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March 25, 2010

Mr. Michael Genest, Chairperson  
Commissioners  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Re: Airport Land Use Commissions/Plans II, Amended; 03-TC-12 and 08-TC-05:  
County of Santa Clara, Claimant

Dear Chairperson Genest and Commissioners:

We respectfully request that the Commission reject the staff analysis and proposed statement of decision and grant the County of Santa Clara's test claim in this matter.

The Commission has already determined that the State imposed mandatory duties on counties related to ALUCs. (*See* CSM-4507, Amended Statement of Decision, adopted July 31, 1997 (hereinafter "CSM-4507").) The essence of the Commission's decision in CSM-4507 is that the State enacted legislation in 1993 making ALUCs discretionary (Chapter 59, Statutes of 1993), but reversed course in 1994 by enacting legislation that again made ALUCs mandatory (Chapter 644, Statutes of 1994).<sup>1</sup>

This test claim pertains to mandated activities that were not considered in the Commission's prior decisions. These mandated activities relate to duties imposed on ALUCs by the Legislature, which have had the attendant effect of imposing additional mandates on counties.

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<sup>1</sup> The staff report asserts that the mandated activities that the Commission found to exist in CSM-4507 only apply to counties that actually disbanded their ALUCs after the 1993 legislation was enacted and reestablished them in response to the 1994 legislation. (Final Staff Analysis, p. 9.) There is nothing in CSM-4507 to suggest that the Commission's decision is so limited, nor does such an interpretation make sense. The bulk of the costs that a county incurs in connection with an ALUC are not limited to the act of establishing an ALUC, but rather from supporting the ALUC's ongoing activities pursuant to its obligation under Section 21671.5(c).

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These Issues Were Not Considered in the Commission's Prior ALUC Test Claim Decisions

The mandates that are the subject of this test claim were not addressed in CSM-4507. That decision only addressed the requirement to adopt an initial CLUP. It did not address the additional responsibilities imposed on counties related to the obligations imposed by Public Utilities Code Sections 21671.5(c), 21675 and 21676.<sup>2</sup>

Beginning in 1990, first by lack of funding and later by the enactment of Chapter 59, Statutes of 1993, the mandate to amend CLUPs was made optional. When the establishment of an ALUC became mandatory again in 1994, this provision lost its voluntary character. As discussed above, the Commission has already determined that Chapter 644, Statutes of 1994, which reinstated the requirement for county airport land use commissions under Section 21670, imposed a new program when compared to Chapter 59, Statutes of 1993 (the legislation in effect immediately before the enactment of the test claim legislation). (CSM-4507, p. 3.)

In ruling on the San Bernardino County test claim, the Commission found that the duty to develop the initial CLUP was not reimbursable because the initial CLUP was required to be adopted prior to January 1, 1995. The San Bernardino County test claim did not, however, address several points incumbent within the newly-mandated establishment of an ALUC. In particular, that test claim did not examine all of the attendant mandates related to ALUC activities that flow from the legislative mandate to establish an ALUC. Several of these ancillary mandates remain unreviewed and unconsidered by the Commission. For example, the San Bernardino County claim did not address the requirement in section 21675(a) that the CLUP "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." The instant test claim seeks to correct this gap.

Mandatory Duties Not Addressed in CSM-4507

Section 21671.5(c) imposes the following obligation on counties:

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.

As explained in the County's amended test claim, the Legislature significantly expanded the mandatory duties of ALUCs after 1975. For example, it was not until 1984 (Chapter 1117, Statutes of 1984), that section 21675 set forth the current requirement that an ALUC review its comprehensive land use plans ("CLUPs") as often as necessary and amend them no more than once a year.<sup>3</sup> Due to the requirement in Section 21671.5(c) that counties provide "staff

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<sup>2</sup> All further statutory references are to the Public Utilities Code, unless otherwise indicated.

<sup>3</sup> As of the date this test claim was initially filed, Public Utilities Code Section 21675 provided as follows:

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assistance” and pay for the “usual and necessary expenses of the commission,” any costs associated with new mandates imposed on ALUCs must be absorbed by counties. Thus, the effect of Section 21671.5(c) is that any new mandates imposed on ALUCs necessarily impose new and increased mandates on counties.

