CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

Proposition 90 (Initiative) Constitutional Amendment

This initiative would amend the California Constitution to require the government to compensate private property owners for government regulatory actions that result in substantial economic loss to private property. It would also narrow the definition of public use and thus limit the government's ability to "take" private property, and increase the compensation required to be paid by the government for taking or damaging private property for public use.

Commission Position: Opposed

(Commission's Bill Analysis and Secretary of State Ballot Pamphlet Material attached)

BILL ANALYSIS
PROPOSITION 90

SUMMARY

This initiative would amend the California Constitution to require the government to compensate private property owners for government regulatory actions that result in substantial economic loss to private property. It would also narrow the definition of public use and thus limit the government's ability to "take" private property, and increase the compensation required to be paid by the government for taking or damaging private property for public use. [1]

PURPOSE OF THE INITIATIVE

The purpose of this initiative is to:

- Require compensation for government actions that result in substantial economic loss to private property, except in certain defined circumstances.
- Prohibit public agencies from taking or damaging private property for use by a private entity, except in certain defined circumstances.
- Modify how compensation for the taking or damaging of private property is calculated, resulting in increased compensation in many circumstances.

ANALYSIS

Proposition 90, sometimes referred to as the "Anderson Initiative" or the "Protect Our Homes Act," seeks to accomplish two goals: (1) requiring government to compensate private property owners when governmental regulatory action reduces the value of private property and (2)

---

[1] Attached to this bill analysis is the Secretary of State's public display draft of the official voter information guide materials regarding Proposition 90, including the text of the initiative. These materials are also available over the internet at www.ss.ca.gov/elections/elections_vig_publicdisplay.htm.

prohibiting the use of eminent domain to facilitate private economic development. Two recent developments have spurred property rights activists to try to accomplish these goals in California and other states: the adoption of Measure 37 in Oregon and the U.S. Supreme Court decision in *Kelo v. City of New London, Conn.*

Property rights proponents have launched efforts to place "regulatory takings" and eminent domain prohibition initiatives on the ballot in several western states in addition to California. As of the date of this report, takings initiatives will be on the November 2006 ballot in Idaho, Montana, and Nevada. In Arizona and Washington, backers of takings initiatives have submitted petitions with substantially more than the required number of signatures, but the signatures are still undergoing verification. Proponents of these measures characterize them as a response to the *Kelo* decision, although, as explained below, the initiatives go beyond the *Kelo* decision, since *Kelo* did not address regulatory takings. Most of these initiatives are funded by a few national donors.

Measure 37: In the November 2004 election, the Oregon electorate enacted Measure 37, an initiative requiring compensation for diminution in the value of property caused by land use regulations adopted after the landowner or the landowner's family acquired the property. Public agencies may avoid financial liability by allowing the landowner to use the property without complying with the regulations that caused the diminution in value of the property. The measure's primary target was Oregon's statewide land use planning program, which establishes urban growth boundaries and requires local governments to adopt comprehensive plans that implement 19 statewide policies.

As of early July 2006, almost 2000 claims have been filed with the State of Oregon seeking a total of more than $4.2 billion in compensation. Upon verification of claims, the State of Oregon's practice has been to waive challenged land use regulations rather than pay compensation. This undermines the State's goals for comprehensive land-use planning and for concentrating most residential, commercial, and industrial development within defined urban limits.

The *Kelo* Decision: In 2005, the U.S. Supreme Court reaffirmed that public agencies may acquire private property through eminent domain and then convey the property to another private party if the conveyance serves some public purpose, such as economic revitalization of a depressed community. The Court cautioned that public agencies may not take private property simply to confer a private benefit on a particular private party. The Court, however, rejected the property owners' argument that it should adopt a narrow definition of what constitutes a public use or purpose. The Court was concerned that a narrow, judicially enforced rule would be inconsistent with prior precedent and would inappropriately entangle the judiciary in policy disputes about when to exercise eminent domain. The Court concluded by observing that States retain the authority to adopt stricter limits on the power of eminent domain than are required by the federal constitution.

The *Kelo* decision attracted considerable media attention. Reports often characterized the decision as a novel expansion of the power of eminent domain despite prior court decisions that had reached similar conclusions. The decision also prompted a considerable amount of legislative activity to restrict the power of eminent domain, including in California (see summary under "Legislative History"). Proposition 90 proponents state that the initiative is in part a response to the *Kelo* decision. However, because the initiative creates compensable "regulatory takings," it goes significantly beyond the issue in *Kelo*.

Proposition 90: Article 1, Section 19 of the California Constitution currently provides that "[p]rivate property may be taken or damaged for public use" only when just compensation has been paid to the owner. Proposition 90 would amend this provision by specifying that:

1) private property may be taken or damaged only for a "stated" public use;
2) "public use" does not include transfers of property to non-governmental owners for economic revitalization, tax revenue enhancement, or "any other uses that are not public in fact;" and
3) "damage" to private property includes "government actions" that result in substantial economic loss to private property, including down zoning of private property, the elimination of any access to private property, and limitations on the use of private air space, except when the action is taken to protect public health and safety.

The initiative establishes new rules that increase the compensation to be paid for property in an eminent domain proceeding, thus increasing the cost to government, and limits disposition of property taken through eminent domain. It also voids unpublished eminent domain judicial decisions. This could either create a new burden on the court system (publication), or void lower court eminent domain decisions. The measure does not prohibit the use of condemnation powers to abate nuisances or restrict administrative powers to take or damage private property under a declared state of emergency. The measure applies to both real and personal property.

