

ITEM 5
TEST CLAIM
FINAL STAFF ANALYSIS

Public Utilities Code Sections 21670, 21675, and 21676 as added or amended by Statutes 1967, Chapter 852; Statutes 1970, Chapter 1182; 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 1991, Chapter 140; Statutes 1993, Chapter 59; Statutes 1994, Chapter 644; Statutes 2000, Chapter 506; Statutes 2002, Chapter 438; and Statutes 2002, Chapter 971

Airport Land Use Commission/Plans II

03-TC-12

County of Santa Clara, Claimant

EXECUTIVE SUMMARY

This test claim addresses Airport Land Use Commissions (ALUCs) and Airport Land Use Compatibility Plans (ALUCPs). ALUCs were created under article 3.5 of the Public Utilities Code¹ 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.”² Generally, each ALUC prepares an ALUCP 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.

This test claim was originally pled by claimant and analyzed by staff as though the activities required to be performed by the ALUC were “the County of Santa Clara’s state-mandated duties.”³ There are provisions of law and facts in the record supporting this interpretation.⁴ However, claimant submitted comments on the draft staff analysis on May 12, 2009 arguing that

¹ All further code references are to the Public Utilities Code, unless otherwise specified.

² Statutes 1967, chapter 852.

³ See Exhibit A, claimant’s test claim filing and the declaration of Dave Elledge, Controller-Treasurer for the County of Santa Clara, executed September 25, 2003, at San Jose, California.

⁴ Counties are required to establish ALUCs or alternate bodies/processes pursuant to section 21670 and 21670.1 and are responsible for certain funding and staffing requirements pursuant to section 21671.5, which is not pled in this test claim. Additionally, claimant provided the ALUC with substantial funding during the potential reimbursement period and provides a majority of the staffing for the ALUC. Finally, the Board of Supervisors approved the ALUC’s bylaws and the fee imposed by the ALUC pursuant to section 21671.5 subd. (f).

ALUCs are independent bodies not subject to the control of counties.⁵ Staff agrees with claimant's assertion that the county is not the ALUC, which is supported by law⁶, and therefore finds that this test claim should be denied because:

1. The Commission does not have jurisdiction to address section 21670 as amended by Statutes 1994, chapter 644, with regard to the activity of establishing the ALUC, or to address section 21675 with regard to the activity of developing the original ALUCP because those issues were the subject of a final decision in CSM 4507.
2. None of the activities claimed under sections 21675 or 21676 are required to be performed by the claimant, County of Santa Clara.
3. ALUCs are not eligible claimants under California Constitution article XIII B, section 6 because they are not subject to taxing and spending limitations under articles XIII A and XIII B, and, even if they were, they have sufficient fee authority pursuant to section 21671.5 necessary to comply with article 3.5, which includes all of the activities claimed in this test claim.
4. Although the county has claimed increased costs as a result of duties imposed on ALUCs, increased costs alone do not result in a state mandate.

CONCLUSION

Staff 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 to address section 21670 as amended by Statutes 1994, chapter 644, with regard to the activity of establishing the ALUC, or to address section 21675 with regard to the activity of developing the original ALUCP because those issues were the subject of a final decision in CSM 4507.
2. None of the activities claimed under sections 21675 or 21676 are imposed on the claimant, County of Santa Clara.
3. ALUCs are not eligible claimants under California Constitution article XIII B, section 6 because they are not subject to taxing and spending limitations under articles XIII A and XIII B, and, even if they were, they have sufficient fee authority pursuant to section 21671.5 necessary to comply with article 3.5, which includes all of the activities claimed in this test claim.
4. Although the county has claimed increased costs as a result of duties imposed on ALUCs, increased costs alone do not result in a state mandate.

Recommendation

Staff recommends that the Commission adopt this staff analysis to deny the test claim.

⁵ Exhibit H, County of Santa Clara comments on draft staff analysis, page 1.

⁶ See sections 21670, 21674, which are discussed on page 12 of this staff analysis.

STAFF ANALYSIS

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Claimant

City of Santa Clara

Chronology

- 09/26/03 County of Santa Clara filed test claim with the Commission on State Mandates (“Commission”)⁷
- 10/07/03 Commission staff issued completeness review letter and requested comments from state agencies
- 10/22/03 Department of Transportation (DOT)⁸ submitted comments on the test claim with the Commission
- 11/06/03 DOF requested an extension to November 26, 2003 for filing comments due to competing workload demands
- 11/12/03 The Commission granted DOF’s request for an extension to file comments on test claim with the Commission to November 26, 2003 for good cause
- 11/26/03 DOF submitted comments on the test claim with the Commission
- 02/05/04 Claimant submitted a response to DOF’s comments on the test claim with the Commission
- 04/13/09 Commission sent a request for comments on the test claim to the Governor’s Office of Planning and Research
- 04/21/09 Commission staff issued a draft staff analysis
- 05/11/09 The Governor’s Office of Planning and Research submitted comments on the draft staff analysis
- 05/12/09 DOF submitted comments on the draft staff analysis
- 05/12/09 County of Santa Clara submitted comments on the draft staff analysis

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.