#### Amendments to Comprehensive Land Use Plans (“CLUPs”)

A CLUP 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 CLUP 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 CLUP, then a county is obligated to provide assistance for this effort pursuant to Section 21671.5(c). This

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(a) Each commission shall formulate a comprehensive land use 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 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 a land use plan, the commission may develop height restrictions on buildings, specify use of land, and determine building standards, including sound proofing adjacent to airports, within the planning area. The comprehensive land use 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 plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding and military airport for all purposes specified in subdivision (a). The plan shall be consistent with the safety and noise standards in the Air Installation Compatible Use Zone 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 planning boundaries 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 plan and each amendment to the plan.

(e) If the comprehensive land use plan does not include the matter required to be included pursuant to this article, the Division of Aeronautics of the department shall notify the commission responsible for the plan.

Although this section was added by Chapter 1182, Statutes of 1970, and was subsequently amended by Chapter 844, Statutes of 1973, Chapter 725, Statutes of 1980, and Chapter 714, Statutes of 1981, (and later amended by Chapter 306, Statutes of 1989, Chapter 563, Statutes of 1990, Chapter 438, Statutes of 2002 and Chapter 971, Statutes of 2002) there was no mention of amending the comprehensive land use plan until the enactment of Chapter 1117, Statutes of 1984.

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includes the obligation to comply with the California Environmental Quality Act (“CEQA”), Public Resources Code Section 21000 *et seq.*, because CLUP amendments are subject to 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 CLUP amendments required by CEQA. (Chapter 1433, Statutes of 1970.) For example, when the Santa Clara County ALUC amended its CLUP in 2004, the City of San Jose filed a lawsuit against the ALUC alleging noncompliance with CEQA. If the County had not provided legal representation to the ALUC, the ALUC would have had no means of obtaining representation. There can be no question that this legal representation falls within the “usual and necessary operating expenses” requirement of Section 21671.5(c).

#### The Staff Interpretation of County Duties Under § 21671.5(c) is too Narrow and Unrealistic

The staff analysis asserts that, while the State may have imposed new mandates on ALUCs, it did not impose any new mandates on counties. (Final Staff Analysis, pp. 20-26.) This assertion misunderstands how commissions function and is akin to asserting that the Commission on State Mandates should be able to perform all of its functions without any professional staff assistance. In reality, ALUCs would not be able to perform the myriad of functions required by state law without significant substantive and procedural assistance from county staff. This is reflected in the express statutory requirement that counties provide ALUCs with “staff assistance.” (§21671.5(c).)

The usual and necessary operating expenses of an ALUC logically and necessarily include costs associated with those activities that are necessary to fulfill the ALUC’s statutorily-mandated duties. Those duties include amending its comprehensive land use plan (“CLUP”) (including compliance with CEQA) as required by Section 21675(a), and reviewing and making decisions on referrals as required by Section 21676. As explained in the County’s amended test claim, the staffing and other support that the a county provides its ALUC are necessary to an ALUC’s ability to implement its statutory obligations and therefore also constitute “usual and necessary operating expenses of the commission [which] shall be a county charge.”

#### Unexercised ALUC Fee Authority Does Precludes Counties from Recovering Their Costs.

The staff analysis states that, “to the extent an ALUC decides not to fully exercise its statutory fee authority, it shifts its costs to the county,” and cites the *Lucia Mar*<sup>4</sup> and *City of San Jose*<sup>5</sup> cases as support for this assertion.” (Final Staff Analysis, p. 32-36.) Neither of those cases supports staff’s claim.

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<sup>4</sup> *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830 (finding that the state had imposed new duties on local agencies that triggered reimbursement).

<sup>5</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4<sup>th</sup> 1802. This case involved a shift of responsibilities from cities to counties for jail booking activities – activities that had been required of local agencies for many years. It did not deal with a new state program or a shift of costs from the state to local agencies.

