to the public in a format that is "understandable and accessible to the general public, including, but not limited to, maps" within 30 days of receiving the State's recommendation. (Gov. Code, § 51178.5.)
- Adopting an ordinance, consistent with the Model Ordinance adopted by the State Fire Marshal, within 120 days of receiving the State's recommendation, which designates the "very high fire hazard severity zones" and describes the required

[23] Page 751.

maintenance standards in those designated areas. Local agencies are exempt from this requirement if the ordinances of the local agency, adopted on or before December 31, 1992, impose standards that are equivalent to, or more restrictive than, the standards imposed by the test claim legislation. (Gov. Code, § 51179.)

- Sending additional notification of the maintenance requirements imposed by Government Code section 51182 to property owners and occupiers.