⁷ Based on the filing date of September 26, 2003, the potential period of reimbursement for this test claim begins on July 1, 2002.

⁸ Note that in this analysis DOT refers to the California agency commonly known as CalTrans.

In 1967, the California State Legislature authorized the creation of 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.”⁹ 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.¹⁰ 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. It also contained section 21671 and 21671.5 which are not pled in this test claim. Section 21671 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; and, section 21671.5 provides for terms of office; removal of members; filling vacancies; compensation; staff assistance; prior approval for employment of personnel; and ALUC meetings.

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 County of Los Angeles.¹¹ This statute also added section 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.

⁹ Statutes 1967, chapter 852.

¹⁰ Exhibit I, Senate Floor Analysis of Assembly Bill No. (AB) 3026 and Senate Transportation Committee Analysis of Senate Bill No. (SB) 1233.

¹¹ 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.)

The applicability of the requirements of article 3.5 was expanded by Statutes 1984, chapter 1117 to include counties having airports having only general aviation airports.¹² 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.

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. (Section 21675.) The original ALUCP preparation was required to be completed by June 30, 1991. (Section 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.” (Section 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. (Section 21675.)

Compatibility of Local Land Use Decisions with the ALUCP

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. (Section 21676.)

The Role of the Counties

The counties were charged with the responsibility for establishing an ALUC or alternative body/process. (Sections 21670 and 21670.1.) The board of supervisors also is responsible for providing for the staffing and operational expenses of the ALUC and it controls the ALUC’s budget. (Section 21671.5.) With regard to budget controls, the board of supervisors determines:

- ALUC member “compensation, *if any*” [21671.5, subdivision (b)].
- The level of staff assistance and budgeting for operating expenses [21671.5, subdivision (c)].
- whether to approve the ALUCs decision to employ any personnel as employees or independent contractors. [21671.5, subdivision (d)].

¹² A general aviation airport is an airport not served by a scheduled airline but operated for the benefit of the general public.

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. (Section 21675.) Additionally, DOT provides training and development programs to ALUC staff. (21674 5.)

Fee Authority

Under prior law, 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, current law authorizes the ALUC to "...establish a schedule of fees necessary to comply with this article. . . ." (21671.5, as amended by Stats. 1991, ch.140.)

Test Claim History

The Commission has adopted two prior Statements of Decision on ALUCs. These prior decisions, while relevant to the issue of jurisdiction, are not precedential or binding on the Commission's decision for this test claim.

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 by requiring them to form an ALUC, and develop an ALUCP. The CSM 4231 mandate was suspended under the provisions of Government Code section 17581 from 1990 though 1993. This mandate was then eliminated by Statutes 1993, chapter 59, which made the establishment of an ALUC 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 airport land use commissions, or alternative bodies, to reestablish such commissions or bodies.¹³ 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 21675.1, subdivision (a).

Eligible claimants under CSM 4507 include counties, cities, cities and counties, or other appropriately designated local government entities, except as provided by Public Utilities Code section 21670.2.¹⁴ The CSM 4507 period of reimbursement began January 1, 1995 and the

¹³ Exhibit I, CSM 4507, Corrected Statement of Decision, adopted July 31, 1997.

¹⁴ Exhibit I, CSM 4507, Parameters and Guidelines, adopted December 17, 1998, page 1.

parameters and guidelines adopted 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.
- b. Augment the body, if 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 December 17, 1998 also specifically state: “the airport land use planning process described in Public Utilities Code section 21675 is not reimbursable.”

The CSM 4507 mandate has been suspended in each Budget Act from 2005-2006 to 2008-2009.

Claimant's Position

The 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.”¹⁵ 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.”¹⁶ 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 117.¹⁷ Claimant also states that Statutes 1987, chapter 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 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. Thus, claimant identifies the following activities which it claims are new and reimbursable:

- Review and amend comprehensive land use plans (i.e. ALUCPs).¹⁸
- Review local agencies' amendments of general plans and specific plans within a 60-day¹⁹ time period.
- Review local agencies' adoption of or approval of zoning ordinances or building regulations within a 60-day time period.²⁰
- Meetings/hearings and other resources to meet the 60-day requirement.²¹

Claimant submitted comments on the draft staff analysis on May 12, 2009 which can be summarized as follows:

- Section 21671.5 subd. (f) only gives fee authority to ALUCs, not counties. ALUCs are independent bodies not subject to the control of counties. The ALUC fee authority is

¹⁵ Exhibit A, Test Claim, page 1.

