

EXHIBIT C

**BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA**

Test Claim of:)	CSM 97-238-01
The City of San Diego)	Nonprofit Special Use Property Requirements
)	
)	MEMORANDUM IN SUPPORT
)	OF THE CITY OF SAN DIEGO'S
)	TEST CLAIM

This Memorandum is submitted by St. Mark's Episcopal Church in support of the City of San Diego's test claim. The City's position regarding Senate Bill 821 is the correct interpretation under the various legislative enactments. The City's further contention that the City of Merced v. State of California (1984) 153 Cal.App.3d 777, 200 Cal.Rptr. 642 and Contra Costa County v. State (1986) 177 C.A.3d 62, 222 Cal.Rptr. 750 do not apply is likewise correct.

Senate Bill 821 expressly provides:

"Section 9. Notwithstanding Section 17610 of the Government Code, if the Commission 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall not be made

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from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution."

The Legislative Counsel's Digest also describes the effect of this provision as follows:

"This bill would provide that if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures, and if the statewide cost does not exceed \$1,000,000 shall be made from the State Mandates Claims Fund."

Senate Bill 821 was enacted in 1992 and was made effective to eminent domain actions commenced after January 1, 1993. Obviously the Legislature and the Legislative Counsel must have been aware of the Merced and Contra Costa cases at the time S.B. 821 was enacted. If that's correct, the Legislature would clearly have stated in Section 9 that this not a state mandated cost.

The converse is however true because Section 9 of Senate Bill 821 represents in our view an invitation to apply for state reimbursement with the opportunity to actually obtain reimbursement. To contend otherwise, is to suggest that Section 9 has no meaning.

The City of Merced, supra, and Contra Costa County, are also distinguishable. These cases are often cited for the proposition that eminent domain is a discretionary act for a local entity and therefore since this action is optional it is not a state mandated cost. This view disregards the fact that the exercise of the power

of eminent domain occurs everyday in California and is an important governmental tool. More importantly, when a local public entity uses this power it is confronted with these state mandated costs. If the action ever was discretionary, it loses that quality once the decision to condemn is made.

We believe that this proposition i.e., the optional nature of eminent domain borders on dicta as it relates to these decisions, primarily The City of Merced. The Legislature in 1981 directed the State Board of Control to specifically not approve or submit to the Legislature any more 1275 claims. (Ch. 1090, Stats. 1981.). Section 1275 claims were business goodwill loss claims made under Chapter 1275, Statutes of 1975. In addition, the Legislature deleted from Chapter 1090 all claims seeking reimbursement of 1275 claims. We believe these facts to be critical.

More importantly here, is the fact that there appeared to be no legislative expression for recovery (1275 claims) in Merced or Contra Costa, as there is where Section 9 of S.B. 821 is involved.

In short, Chapter 1275, Statutes of 1975 did not include language inviting or suggesting that the local entity could request reimbursement for a mandated cost.

Here, this matter does not deal with the loss of business goodwill. It deals with the application of a special valuation method or program which if all relevant facts are found to exist, must be used. See Section 824 of the California Evidence Code. It was designed to assist special use properties in California such as my client's Church.

Senate Bill 821 was enacted subsequent to the applicable code provisions, Article XIII B, §6, California Constitution, and §§ 17500 et seq. of the Government Code. It would have been quite simple for the Legislature, if it so intended, to declare S.B. 821 was not a state mandated cost. It chose not to do so.

CERTIFICATION

I certify by my signature below that the statements made in this document are true and correct of my own knowledge, and as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on Oct 30, 1997, at San Diego, California, by:

DETISCH & CHRISTENSEN

BY 
Donald W. Detisch
Attorneys for St. Mark's
Episcopal Church

PROOF OF SERVICE

Test Claim Name: Claim of the City of San Diego
 Test Claim Number: CSM-97-238-01
 Government Code Sec.: SB 821 wherein Code of Civil Proc. Sections 1235.155 & 1263.321 and Evidence Code section 824 was added and section 823 was amended
 Chapters:
 Issue: Nonprofit, Special Use Property Requirements
 Originated: 09-Sep-97

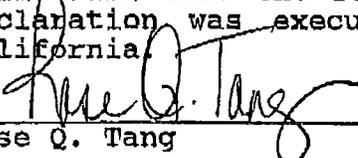
I, the undersigned, declare as follows:

I am employed by Detisch & Christensen, I am 18 years of age or older and not a party to the within entitled cause; my business address is 444 West "C" Street, Suite 200, San Diego, CA 92101.

On October 30, 1997, I served the attached MEMORANDUM IN SUPPORT OF CITY OF SAN DIEGO'S TEST CLAIM via facsimile to the following state agencies and interested parties:

SEE ATTACHED MAILING LIST

I declare under penalties of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 30, 1997, at San Diego, California.



 Rose Q. Tang

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FROM: Donald W. Detisch

DATE: October 30, 1997

RE: CSM/SB# and Claim Title CSM 97-238-01
Claim of the City of San Diego
Memorandum in Support of City of San Diego's
Test Claim

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