

## COMMISSION ON STATE MANDATES

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November 3, 1998

Ms. Debra J. Bevier, Deputy City Attorney  
City of San Diego  
1200 Third Ave., Suite 1200  
San Diego, CA 92101

*And Interested Persons (See mailing list)*

**RE:** Proposed Statement of Decision  
*Non Profit, Special Use Property Requirements* -CSM 97- TC-01  
City of San Diego, Claimant  
Code of Civil Procedure Sections 1235.155, 1263.320 and 1263.321  
Evidence Code Sections 823 and 824  
Government Code Section 7267.9  
Chapter 7, Statutes of 1992

Enclosed please find the Proposed Statement of Decision. The Proposed Statement of Decision will be presented to the Commission for adoption on November 30, 1998.

Comments to the Proposed Statement of Decision received in our office by November 10, 1998 will be included in the agenda binders for the November hearing.

Pursuant to section 1188.4 of the Commission's regulations, the claimant or any interested party may request reconsideration of the Commission's decision to correct an error of law. All requests for reconsideration must be submitted to the Commission no later than 90 days following the Commission's adoption of the Statement of Decision.

Please contact Camille Shelton, Staff Counsel, with questions regarding the above.

Sincerely,

  
PAULA HIGASHI  
Executive Director

Enc. (Proposed Statement of Decision)

c: Mr. Donald W. Detisch  
Mailing List

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**Item #**

**Proposed Statement of Decision**

Code of Civil Procedure Sections 1235.155, 1263.320 and 1263.321  
Evidence Code Sections 823 and 824  
Government Code Section 7267.9  
As added or amended by Statutes of 1992, Chapter 7

***Nonprofit, Special Use Property Requirements***

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**Executive Summary**

The Commission heard this test claim on October 29, 1998. With a 7 to 0 vote, the Commission unanimously denied the test claim.

The test claim legislation affected several statutory provisions pertaining to the payment of just compensation when property is taken by eminent domain and the property has no relevant, comparable value. Property with no relevant, comparable value is defined as "nonprofit, special use property" such as a school, church, cemetery, or hospital. If a governmental entity elects to condemn property that is characterized as nonprofit, special use property, the calculation of just compensation shall be based on the value of reproducing the improvements located on the land without taking into consideration any depreciation or obsolescence of the improvements.

In addition, the test claim legislation requires public entities, prior to commencing action to acquire nonprofit, special use property through eminent domain, to make every reasonable effort to seek alternative property for the project, except as specified.

The Commission concluded that the test claim legislation does *not* impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514 because:

- the exercise of the power of eminent domain is discretionary and not state mandated,
- once a local agency elects to acquire property that contains nonprofit, special use property, the downstream activities, including the statutory requirement to seek alternative property before negotiating with the owner and the payment of just compensation for the property taken, are *not* state mandated,
- evidence of additional costs alone without a corresponding increase in the level of service performed by a local agency does not result in reimbursement, and
- payment of "just compensation" under eminent domain is mandated by the U.S. Constitution.

**Staff Recommendation**

Staff recommends that the Commission approve the attached Proposed Statement of Decision, which accurately reflects the Commission's decision to deny this test claim.