¹⁶ Exhibit A, Test Claim, page 3.

¹⁷ Exhibit A, Test Claim, page 4.

¹⁸ Ibid.

¹⁹ Exhibit A, Test Claim, page 6.

²⁰ Ibid.

²¹ Ibid.

permissive, not mandatory, and even if the ALUC chooses to impose fees, those fees may not be sufficient to cover the county's cost. For example, the Santa Clara County ALUC did not impose fees until 2004 and then only imposed fees to cover the estimated costs of processing referrals under 21676, not the costs of updating the ALUCP.

- County fee authority under Government Code section 66014 and county police power does not apply to mandated ALUC activities because:
 - (1) Government Code section 66014 applies to recovery of costs for plans “that a local agency is required to adopt” and ALUCs, not counties, adopt ALUCPs; and,
 - (2) the county's police powers are limited to the unincorporated area of the county and referrals to ALUCs pursuant to 21676 come from areas surrounding airports which include both incorporated and unincorporated areas.²²

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.²³ In support of this argument DOF cites section 21671.5 of the Public Utility Code. 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 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).²⁴

The Department of Finance submitted comments on the draft staff analysis concurring with staff recommendation to deny the test claim because ALUCs and counties have sufficient fee authority pursuant to subdivision (d) of section 17556 of the Government Code.²⁵

Department of Transportation's (DOT's) Position

DOT, in its comments dated October 22, 2003, states that section 21675.1, subdivision (c) requires that all expenses and costs by the ALUC be provided by its county and reimbursement of the test claim is thus prohibited by statute.²⁶

²² Exhibit H, Claimant comments on the draft staff analysis. Note that staff provided an extensive discussion of county fee authority in the draft staff analysis which is no longer relevant because staff recommends denying this test claim on alternate grounds. Therefore, the county fee authority issue will not be discussed further in this analysis.

²³ Exhibit D, DOF comments on the test claim, page 1.

²⁴ Ibid.

²⁵ Exhibit H, DOF comments on the draft staff analysis, page 1.

²⁶ Exhibit B, DOT comments on the Test Claim, October 22, 2003, page 3.

Discussion

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.”²⁷ 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.²⁸ 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.²⁹

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 agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.³⁰ 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.³¹ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”³² Finally, the newly required activity or increased level of service must impose costs mandated by the state.³³

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 6.³⁴ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an

²⁷ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²⁸ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²⁹ *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.3drd 830, 835 (*Lucia Mar*).

³⁰ *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*,

³¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

³² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

³³ *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.

³⁴ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

“equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”³⁵

The analysis addresses the following issue:

Do the test claim statutes require counties to perform state-mandated activities?

There are three statutory sections pled in this test claim, 21670, 21675 and 21676. The claimant requests reimbursement for the following activities which it claims are new and reimbursable:

- Review and amend comprehensive land use plans (i.e. ALUCPs)
- 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.
- Meetings/hearings and other resources to meet the 60-day requirement.³⁶

This test claim was originally pled by claimant and analyzed by staff as though the activities required to be performed by the ALUC were “the County of Santa Clara’s state mandated duties.”³⁷ There are provisions of law and facts in the record supporting this interpretation.³⁸ However, claimant submitted comments on the draft staff analysis on May 12, 2009 arguing that ALUCs are independent bodies not subject to the control of counties.³⁹ Staff agrees with claimant’s assertion that the county is not the ALUC, which is supported by law and therefore finds that this test claim should be denied because:

1. The Commission does not have jurisdiction to address section 21670 as amended by Statutes 1994, chapter 644, with regard to the activity of establishing the ALUC, or to address section 21675 with regard to the activity of developing the original ALUCP because those issues were the subject of a final decision in CSM 4507.
2. None of the activities claimed under sections 21675 or 21676 are required to be performed by the claimant, County of Santa Clara.
3. ALUC’s are not eligible claimants under California Constitution article XIII B, section 6 because they are not subject to taxing and spending limitations under articles XIII A and

³⁵ *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.

³⁶ Exhibit A, Test claim, page 6.

³⁷ Exhibit A, See claimant’s test claim filing and the declaration of Dave Elledge, Controller-Treasurer for the County of Santa Clara, executed September 25, 2003, at San Jose, California.