The proposition includes a "grandfather" clause specifying that the measure does not apply to any statute, charter provision, ordinance, resolution, law, rule or regulation (collectively "rule") in effect on the date of enactment. Any rule in effect on the date of enactment that is amended after the date of enactment will continue to be exempt from the initiative provided that the amendment both serves to promote the original policy of the rule and does not significantly broaden the scope of application of the rule being amended. The grandfather clause does not apply to "eminent domain powers," but the measure does not define exactly what powers constitute "eminent domain powers."

If enacted, this measure will likely have a substantial impact on implementation of the Coastal Act. Although Proposition 90 appears to grandfather in most statutes and other rules that are currently in effect, the precise scope of that exemption is unclear. For example, even if the current versions of the Coastal Act and certified LCPs are exempt (the measure is not entirely clear about that point), the measure is ambiguous about the effect of future amendments. Rules amended after the initiative's enactment will generally be exempt from the initiative if the amendment both "serves to promote the [rule's] original policy" and "does not significantly broaden the [rule's] scope of application." Whether any particular amendment promotes the Coastal Act's or an LCP's original policy and whether it significantly broadens their scope of application will most likely be the subject of much litigation.

Because of the uncertainties that the initiative would create regarding potential liability for claims brought challenging future LCP amendments, local governments will probably become more reluctant to amend LCPs. Erroneous and out-dated LCP provisions would thus become more difficult to correct, and LCPs may not be able to respond to changing conditions and new knowledge about threats to coastal resources.

If courts construe future amendments as falling outside the scope of Proposition 90's grandfather clause, then both the Commission and local governments would face a much greater financial liability.

Although the Commission does not itself have the power of eminent domain, the eminent domain provisions of the initiative may nonetheless significantly affect implementation of the Coastal Act. By altering how "just compensation" is calculated, and when it is imposed, the initiative could increase the Commission's financial liability if the Commission is ever found to have committed a regulatory taking. The measure requires that valuation must be based on the property's "highest and best use without considering any future dedication requirements imposed by the government." Thus, the initiative anticipates the property would be valued based on a use that would provide the highest value, regardless of land use requirements. In addition, to the extent public projects to enhance coastal resources depend upon the acquisition of private property, this measure may make those projects more expensive or infeasible. Conversely, the measure may prevent some projects that are inconsistent with Coastal Act policies because of increased expense and uncertainty.

In summary, Proposition 90 is intended to restrict public agencies' regulation of land use and exercise of the power of eminent domain. It is likely to accomplish both of those purposes, at least in part, though ambiguities in the initiative prevent any confident predictions about exactly how far reaching its consequences will be. Property owners may obtain greater ability to develop their own property as they prefer, but at the cost of less effective implementation of the Coastal Act.

EXISTING LAW

The United States and California Constitutions require public agencies to provide just compensation when taking private property for public use. Property may be obtained in title through an eminent domain proceeding, during which the proper compensation is determined and the government pays and takes title to the property. The owner then has no further claim on the property. A public agency may convey property acquired through eminent domain to another private entity so long as the conveyance is for a public purpose. In addition, if a public agency imposes restrictions on the use of private property so that the owner is deprived of all economic use of the property, the restrictions are considered a "regulatory taking," which also requires compensation. Diminution in the value of property by itself is not sufficient to establish a regulatory taking.

LEGISLATIVE HISTORY

This constitutional amendment was placed on the ballot by petition. Numerous bills and proposed constitutional amendments are currently pending in the Legislature that would restrict the exercise of eminent domain. ACA 15 (Mullin) would amend the California Constitution to prohibit redevelopment agencies from acquiring private property through eminent domain without first making written findings that the property contains conditions of both physical and economic blight. SCA 15 (McClintock) would amend the California Constitution to provide that private property may be taken or damaged only for a stated public use; that the condemnor must generally own and occupy the taken property; and that if the property ceases to be used for the state public use, it must be offered back to the prior owner. SCA 20 (McClintock) is similar to SCA 15, but would allow private property to be taken for purposes or economic development or other private use with the consent of the owner. SCA 24 (Torlackson) would amend the

California Constitution to provide that "public use" does not include the taking of owner-occupied residential property for private use.

AB 1162 (Mullin) would impose a temporary statutory moratorium on the exercise of eminent domain to acquire owner-occupied residential property if the property would be transferred to a private entity. SB 1650 (Kehoe) would restrict the circumstances in which property acquired through eminent domain may be used for a purpose different than the purpose for which the property was originally acquired. It would also require property acquired through eminent domain to be offered back to the prior owner in certain circumstances.

At the local level, Napa County rejected Measure A in the June 2006 primary election. Measure A would have required the County to compensate property owners for decreases in property value caused by new land use restrictions.

FISCAL IMPACT

The Legislative Analyst's Office estimates that the measure would increase annual state and local government costs to pay property owners for (1) losses to their property associated with certain new laws and rules, and (2) property acquisitions. The amount of such costs is unknown, but potentially significant on a statewide basis.

RECOMMENDATION

Staff recommends that the Commission **OPPOSE PROPOSITION 90.**

ADDITIONAL INFORMATION

More information regarding this initiative and the initiative process is available on the websites of the California Secretary of State (www.ss.ca.gov/elections/elections.htm) and the California Legislative Analyst's Office (www.lao.ca.gov).

