

EXHIBIT D

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DATE: December 8, 1998
TO: Ms. Paula Higashi, Executive Director, Commission on State Mandates
FAX NO.: (916) 445-0278
FROM: Debra J. Bevier
SUBJECT: CSM No. 97-TC-01
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COMMENTS/INSTRUCTIONS:

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December 8, 1998

SENT VIA FACSIMILE AND FEDERAL EXPRESS

Ms. Paula Higashi
Executive Director
COMMISSION ON STATE MANDATES
1300 I Street, Suite 950
Sacramento, CA 95814

Re: CSM No. 97-TC-01
City of San Diego
Code of Civil Procedure, Evidence Code and Government Code
Chapter 7/92
Non Profit, Special Use Property Requirements

Dear Ms. Higashi:

I am in receipt of the Proposed Statement of Decision for the above-referenced matter. As the Administrative Record will show my disagreements and objections to the reasoning and conclusions that the Commission reached and stated throughout the Proposed Statement, I will not reiterate those at this time.

I would request that the following enumerated issues be corrected:

I object to the way the Proposed Statement uses the word "elects" (i.e., "If a governmental entity elects to condemn property ...") throughout the document. An unbiased way to state the thought would be to say "If a governmental entity condemns property..." or "If a governmental entity declares it necessary to condemn property ...".

The declaration of Michael R. Steffen does not state, as suggested at the top of page 5 and referenced as footnote number 3, that "St. Mark's was located in the center of the multi-block area and was needed by the City for use in the construction of the proposed police station".

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I, on behalf of the City of San Diego, did not state that "The church property and improvement on the property were appraised, without consideration of depreciation and obsolescence of the improvements on the land as required by the test claim legislation, at \$700,000" (page 5, first full paragraph).

The second full paragraph on page 5 is factually and completely incorrect and should be stricken. Additionally, besides the fact that the information contained therein is incorrect, I indicated on the record, during the hearing, that the issue of any settlement between St. Marks and the City of San Diego is irrelevant to the issue before the Commission. Mr. Dezember, the Chair of the Commission, agreed and stated on the record that the issue was irrelevant.

The third bulleted item on page 6 is incorrect and misleading. The issue I argued was that discretionary actions have not precluded a finding of reimbursable mandate for previous Test Claims brought before the Commission. And, although the Commission references an Attorney General Opinion that states that the Commission may disregard its earlier decisions, its election to disregard those earlier decisions cannot be arbitrary or unreasonable. I pointed out that because Staff and the Commission never evaluated whether or not disregarding the previous decisions was proper, that the disregard of those previous decisions was automatically arbitrary and unreasonable.

I look forward to receiving a revised Proposed Statement of Decision that is corrected to reflect the issues listed above. Thank you for your consideration.

Sincerely yours,

CASEY GWINN, City Attorney



By

Debra J. Bevier
Deputy City Attorney

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cc: Attached List

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