

CALIFORNIA COASTAL COMMISSION

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August 8, 2006

TO: Coastal Commissioners and Interested Public

FROM: Peter M. Douglas, Executive Director
 Sarah Christie, Legislative Coordinator

SUBJECT: LEGISLATIVE REPORT FOR AUGUST 2006

CONTENTS: This report provides summaries and status of bills that affect the Coastal Commission and California's Coastal Program as well as bills that staff has identified as coastal-related legislation.

Note: Information contained in this report is accurate as of 7/31/06. Changes in the status of some bills may have occurred between the date this report was prepared and the presentation date. Current status of any bill may be checked by visiting the California Senate Homepage at www.sen.ca.gov. This report can also be accessed through the Commission's World Wide Web Homepage at www.coastal.ca.gov

Legislative Calendar

*Some deadlines may be waived by a majority vote of the Rules Committee

Jan. 1	Statutes take effect
Jan. 4	Legislature reconvenes
Jan. 10	Budget must be submitted by Governor
Jan. 13	Last day for policy committees to hear and report to Fiscal Committees
Jan. 20	Last day for any committee to hear and report 2005 bills introduced in their house
Jan. 27	Last day to submit bill requests to Office of Legislative Counsel
Jan. 31	Last day for each house to pass 2005 bills introduced in their house
Feb. 24	Last day for bills to be introduced
Apr. 6	Spring Recess begins
Apr. 17	Legislature reconvenes
May 19	Last day for policy committees to meet prior to June 5
May 26	Last day for Fiscal Committees to hear and report 2005 bills introduced in their house
May 26	Last day for Fiscal Committees to meet prior to June 5
May 30	Through June 2—Floor Session only. No committees may meet
June 2	Last day for bills to be passed out of house of origin
June 5	Committee meetings may resume
June 15	Budget must be passed by midnight
June 29	Last day for a legislative measure to qualify for the general election ballot
June 30	Last day for policy committees to meet and report bills
July 7	Summer Recess begins at the end of session if Budget Bill has been enacted
Aug. 7	Legislature reconvenes
Aug. 18	Last day for Fiscal Committees to meet and report bills to the Floor
Aug. 25	Last day to amend bills on the Floor
Aug. 31	Last day for each house to pass bills. Final Recess begins at end of session
Sept. 30	Last day for Governor to sign or veto bills passed by the Legislature before Sept. 1

PRIORITY LEGISLATION

AB 32 (Nunez) Air Pollution: greenhouse gases: California Global Warming Solutions Act of 2006

This bill would require the California Air Resources Board (ARB) to adopt procedures and protocols by 2008 to reduce greenhouse gas emission to 1990 levels. The bill would require the ARB to provide an annual report to the Governor and the Legislature on the progress of greenhouse gas emissions, develop compliance and enforcement procedures, and coordinate with state agencies to implement green house gas reduction standards.

Introduced 12/06/04
Last Amended 06/22/06
Status Senate Environmental Quality Committee

Commission Position: Support

AB 782 (Mullin) Redevelopment: project area

This bill would amend the Health and Safety Code to eliminate antiquated subdivisions as a criterion for declaring “blight” in a redevelopment area.

Introduced 02/18/05
Last Amended 01/04/06
Status Passed Senate Local Government Committee

AB 1165 (Bogh) Energy Resources: energy agency reorganization

This bill would abolish the State Energy Resources and Conservation Commission, the California Consumer Power and Conservation Financing Authority, and the Electricity Oversight Board. It would create the Department of Energy, headed by a Secretary of Energy, and would create the California Energy Commission and the Office of Energy Market Oversight within the department. The secretary would be appointed by, and hold office at the pleasure of, the Governor, subject to confirmation by the Senate. The bill would authorize the Governor to appoint members as proscribed by the bill.