The "Protect Our Homes Coalition" maintains a website in favor of the initiative (www.protectourhomes2006.com) and "No on Prop 90, Californians Against the Tax Trap" maintains one in opposition (www.NoProp90.com).

PROPOSITION

90 GOVERNMENT ACQUISITION, REGULATION OF PRIVATE PROPERTY. INITIATIVE CONSTITUTIONAL AMENDMENT.

OFFICIAL TITLE AND SUMMARY ★ ★ ★

Prepared by the Attorney General

GOVERNMENT ACQUISITION, REGULATION OF PRIVATE PROPERTY. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Bars state and local governments from condemning or damaging private property to promote other private projects or uses.
- Limits government's authority to adopt certain land use, housing, consumer, environmental and workplace laws and regulations, except when necessary to preserve public health or safety.
- Voids unpublished eminent domain court decisions.
- Defines "just compensation."
- Government must occupy condemned property or lease property for public use.
- Condemned private property must be offered for resale to prior owner or owner's heir at current fair market value if government abandons condemnation's objective.
- Exempts certain governmental actions.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Increased annual state and local government costs to pay property owners for (1) losses to their property associated with certain new laws and rules, and (2) property acquisitions. The amount of such costs is unknown, but potentially significant on a statewide basis.

ANALYSIS BY THE LEGISLATIVE ANALYST

SUMMARY

This measure amends the California Constitution to:

- Require government to pay property owners for substantial economic losses resulting from some new laws and rules.
- Limit government authority to take ownership of private property.

This measure applies to all types of private property, including homes, buildings, land, cars, and "intangible" property (such as ownership of a business or patent). The measure's requirements apply to all state and local governmental agencies.

PAYING PROPERTY OWNERS FOR ECONOMIC LOSSES

State and local governments pass laws and other rules to benefit the overall public health, safety, or welfare of the community, including its long-term economy. (In this analysis, we use the term "laws and rules" to cover a variety of government requirements, including statutes, ordinances, and regulations.)

In some cases, government requirements can reduce the value of private property. This can be the case, for example, with laws and rules that (1) limit development on a homeowner's property, (2) require industries to change their operations to reduce pollution, or (3) restrict apartment rents.

PROPOSAL

This measure requires government to pay property owners if it passes certain new laws or rules that result in substantial economic losses to their property. Below, we discuss the types of laws and rules that would be exempt from the measure's requirements and those that might require government compensation.

What Laws and Rules *Would Not* Require Compensation?

All *existing* laws and rules would be exempt from the measure's compensation requirement. New laws

and rules also would be exempt from this requirement if government enacted them: (1) to protect public health and safety, (2) under a declared state of emergency, or (3) as part of rate regulation by the California Public Utilities Commission.

What Laws and Rules *Could* Require Compensation?

While the terms of the measure are not clear, the measure provides three examples of the types of new laws and rules that could require compensation. These examples relate to land use and development and are summarized below.

- ***Downzoning Property.*** This term refers to decisions by government to reduce the amount of development permitted on a parcel. For example, a government action to allow construction of three homes on an acre where five homes previously had been permitted commonly is called "downzoning."
- ***Limitations on the Use of Private Air Space.*** This term generally refers to actions by government that limit the height of a building. For example, a government rule limiting how tall a building may be to preserve views or maintain historical character often is called a limitation of "air space."
- ***Eliminating Any Access to Private Property.*** This term could include actions such as closing the only public road leading to a parcel.

In addition to the examples cited above, the broad language of the measure suggests that its provisions could apply to a variety of future governmental requirements that impose economic losses on property owners. These laws and rules could include requirements relating, for example, to employment conditions, apartment prices, endangered species, historical preservation, and consumer financial protection.

Would Government Pay Property Owners for All Losses?

Under current law and court rulings, government usually is required to compensate property owners for losses resulting from laws or rules if government's action deprives the owners of virtually all beneficial use of the property.

This measure specifies that government must pay property owners if a new law or rule imposes "substantial economic losses" on the owners. While the measure does not define this term, dictionaries define "substantial" to be a level that is fairly large or considerable. Thus, the measure appears to require government to pay property owners for the costs of many more laws and rules than it does today, but would not require government to pay for smaller (or less than substantial) losses.

Effects on State and Local Governments

The measure's provisions regarding economic losses could have a major effect on future state and local government policymaking and costs. The amount and nature of these effects, however, is difficult to determine as it would depend on how the courts interpreted the measure's provisions and how the Legislature implemented it. Most notably:

- ***How Many Laws and Rules Would Be Exempt From the Requirement That Government Pay Property Owners for Losses?*** The measure does not require government to compensate property owners under certain circumstances (such as actions to protect public health and safety). If these exemptions were interpreted broadly (rather than narrowly), fewer new laws and rules could require compensation.
- ***How Big Is a Substantial Economic Loss?*** If relatively small losses (say, less than a 10 percent reduction in fair market value) to a property owner required compensation, government could be required to pay many property owners for costs resulting from new laws and rules. On the other hand, if courts ruled that a loss must exceed 50 percent of fair market value to be a substantial economic loss, government would be required to pay fewer property owners.

Under the measure, state and local governments probably would modify their policymaking practices to try to avoid the costs of compensating property owners for losses. In some cases, government might decide not to create laws and rules because of these costs. In other cases, government might take alternative approaches to achieving its goals. For example, government could:

For text of Proposition 90 see page 187.

