

**DEPARTMENT OF TRANSPORTATION**

LEGAL DIVISION – MS 57

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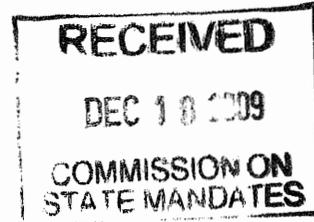
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December 8, 2009



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

In re: Notice of Complete Test Claim Amendment Filing and Schedule for Comments-  
Airport Land Use Commission/Plans II (03-TC-12) Amended, 08-TC-05

Dear Ms. Higashi:

The State of California, Department of Transportation, Division of Aeronautics (hereinafter "Department") hereby submits its response to the May 28, 2009, test claim amendment filed by the Claimant, the County of Santa Clara.

The Staff Analysis ("Staff") states in pertinent part that 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. In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.

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. A "higher level of service" occurs when the new "requirements" were intended to provide an enhanced service to the public.

In the subject action, the Staff recommends that the Commission adopt the subject staff analysis and deny the test claim submitted by the Claimant as the test claim statutes do not constitute a reimbursable state-mandated program within the meaning of the California Constitution, article XIII B, section 6. The Department agrees with the recommendations by the Staff to adopt the staff analysis to deny the test claim.

Many of the issues raised by the Claimant regarding Public Utilities Code sections 21670 and 21675 are jurisdictionally barred as the Commission already ruled on these issues in a final decision issued in CSM 4507. Moreover, the Staff correctly

stated that the subject claim is being made by the County and that the County admits that an Airport Land Use Commission is an independent body. The Department concurs with the Staff that none of the activities claimed under sections 21675 and 21676 are to be performed by the Claimant. Further, the Department agrees with the Staff's findings that neither section 21675 or 21676 require counties to perform any of the activities pled in the test claim. Moreover, Public Utilities Code section 21671.5, subdivision (f) authorizes an Airport Land Use Commission fee authority sufficient to cover the costs of performing the activities stated in the test claim statutes. Of importance is the Staff's distinction between the creation of an Airport Land Use Commission and the activities of an Airport Land Use Commission.

Pursuant to California Constitution, article XIII B, section 6, the Staff identifies Airport Land Use Commissions as ineligible claimants as they are not subject to taxing and spending limitations. The Staff analogizes that even if they were, an Airport Land Use Commission has sufficient fee authority pursuant to Public Utilities Code section 21671.5, subdivision (f). The Department concurs with the Staff that even though the County may have increased costs as a result of the duties imposed by an Airport Land Use Commission, increased costs alone do not result in a state mandate.

Pursuant to Public Utilities Code section 21682, subdivisions (a) and (b), money may be paid to each public entity owning and operating an airport. A public entity is defined as "any city, county, airport district, airport authority, port district, port authority, public district, public authority, political subdivision, airport land use commission, community services district, or public corporation and the University of California." (PUC, §21681, subd. (d).)

The public entity must establish a special aviation fund in which all payments received shall be deposited for expenditure solely for airport and aviation purposes. (PUC, §21684, subd. (a).) Pursuant to Public Utilities Code section 21681, subdivision (f), airport and aviation purposes means expenditures of a "capital improvement nature, including the repair or replacement of a capital improvement, and expenditures for compatible land use planning in the area surrounding an airport" plus the following:

"Activities of an airport land use commission in connection with the preparation of a new or updated airport land use compatibility plan pursuant to Section 21675. Expenditures that cannot be clearly identified as capital improvements shall be submitted to the department for consideration and approval." (PUC, §21681, subd. (f)(16).)

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Finally, as to Public Utilities Code section 21675, the Claimant admits that this section pre-dates 1975. Also, as stated above, the Commission on State Mandates lacks jurisdiction to address section 21670 in regards to the activity of establishing an Airport Land Use Commission or section 21675 in regards to the activity of developing the original airport land use compatibility plan as these issues was the subject of a final decision in CSM 4507. In the CSM 4507 decision, the "Commission found that the development of the airport land use compatibility plan 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 21675.1, subdivision (a)." (See Staff Analysis, pg. 6)

The Department concurs with the Staff and its recommendations to deny the test claim, and further on grounds that it is prohibited by statute and impermissible.

Very truly yours,



RAIYN BAIN  
Attorney

c: Gary Cathey

2 **PROOF OF SERVICE**

3 I, the undersigned, say: I am, and was at all times herein mentioned, a citizen of the United  
4 States and employed in the County of Sacramento, State of California, over the age of 18 years and not  
5 a party to the within action or proceeding; that my business address is 1120 N Street, Sacramento,  
6 California; that on December 8, 2009, I enclosed a true copy of the attached:

7 **December 8, 2009 Letter from California Department of Transportation's Comments Re:  
8 Notice of Complete Test Claim Amendment Filing and Schedule for Comments-  
9 Airport Land Use Commission/Plans II (03-TC-12) Amended, 08-TC-05**

10 in a separate envelope for each of the persons named below, addressed as set forth immediately below  
11 the respective names, as follows:

12 SEE ATTACHED

13  **By Mail:** I caused such envelope(s) to be deposited in the mail at my business address,  
14 addressed to the addressee(s) designated. I am readily familiar with The State of California, Department  
15 of Transportation, Legal Division's practice for collection and processing of correspondence and  
16 pleadings for mailing. In the ordinary course of business at the Department of Transportation, Legal  
17 Division, mail is given the correct amount of postage and is deposited on that same day in a United  
18 States Postal Service mailbox in the City of Sacramento, California.

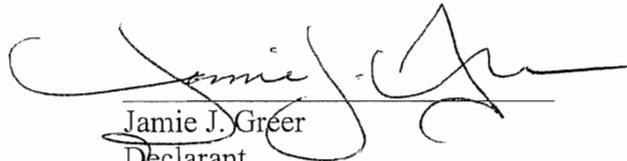
19  **By Personal Service:** I caused such envelope(s) to be delivered in person to the addressee(s)  
20 designated.

21  **By Overnight Courier Service:** I caused such envelope(s) to be delivered via overnight courier  
22 service to the addressee(s) designated.

23  **By Facsimile:** I caused said document(s) to be transmitted to the telephone number(s) of the  
24 addressee(s) designated.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
26 true and correct.

27 Executed at Sacramento, California, on December 8, 2009.

28   
Jamie J. Greer  
Declarant

1 *Airport Land Use Commissions/Plans II, 03-TC-12 Amended*

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