Here, the Legislature imposed new requirements on ALUCs that did not previously exist, which in turn imposed new costs on counties pursuant to their obligation to cover the “usual and necessary operating expenses” of an ALUC pursuant to Section 21671.5(c). This was not simply a shifting of pre-existing costs between local agencies. As the Supreme Court explained in *Lucia Mar*:

Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B, the result seems equally violative of the fundamental purpose underlying section 6 of that article.<sup>6</sup>

The authority to adopt fees rests solely with ALUCs, and counties have no ability to force ALUCs to exercise this authority. Thus, to the extent the state imposes new duties on an ALUC that a county is required to pay for pursuant to section 21671.5(c) and the ALUC chooses not to adopt fees or does not adopt fees that provide for full cost recovery, those activities constitute a new unfunded state mandate requiring reimbursement pursuant to Article XIII B, Section 6 of the California Constitution.

In CSM-4507, the Commission determined that the fee authority provided to ALUCs in section 21671.5(f) does not cover all ALUC costs because not all of those costs can be charged to proponents:

[T]he Commission noted the county’s fee authority under subdivision (f) of Public Utilities Code section 21751.5 is not sufficient to make a finding that no reimbursable costs mandated by the state are associated with the state mandated activities set forth in the test claim. Further, the Commission recognized that the fee authority spelled out in subdivision (f) does not offset all of the costs incurred in performing the state mandated activities set forth in Public Utilities Code sections 21670 and 21670.1.<sup>7</sup>

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<sup>6</sup> 44 Cal.3d at p. 836.

<sup>7</sup> CSM-4507, p. 7.

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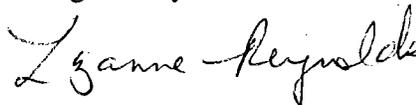
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Conclusion

We thank the Commission for its consideration of the County's test claim and respectfully request that you grant the test claim.<sup>8</sup>

Very truly yours,

MIGUEL MÁRQUEZ  
Acting County Counsel



Lizanne Reynolds  
Deputy County Counsel

c: Interested Party Mailing List

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<sup>8</sup> The County incorporates by reference in this letter its initial test claim (03-TC-12), its amended test claim (08-TC-05), and its comments on the draft staff analysis dated Jan. 22, 2010.

1 COMMISSION ON STATE MANDATES

2 PROOF OF SERVICE BY MAIL

3  
4 *Airport Land Use Commissions/Plans II*

5  
6 I, Lizanne Reynolds, say:

7 I am now and at all times herein mentioned have been over the age of eighteen  
8 years, employed in Santa Clara County, California, and not a party to the within action or  
9 cause; that my business address is 70 West Hedding, East Wing, 9<sup>th</sup> Floor, San Jose,  
10 California 95110-1770. I am readily familiar with the County's business practice for  
collection and processing of correspondence for mailing with the United States Postal  
Service. I served a copy of the

11 **Letter re: Airport Land Use Commission/Plans II, Amended; 03-TC-12**  
12 **and 08-TC-05: County of Santa Clara, Claimant**

13 by placing said copy in an envelope addressed to:

14 Raiyn Bain  
15 Department of Transportation (B-15)  
16 Legal Division, MS 57  
1120 N Street  
Sacramento, California 95814

Ms. Hasmik Yaghobyan  
County of Los Angeles  
Auditor-Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles, California 90012

17 Ms. Annette Chin  
18 Cost Recovery Systems, Inc.  
19 705-2 East Bidwell Street, #294  
Folsom, California 95630

Mr. Jim Spano  
State Controller's Office (B-08)  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, California 95814

20 Mr. Ronald W. Beals  
21 Department of Transportation (B-15)  
1120 N Street  
22 Sacramento, California 95814

Mr. Scott Morgan  
Governor's Office of Planning and  
Research (A-08)  
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14 Ms. Juliana F. Gmur  
15 MAXIMUS  
16 2380 Houston Avenue  
17 Clovis, California 93611

Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

18 which envelope was then sealed, with postage fully prepaid thereon, on **March 25, 2010**,  
19 and placed for collection and mailing at my place of business following ordinary business  
20 practices. Said correspondence will be deposited with the United States Postal Service at  
21 San Jose, California, on the above-referenced date in the ordinary course of business; there  
22 is delivery Service by United States mail at the place so addressed.

23 I declare under penalty of perjury under the laws of the State of California that the  
24 foregoing is true and correct, and that this declaration was executed on **March 25, 2010**, at  
25 San Jose, California.

26  
27  
28  
  
Lizanne Reynolds

260575.wpd