- Give property owners incentives to voluntarily carry out public objectives.
- Reduce the scope of government requirements so that any property owners' losses were not substantial.
- Link the new law or rule directly to a public health and safety (or other exempt) purpose.

There probably would be many cases, however, where government would incur additional costs as a result of the measure. These would include situations where government anticipated costs to compensate property owners at the time it passed a law—as well as cases when government did not expect to incur these costs. The total amount of these payments by government to property owners cannot be determined, but could be significant on a statewide basis.

LIMITING GOVERNMENT AUTHORITY TO TAKE PROPERTY

Eminent domain (also called "condemnation") is the power of local, state, and federal governments to take private property for a public use so long as government compensates the property owner. (In some cases, government has given the power of eminent domain to private entities, including telephone and energy companies and nonprofit hospitals. In this analysis, these private entities are included within the meaning of "government.")

Over the years, government has taken private property to build roads, schools, parks, and other public facilities. In addition to these uses of eminent domain, government also has taken property for public purposes that do not include construction of public facilities. For example, government has taken property to: help develop higher value businesses in an area, correct environmental problems, enhance tax revenues, and address "public nuisances" (such as hazardous buildings, blight, and criminal activity).

PROPOSAL

This measure makes significant changes to government authority to take property, including:

- Restricting the purposes for which government may take property.
- Increasing the amount that government must pay property owners.
- Requiring government to sell property back to its original owners under certain circumstances.

Below, we discuss the major changes proposed by the measure, beginning with the situations under which government could—and could not—take property.

Under What Circumstance Could Government Take Property?

Under the measure, government could take private property to build public roads, schools, parks, and other government-owned public facilities. Government also could take property and lease it to a private entity to provide a public service (such as the construction and operation of a toll road). If a public nuisance existed on a specific parcel of land, government could take that parcel to correct the public nuisance. Finally, government could take property as needed to respond to a declared state of emergency.

What Property Takings Would Be Prohibited?

Before taking property, the measure requires government to state a "public use" for the property. The measure narrows the definition of public use in a way that generally would prevent government from taking a property:

- ***To Transfer It to Private Use.*** The measure specifies that government must maintain ownership of the property and use it only for the public use it specified when it took the property.
- ***To Address a Public Nuisance, Unless the Public Nuisance Existed on That Particular Property.*** For example, government could not take *all* the parcels in a run-down area unless it showed that each and every parcel was blighted.
- ***As Part of a Plan to Change the Type of Businesses in an Area or Increase Tax Revenues.*** For example, government could not take property to promote development of a new retail or tourist destination area.

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

In any legal challenge regarding a property taking, government would be required to prove to a jury that the taking is for a public use as defined by this measure. In addition, courts could not hold property owners liable to pay government's attorney fees or other legal costs if the property owner loses a legal challenge.

How Much Would Government Have to Pay Property Owners?

Current law requires government to pay "just compensation" to the owner before taking property. Just compensation includes money to reimburse the owner for the property's "fair market value" (what the property and its improvements would sell for on an open market), plus any reduction in the value of remaining portions of the parcel that government did not take. State law also requires government to compensate property owners and renters for moving costs and some business costs and losses.

The measure appears to increase the amount of money government must pay when it takes property. Under the measure, for example, government would be required to pay more than a property's fair market value if a greater sum were necessary to place the property owner "in the same position monetarily" as if the property had never been taken. The measure also appears to make property owners eligible for reimbursement for a wider range of costs and expenses associated with the property taking than is currently the case.

When Would Government Sell Properties to Former Owners?

If government stopped using property for the purpose it stated at the time it took the property, the former owner of the property (or an heir) would have the right to buy back the property. The property would be assessed for property tax purposes as if the former owner had owned the property continuously.

Effects on State and Local Governments

Government buys many hundreds of millions of dollars of property from private owners annually. Relatively few properties are acquired using government's eminent domain power. Instead, government buys most of this property from *willing* sellers. (Property owners often are aware, however, that government could take the property by eminent domain if they did not negotiate a mutually agreeable sale.)

A substantial amount of the property that government acquires is used for roads, schools, or other purposes that meet the public use requirements of this measure—or is acquired to address specific public nuisances. In these cases, the measure would not reduce government's authority to take property. The measure, however, likely would increase somewhat the amount that government must pay property owners to take their property. In addition, the measure could result in willing sellers increasing their asking prices. (This is because sellers could demand the amount that they would have received if the property were taken by eminent domain.) The resulting increase in government's costs to acquire property cannot be determined, but could be significant.

The rest of the property government acquires is used for purposes that do not meet the requirements of this measure. In these cases, government could not use eminent domain and could acquire property only by negotiating with property owners on a voluntary basis. If property owners demanded selling prices that were more than the amount government previously would have paid, government's spending to acquire property would increase. Alternatively, if property owners did not wish to sell their property and no other suitable property was available for government to purchase, government's spending to acquire property would decrease.

Overall, the net impact of the limits on government's authority to take property is unknown. We estimate, however, that it is likely to result in significant net costs on a statewide basis.

For text of Proposition 90 see page 187.

PROP 90 GOVERNMENT ACQUISITION, REGULATION OF PRIVATE PROPERTY. INITIATIVE CONSTITUTIONAL AMENDMENT. ★ ★ ★

ARGUMENT IN FAVOR OF PROPOSITION 90

Proposition 90 stops eminent domain abuse!