³⁸ Counties are required to establish ALUCs or alternate bodies/processes pursuant to section 21670 and 21670.1 and are responsible for certain funding and staffing requirements pursuant to section 21671.5, which is not pled in this test claim. Additionally, claimant provided the ALUC with substantial funding during the potential reimbursement period and provides a majority of the staffing for the ALUC. Finally, the Board of Supervisors approved the ALUC’s bylaws and the fee imposed by the ALUC pursuant to section 21671.5, subd. (f).

³⁹ See Exhibit H, County of Santa Clara comments on draft staff analysis, page 1.

XIII B, and, even if they were, they have sufficient fee authority pursuant to section 21671.5 necessary to comply with article 3.5, which includes all of the activities claimed in this test claim.

4. Although the county has claimed increased costs as a result of duties imposed on ALUCs, increased costs alone do not result in a state mandate.

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.

Based on the membership of the ALUC, it is apparent that the County Board of Supervisors does not control the ALUC. Moreover, 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:

- (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.

As is demonstrated by the plain language of sections 21670 and 21674, the county has only two seats out of seven, which is not a majority, and the ALUC has a number of

independent powers including the ability to adopt rules and regulations. Taken together, these provisions demonstrate the ALUC is an independent body which the county does not control.

1. The Commission Does Not Have Jurisdiction to Address Section 21670 as Amended by Statutes 1994, Chapter 644, With Regard to the Activity of Establishing the ALUC, or To Address Section 21675 With Regard to the Activity of Developing the Original ALUCP Because Those Issues Were The Subject of a Final Decision in CSM 4507

Public Utilities Code section 21670, subdivision (b) requires counties that have an airport served by a scheduled airline to establish an ALUC. Counties that have an airport not served by a scheduled airline, but operated for the benefit of the general public, are required to establish an ALUC, or declare that the county is exempt from creating a ALUC by adopting a resolution finding that there is no noise, public safety, or land use issues affecting any airport in the county. In the event the county determines that an ALUC is not necessary, the county is required to transmit a copy of the resolution to the Director of Transportation.

As discussed above, CSM 4507 is an approved test claim awarding reimbursement for duties imposed on counties pursuant to section 21670 and 21670.1. 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 21675.1, subdivision (a). An administrative agency does not have jurisdiction to rehear a decision that has become final.⁴⁰ Therefore, the Commission does not have jurisdiction over section 21670 or 21670.1 as amended by Statutes 1994, chapter 644 or over section 21675 as in existence immediately before the effective date of Statutes 1994, chapter 644 (i.e. January 1, 1995) with regard to the activity of developing the ALUCP.

2. None of the Activities Claimed Under Sections 21675 or 21676 Are Required to be Performed by the Claimant, County of Santa Clara

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

⁴⁰ Exhibit I, *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.

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 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.

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.

With respect to section 21675, claimant requests reimbursement to review and amend comprehensive land use plans (i.e. ALUCPs).⁴¹ However, based on the plain language of section 21675, ALUCs are required to perform these activities but counties are not.

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

⁴¹ Exhibit A, Test claim, page 6.

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.

With respect to section 21676, claimant requests reimbursement for the following activities:

- 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 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.

Staff recognizes that 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.⁴² However, based on the plain meaning of section 21676, the counties are not required to perform the following activities which are the only 21676 activities pled:

- Review local agencies' amendments of general plans and specific plans within a 60-day time period.

⁴² See Exhibit A, Government Code section 66014 and *Collier v. San Francisco* (2007) 151 Cal.App.4th 1326, page 1353, review denied.

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

Based on a plain meaning reading of section 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.
- 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.⁴³
- 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.

With regard to claimants request for reimbursement for “meetings/hearings and other resources to meet the 60-day requirement,” this language is not required by the statutes pled.

Staff finds that neither section 21675 or 21676 require counties to perform any of the activities pled in the test claim.

⁴³ 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 statute is silent regarding reimbursement for activities required by the amendments made to section 21675. Because section 21675 as amended by Statutes 2002, chapter 971 was not among the sections listed as being contingent upon federal funding, staff finds that the activities mandated by that section are not contingent upon receipt of federal funds. As a side note, the Commission has received comments from OPR which indicate that OPR was not able to reach an agreement with the federal government and therefore, cities and counties are not required to comply with the amendments to sections 65302, 65302.3, 65560, and 65583 of the Government Code, relating to military readiness activities, military personnel, military airports, and military installations.