Local governments can take homes, businesses, and churches through unfair use of eminent domain. They can also take away your property value with the stroke of a pen.

We are three average Californians, and it happened to us.

Local governments unfairly tried to take our property away from us and turn it over to developers to build condos, hotels, and other commercial projects.

Why? Because these developers are politically connected, and their projects will generate more tax revenue for local governments.

If government can take our property, it can take yours too.

- Manuel Romero had eminent domain used against his family restaurant so that a Mercedes-Benz dealership next door could use the space for a parking lot.
- Bob Blue had eminent domain used against his small luggage store—in his family for almost sixty years—so that a luxury hotel could be built.
- Pastor Roem Agustin had his church threatened with condemnation so that a developer could build condominiums.

It's wrong for senior citizens, small business owners, or anyone who can't fight back to be forced to give up their property so wealthy developers can build giant retail stores, shopping malls, and upscale housing developments.

Government can also take property without compensating property owners.

When governments pass regulations that reduce the value of your property, it's called regulatory taking. When this happens you should be compensated by the government for your lost value.

Government should not be able to take your home—outright or through regulations that reduce the value of your property—without it being for a legitimate PUBLIC use and without paying for what it takes.

That's simple fairness.

That's why California needs Proposition 90, the Protect Our Homes Act.

Proposition 90 will:

- restore homeowners' rights that were gutted last year by the Supreme Court's outrageous *Kelo* decision. That ruling allows eminent domain to be used to take homes and businesses and turn them over to private developers.
- return eminent domain to legitimate public uses, such as building roads, schools, firehouses, and other needs that serve the public and not the financial interests of the government and powerful developers.
- restrict government's ability to take away people's use of their property without compensating them.

Those who benefit financially from the status quo are spending millions to mislead voters and claim the sky is falling.

Opponents are engaging in scare tactics in order to divert attention from their REAL MOTIVE—maintaining the status quo so they can continue to profit from taking our private property.

For example, opponents falsely claim that the measure will hurt the enforcement of environmental regulations. But all existing California environmental laws and regulations are expressly protected.

The Protect Our Homes Act protects *all of us*—and helps families for future generations—while stopping government from taking your property simply to boost tax revenue.

Save our homes and businesses.

Please vote YES on Proposition 90.

For more information, visit www.protectourhomes2006.com.

MANUEL ROMERO, Eminent Domain Abuse Victim

BOB BLUE, Eminent Domain Abuse Victim

PASTOR ROEM AGUSTIN, Eminent Domain Abuse Victim

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 90

Of course we can all agree that Californians deserve protection from eminent domain abuse. And, if Prop. 90 was a well-designed reform of eminent domain, many thoughtful Californians would support it.

However, the out-of-state drafter of Prop. 90 is attempting a bait and switch on voters. This poorly-written proposition is loaded with unrelated and far-reaching provisions that will harm, not protect, homeowners and be very expensive for all California taxpayers.

We can't afford to be misled.

The hidden provisions in Prop. 90 create a new category of lawsuits that allow wealthy landowners and corporations to sue for huge new payouts. These lawsuits and payouts would cost California taxpayers billions of dollars every year.

That's why groups representing taxpayers, homeowners, businesses, police and fire, environmentalists, and farmers all urge you to Vote NO on 90.

THE LEAGUE OF WOMEN VOTERS OF CALIFORNIA says: *"Prop. 90 would fundamentally change our system of representative democracy and put the interests of a few above the well-being of ALL Californians."*

Prop. 90 is anti-taxpayer and anti-homeowner.

That's why THE LEAGUE OF CALIFORNIA HOMEOWNERS OPPOSES PROP. 90 and says: *"Prop. 90 is a trap that actually hurts homeowners. It would cost taxpayers billions and erode basic laws that protect our communities, our neighborhoods, and the value of our homes."*

Say NO to the Taxpayer TRAP. Vote NO on 90.

www.NoProp90.com

KENNETH W. WILLIS, President
League of California Homeowners

CHIEF MICHAEL L. WARREN, President
California Fire Chiefs Association

JACQUELINE JACOBBERGER, President
League of Women Voters of California

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

ARGUMENT AGAINST PROPOSITION 90

The handful of wealthy landowners that paid to put Prop. 90 on the ballot are trying a classic bait and switch on California voters.

They want you to believe Prop. 90 is about eminent domain. That's the bait. But, hidden in the fine print of the measure is the trap—a far-reaching section unrelated to eminent domain that would lead to huge new costs for *all California taxpayers.*

Prop. 90 would change California's constitution to enable large landowners and corporations to demand huge payouts from state and local taxpayers just by *claiming* a law has harmed the value of their property or business—no matter how important the law may be or far-fetched the claim.

According to William G. Hamm, formerly California's nonpartisan legislative analyst, "PROP. 90 could require BILLIONS OF DOLLARS IN NEW TAXPAYER COSTS EACH YEAR, if communities and the state continue to pass or enforce basic laws to protect neighborhoods, limit unwanted development, protect the environment, restrict unsavory businesses, and protect consumers."

With no limit on the total costs, Prop. 90 traps taxpayers into signing a *blank check.* We all pay, while large landowners and corporations reap windfall payouts.

Here's an example of how the "taxpayer trap" works:

If local voters pass a measure to limit a new development to 500 houses—instead of 2,000 houses that a developer *wants* to build—under Prop. 90, the developer could demand a payment for the value of the remaining 1,500 houses. Even if local community services and infrastructure would be strained by the larger development, Prop. 90 would put taxpayers at risk for payment.

Prop. 90 is not just limited to land-use laws. Read the official analysis. Statewide consumer protection laws, restrictions on telemarketing, and worker protections would all trigger new demands for payouts.

As a result, Prop. 90 would lead to thousands of expensive lawsuits that would tie up our courts and result in added bureaucracy and red tape.

The cost of these lawsuits and payouts would rob local communities of billions of dollars in limited resources that fund fire and police protection, paramedic response, schools, traffic congestion relief, and other vital services. That's why the CALIFORNIA FIRE CHIEFS ASSOCIATION, CALIFORNIA POLICE CHIEFS ASSOCIATION, and CALIFORNIA SCHOOL BOARDS ASSOCIATION oppose Prop. 90.

PROP. 90 *would trap taxpayers in a LOSE-LOSE situation.* If communities act to protect their quality of life, taxpayers could be forced to make huge payouts. Or, if communities couldn't afford the payouts, basic quality-of-life protections simply couldn't be enacted. That's why conservation groups, including the CALIFORNIA LEAGUE OF CONSERVATION VOTERS and the PLANNING AND CONSERVATION LEAGUE, warn the measure would drastically limit our ability to protect California's coastline, open spaces, farmland, air and water quality.

For more information on Prop. 90, visit *www.NoProp90.com.*

When you vote, please join groups representing California taxpayers, firefighters, law enforcement officers, educators, small businesses, land conservationists, the environment, and homeowners.

Say NO to the TAXPAYER TRAP. Vote NO on PROPOSITION 90.

CHIEF MICHAEL L. WARREN, President
California Fire Chiefs Association

CHIEF STEVE KRULL, President
California Police Chiefs Association

EDWARD THOMPSON, JR., California Director
American Farmland Trust

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 90

DON'T BE FOOLED BY SPECIAL INTERESTS!!!

Proposition 90 protects our fundamental right to own—and keep—our homes and private property. It's called the "AMERICAN DREAM," and government should not be in the business of destroying it.

Proposition 90 fixes the Supreme Court's outrageous *Kelo* decision.

Opponents—those who profit most from abusing eminent domain and taking private property—are shamelessly trying to mislead you and distort what Proposition 90 does.

Opponents say read the fine print. WE AGREE. You'll see:

Proposition 90 MAINTAINS EVERY current state and local environmental, consumer protection, and public safety law and regulation. Read Section 6, which states, "the provisions added to this section shall not apply to any statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment."

Proposition 90 HAS NOTHING TO DO with funding for police or firefighters.

The public health and safety are PROTECTED. The Legislature can enact ANY NEW LAW to ensure public health and safety.

Proposition 90 protects YOU from politicians who reward their campaign contributors by taking your private property and giving it to someone else.

The REAL opponents of Proposition 90 are those who profit by TAKING OUR HOMES AND SMALL BUSINESSES—greedy government bureaucrats who want higher taxes and mega-developer campaign contributors who make millions using agricultural land, residential neighborhoods, businesses, and churches seized through eminent domain to develop strip malls and other projects. IF THEY WIN, WE LOSE.

PROTECT OUR HOMES: VOTE YES ON 90.

MIMI WALTERS, Honorary Chair
California Protect Our Homes Coalition

MARTYN B. HOPPER, California Director
National Federation of Independent Business (NFIB)

JOHN M. REVELLI, Eminent Domain Abuse Victim

(e)(1) In the case of a corporation that is an "S corporation" for purposes of this part for its first taxable year for which it has in effect a valid federal S election, there shall be allowed as a deduction in determining that corporation's "subchapter C earnings and profits" at the close of any taxable year the amount of any consent dividend (as provided in paragraph (2)) paid after the close of that taxable year.

(2) In the event there is a determination that a corporation described in paragraph (1) has "subchapter C earnings and profits" at the close of any taxable year, that corporation shall be entitled to distribute a consent dividend to its shareholders. The amount of the consent dividend may not exceed the difference between the corporation's "subchapter C earnings and profits" determined under subdivision (d) at the close of the taxable year with respect to which the determination is made and the corporation's "subchapter C earnings and profits" for federal income tax purposes at the same date. A consent dividend must be paid within 90 days of the date of the determination that the corporation has "subchapter C earnings and profits." For this purpose, the date of a determination means the effective date of a closing agreement pursuant to Section 19441, the date an assessment of tax imposed by this section becomes final, or the date of execution by the corporation of an agreement with the Franchise Tax Board relating to liability for the tax imposed by this section. For purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part, a corporation must make the election provided in Section 1368(e)(3) of the Internal Revenue Code.

(3) If a corporation distributes a consent dividend, it shall claim the deduction provided in paragraph (1) by filing a claim therefor with the Franchise Tax Board within 120 days of the date of the determination specified in paragraph (2).

(4) The collection of tax imposed by this section from a corporation described in paragraph (2) shall be stayed for 120 days after the date of the determination specified in paragraph (2). If a claim is filed pursuant to paragraph (3), collection of that tax shall be further stayed until the date the claim is acted upon by the Franchise Tax Board.

(5) If a claim is filed pursuant to paragraph (3), the running of the statute of limitations on the making of assessments and actions for collection of the tax imposed by this section shall be suspended for a period of two years after the date of the determination specified in paragraph (2).