3. ALUCs are Not Eligible Claimants Under California Constitution Article XIII B, Section 6 Because They are Not Subject to Taxing and Spending Limitations Under Articles XIII A And XIII B, And, Even if They Were, They Have Sufficient Fee Authority Pursuant to Section 21671.5 Necessary to Comply With Article 3.5 Which Includes All of the Activities Claimed in This Test Claim

As discussed above, section 21675 and 21676 require ALUC to perform the following activities:

- 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.
- 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.
- 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.

However, as claimant argues, an ALUC is an independent body, separate from the county. As a separate entity, it has several powers and duties listed in section 21674. But ALUCs do not have the power to levy tax revenues to pay for their expenses. Rather, the operating costs of an ALUC are paid by the county served by the ALUC. (Section 21671.5, subd. (c).) In addition, ALUCs are authorized to charge fees for the cost of complying with Article 3.5. (Section 21671.5, subd. (f).) Thus, ALUCs are exempt from the spending limitations of article XIII B and cannot, by law, claim reimbursement under article XIII B, section 6 of the California Constitution.

Section 21671.5, subdivision (f) authorizes ALUCs to impose fees on proponents of actions, regulations or permits sufficient to cover the costs of performing all of the mandatory activities imposed by the test claim statutes. 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.⁴⁴ (Emphasis added.)

⁴⁴ Note that section 66016 requires that the fees must be adopted by ordinance or resolution, after providing notice and holding a public hearing.

The plain meaning of section 21671.5, subdivision (f) demonstrates that ALUCs have fee authority sufficient to cover the costs of performing the activities mandated 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.”⁴⁵ 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. . .”⁴⁶ 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 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?⁴⁷ (Emphasis in original.)

⁴⁵ Exhibit I, *Freedom Newspapers, Inc v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826.

⁴⁶ Exhibit I, *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.

⁴⁷ Exhibit I, Assembly Committee on Local Government analysis of SB 532, as amended May 14, 1991, page 3.

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.”⁴⁸

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.⁴⁹ 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*.⁵⁰

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.⁵¹ 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 6.⁵² Thus, a local agency must be subject to the tax and spend limitations of articles XIII A and XIII B to be eligible for reimbursement of costs incurred to implement a “program” under section 6.⁵³ Reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B, and only when the costs in question can be recovered solely from “proceeds of taxes,” or tax revenues.⁵⁴

Therefore, because ALUCs are not subject to the tax and spend limitations of articles XIII A and XIII B and because they have fee authority pursuant to section 21671.5 necessary to comply with article 3.5 which includes all of the activities claimed in this test claim, they are not eligible for reimbursement of costs incurred to implement a “program” under section 6.

⁴⁸ Exhibit I, Senate Floor Analysis (Unfinished Business), SB 532 (Bergeson), as amended June 27, 1991, page 1.

⁴⁹ *County of San Diego supra*, 15 Cal.4th at page 81.

⁵⁰ *Ibid*. See also, *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 980-981, 985 (*Redevelopment Agency*); and *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 280-281 (*City of El Monte*).

⁵¹ *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.

⁵² *City of El Monte, supra*, at p. 282.

⁵³ See *Redevelopment Agency, supra*, 55 Cal.App.4th 976, 985-987.

⁵⁴ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

4. Although the County Has Claimed Increased Costs as a Result Of Duties Imposed on ALUCs, Increased Costs Alone Do Not Result in a State Mandate

Staff recognizes that claimant has provided substantial funding to the Santa Clara ALUC during the course of the potential reimbursement period. However, it is well-established that local agencies are not entitled to reimbursement for all increased costs mandated by state law, but only those resulting from a new program or higher level of service imposed on them by the state.⁵⁵ Because the test claim statutes over which the Commission has jurisdiction do not require claimant to perform any of the activities pled, staff finds that they do not impose a new program or higher level of service on counties and therefore the costs claimed by the county are not reimbursable.

CONCLUSION

Staff 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 to address section 21670 as amended by Statutes 1994, chapter 644, with regard to the activity of establishing the ALUC, or to address section 21675 with regard to the activity of developing the original ALUCP because those issues were the subject of a final decision in CSM 4507.
2. None of the activities claimed under sections 21675 or 21676 are imposed on the claimant, County of Santa Clara.
3. ALUCs are not eligible claimants under California Constitution article XIII B, section 6 because they are not subject to taxing and spending limitations under articles XIII A and XIII B, and, even if they were, they have sufficient fee authority pursuant to section 21671.5 necessary to comply with article 3.5 which includes all of the activities claimed in this test claim.
4. Although the county has claimed increased costs as a result of duties imposed on ALUCs, increased costs alone do not result in a state mandate.

Recommendation

Staff recommends the Commission adopt this staff analysis and deny this test claim.

⁵⁵ *County of Los Angeles*, supra, 110 Cal.App.4th 1176, 1189.