SEC. 10. Section 24586 is added to the Revenue and Taxation Code, to read:

24586. (a) The Franchise Tax Board shall annually determine the total amount of the fees generated by increases in the tax rates for tax years beginning January 1, 2007, and thereafter pursuant to Revenue and Taxation Code Sections 23151, 23181, 23183, 23501, and 23811, and notify the Controller of that amount.

(b) The Controller shall transfer the amount determined under subdivision (a), less the direct, actual costs of the Franchise Tax Board and the Controller for the collection and administration of funds under this article, to the California Clean Money Fund, established pursuant to Section 91133 of the Government Code, for use in funding clean and fair elections for non-federal statewide and state legislative elections. Upon appropriation by the Legislature, the Controller shall transfer the amount of reimbursement for direct actual costs incurred by the Franchise Tax Board and the Office of the Controller in the administration of this fund.

(c) All funds deposited in the California Clean Money Fund shall be allocated, in accordance with Section 91133 of the Government Code, to the Fair Political Practices Commission for disbursement for the purposes and in the manner described in Section 91133 of the Government Code.

(d) This section shall remain in effect so long as Chapter 12 (commencing with Section 91015) of Title 9 of the Government Code, also known as the California Clean Money and Fair Elections Act of 2006, requires the establishment and maintenance of the California Clean Money Fund.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 12. This chapter shall be deemed to amend the Political Reform Act of 1974 as amended and all of its provisions that do not conflict with this chapter shall apply to the provisions of this chapter.

SEC. 13. Severability

(a) The provisions of this act are severable. If any provision or portion of provision of this act or the application of any provision of this act to any person or circumstance is held to be invalid by a court of competent jurisdiction, that invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application.

(b) In adopting this measure, the People specifically declare that the provision of this act adding Section 91139 to the the Government Code shall be severable from the remainder of this act, and the People specifically declare their desire and intent to enact the remainder of this act even if that provision were not to be given full or partial effect. The People recognize that a Montana law prohibiting corporate contributions or expenditures in connection with a ballot measure election was invalidated in 2000 by a divided panel of the Ninth Circuit Court of Appeals in *Montana Chamber of Commerce v. Argenbright*, but believe that the majority opinion in that case incorrectly interpreted relevant decisions of the United States Supreme Court in this area and that more recent decisions of the Supreme Court support the People's rationale for limiting corporate campaign spending in order to eliminate the distorting effects of corporate wealth on the electoral process. Moreover, the People are adopting the prohibitions in this act based upon an evidentiary record and history of California ballot measure elections that compellingly demonstrates the need for the narrowly tailored restrictions contained herein.

SEC. 14. Construction and Amendment

This act shall be broadly construed to accomplish its purposes. This act may be amended to further its purposes by a statute, passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring and signed by the Governor, if at least 12 days prior to passage in each house the bill in its final form has been delivered to the California Fair Political Practices Commission for distribution to the news media and to every person who has requested the Commission to send copies of such bills to him or her. Any such amendment must be consistent with the purposes and must further the intent of this act. Notwithstanding this provision, amendments to adjust for changes in the cost of living may be made pursuant to Section 91145.

SEC. 15. Effective Date

This act shall become effective immediately upon its approval by the voters and shall apply to all elections held on or after January 1, 2007.

SEC. 16. Conflicting Ballot Measures

(a) If a conflict exists between the provisions of this measure and the provisions of any other measure approved by the voters at the same election, the provisions of this measure shall take effect except to the extent that they are in direct and irreconcilable conflict with the provisions of such other measure and the other measure receives a greater number of affirmative votes.

(b) If any provisions of this measure are superseded by the provisions of any other conflicting ballot measure approved by the voters and receiving a greater number of affirmative votes at the same election, and the conflicting ballot measure is subsequently held to be invalid, the provisions of this measure shall be self-executing and shall be given full force of law.

PROPOSITION 90

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the California Constitution.

This initiative measure expressly amends the California Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. STATEMENT OF FINDINGS

(a) The California Constitution provides that no person shall be deprived of property without due process of law and allows government to take or damage private property only for a public use and only after payment to the property owner of just compensation.

(b) Despite these constitutional protections, state and local

governments have undermined private property rights through an excessive use of eminent domain power and the regulation of private property for purposes unrelated to public health and safety.

(c) Neither the federal nor the California courts have protected the full scope of private property rights found in the state constitution. The courts have allowed local governments to exercise eminent domain powers to advance private economic interests in the face of protests from affected homeowners and neighborhood groups. The courts have not required government to pay compensation to property owners when enacting statutes, charter provisions, ordinances, resolutions, laws, rules or regulations not related to public health and safety that reduce the value of private property.

(d) As currently structured, the judicial process in California available to property owners to pursue property rights claims is cumbersome and costly.

SEC. 2. STATEMENT OF PURPOSE

(a) The power of eminent domain available to government in California shall be limited to projects of public use. Examples of public use projects include, but are not limited to, road construction, the creation of public parks, the creation of public facilities, land-use planning, property zoning, and actions to preserve the public health and safety.

(b) Public use projects that the government assigns, contracts or otherwise arranges for private entities to perform shall retain the power of eminent domain. Examples of public use projects that private entities perform include, but are not limited to, the construction and operation of private toll roads and privately-owned prison facilities.

(c) Whenever government takes or damages private property for a public use, the owner of any affected property shall receive just compensation for the property taken or damaged. Just compensation shall be set at fair market value for property taken and diminution of fair market value for property damaged. Whenever a property owner and the government cannot agree on fair compensation, the California courts shall provide through a jury trial a fair and timely process for the settlement of disputes.

(d) This constitutional amendment shall apply prospectively. Its terms shall apply to any eminent domain proceeding brought by a public agency not yet subject to a final adjudication. No statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment that results or has resulted in a substantial loss to the value of private property shall be subject to the new provisions of Section 19 of Article 1.

(e) Therefore, the people of the state of California hereby enact "The Protect Our Homes Act."

SEC 3. Section. 19 of Article I of the California Constitution is amended to read:

SEC. 19. *(a)(1)* Private property may be taken or damaged *only* for *a stated* public use *and* only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. *Private property may not be taken or damaged for private use.*

(2) Property taken by eminent domain shall be owned and occupied by the condemnor, or another governmental agency utilizing the property for the stated public use by agreement with the condemnor, or may be leased to entities that are regulated by the Public Utilities Commission or any other entity that the government assigns, contracts or arranges with to perform a public use project. All property that is taken by eminent domain shall be used only for the stated public use.

(3) If any property taken through eminent domain after the effective date of this subdivision ceases to be used for the stated public use, the former owner of the property or a beneficiary or an heir, if a beneficiary or heir has been designated for this purpose, shall have the right to reacquire the property for the fair market value of the property before the property may be otherwise sold or transferred. Notwithstanding subdivision (a) of Section 2 of Article XIII A, upon reacquisition the property shall be appraised by the assessor for purposes of property taxation at its base year value, with any authorized adjustments, as had been last determined in accordance with Article XIII A at the time the property was acquired by the condemnor.

(4) The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.

(b) For purposes of applying this section:

(1) "Public use" shall have a distinct and more narrow meaning than the term "public purpose"; its limiting effect prohibits takings expected to result in transfers to nongovernmental owners on economic development or tax revenue enhancement grounds, or for any other actual uses that are not public in fact, even though these uses may serve otherwise legitimate public purposes.

(2) Public use shall not include the direct or indirect transfer of any possessory interest in property taken in an eminent domain proceeding from one private party to another private party unless that transfer proceeds pursuant to a government assignment, contract or arrangement with a private entity whereby the private entity performs a public use project. In all eminent domain actions, the government shall have the burden to prove public use.

(3) Unpublished eminent domain judicial opinions or orders shall be null and void.

(4) In all eminent domain actions, prior to the government's occupancy, a property owner shall be given copies of all appraisals by the government and shall be entitled, at the property owner's election, to a separate and distinct determination by a superior court jury, as to whether the taking is actually for a public use.

(5) If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. If private property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.

(6) In all eminent domain actions, "just compensation" shall be defined as that sum of money necessary to place the property owner in the same position monetarily, without any governmental offsets, as if the property had never been taken. "Just compensation" shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

(7) In all eminent domain actions, "fair market" value shall be defined as the highest price the property would bring on the open market.

(8) Except when taken to protect public health and safety, "damage" to private property includes government actions that result in substantial economic loss to private property. Examples of substantial economic loss include, but are not limited to, the downzoning of private property, the elimination of any access to private property, and limitations on the use of private air space. "Government action" shall mean any statute, charter provision, ordinance, resolution, law, rule or regulation.

(9) A property owner shall not be liable to the government for attorney fees or costs in any eminent domain action.

(10) For all provisions contained in this section, "government" shall be defined as the State of California, its political subdivisions, agencies, any public or private agent acting on their behalf, and any public or private entity that has the power of eminent domain.

(c) Nothing in this section shall prohibit the California Public Utilities Commission from regulating public utility rates.

(d) Nothing in this section shall restrict administrative powers to take or damage private property under a declared state of emergency.

(e) Nothing in this section shall prohibit the use of condemnation powers to abate nuisances such as blight, obscenity, pornography, hazardous substances or environmental conditions, provided those condemnations are limited to abatement of specific conditions on specific parcels.

SEC. 4. IMPLEMENTATION AND AMENDMENT

This section shall be self-executing. The Legislature may adopt laws to further the purposes of this section and aid in its implementation. No amendment to this section may be made except by a vote of the people pursuant to Article II or Article XVIII of the California Constitution.

SEC. 5. SEVERABILITY

The provisions of this section are severable. If any provision of this section or its application is held invalid, that finding shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. EFFECTIVE DATE

This section shall become effective on the day following the election

pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

The provisions of this section shall apply immediately to any eminent domain proceeding by a public agency in which there has been no final adjudication.

Other than eminent domain powers, the provisions added to this section shall not apply to any statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment that results in substantial economic loss to private property. Any statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment that is amended after the date of enactment shall continue to be exempt from the provisions added to this section provided that the amendment both serves to promote the original policy of the statute, charter provision, ordinance, resolution, law, rule or regulation and does not significantly broaden the scope of application of the statute, charter provision, ordinance, resolution, law, rule or regulation being amended. The governmental entity making the amendment shall make a declaration contemporaneously with enactment of the amendment that the amendment promotes the original policy of the statute, charter provision, ordinance, resolution, law, rule or regulation and does not significantly broaden its scope of application. The question of whether an amendment significantly broadens the scope of application is subject to judicial review.