Introduced 02/18/05
Last Amended 08/31/05
Status Senate Energy, Utility and Commerce Committee

AB 1204 (Laird) Parks: Monterey Peninsula Regional Park District: transfer

This bill would authorize the Department of Parks and Recreation to transfer 130 acres of land near Carmel-By-The-Sea formerly known as the Hatton Canyon Bypass, to the Monterey Regional Park District for use as a public park.

Introduced 02/22/05
Last Amended 08/15/05
Status In Assembly. Concurrence with Senate amendments pending.

AB 1632 (Blakeslee) Energy: planning and forecasting

This bill would require the Energy Commission to conduct seismic safety assessments of electrical generation facilities over 1700 megawatts. It would also require the Commission to assess the state and local costs of storing spent nuclear waste onsite, and include the assessment in its 2008 energy policy review.

Introduced 02/22/05
Last Amended 06/27/06
Status Senate Appropriations Committee.

Commission Position: Recommend Support

AB 1679 (Mullin) Department of Transportation: property transfer

This bill would have required Caltrans to transfer approximately 30 acres of land in San Mateo County, originally purchased as a future alignment for the Devil's Slide Bypass, to the Department of Parks and Recreation with an option to lease the property to the Montara Water and Sanitary District for groundwater resources and passive public recreation. As amended on 6/21, the bill would transfer the Scott Creek watershed within Santa Cruz County from the jurisdiction of the Central Coast Regional Water Quality Control Board to the San Francisco Bay Regional Water Quality Control Board.

Introduced 05/09/06
Last Amended 06/21/06
Status Senate Environmental Quality Committee
Commission Position: Support

AB 1803 (Committee on Budget) Public Resources

This budget trailer bill, in relevant part, directs the Commission to report annually to the Legislature on the acceptance of OTDs. It also establishes the Coastal Wetlands Account to provide funding for the restoration and management of coastal wetlands statewide.

Introduced 01/10/06
Last Amended 06/27/06
Status **Chaptered** (Chapter 77, Statutes of 2006)

AB 1940 (Koretz) Environment: marine debris

This bill would add Section 30327 to the Public Resources Code, directing the Coastal Commission to take additional steps, within its existing resources, to address marine debris. These additional steps include but are not limited to the following: Increase public outreach and educations; Coordinate with public agencies, including local governments, to reduce marine debris; Convene a multi-agency task force for the purpose of implementing a statewide effort to reduce marine debris. As amended on 6/14, the bill would require the state and regional water boards to implement best management practices for the control of plastic pellets, powder pellets, and fragments into waters of the state.

Introduced 02/01/06
Last Amended 06/14/06
Status Senate Appropriations Committee
Position Support if Amended

AB 2134 (Harman) Funding: coastal wetlands maintenance

This bill would create the Coastal Wetlands Account in the State Treasury, and require the State Lands Commission to deposit \$5 million annually into that account, to be administered by the State Treasurer. Interest from the account would be continuously appropriated to the Department of Fish and Game for wetland maintenance projects. **The substance of this bill has been amended into SB 1125.**

Introduced 03/27/06
Last Amended 03/27/06
Status Assembly Natural Resources Committee

AB 2299 (Harman) California Coastal Act: Aquaculture

This bill would amend Section 30411 of the Coastal Act relating to the requirement for the Department of Fish and Game to prepare a programmatic EIR for existing and potential aquaculture operations. The bill would specify that any private industry funds expended for preparation of the report prior to 2007, including in-kind contributions and materials, would count as matching funds, and would appropriate \$300,000 from the general fund to complete the EIR. Note: This section has been repealed by SB 201 (Simitian).

Introduced 02/22/06
Last Amended 04/27/06
Status Assembly Appropriations Committee. Held under submission.

AB 2348 (Laird) Flood control: Pajaro River

This bill would authorize the state to provide funding to the counties of Monterey and Santa Cruz for a flood control project on the Pajaro River.

Introduced 02/23/06
Last Amended 05/26/06
Status Senate Appropriations Committee

AB 2485 (Jones) Fish and Game: sea otters

This bill would state the Legislature's intent to establishment a research program focusing on how to reduce sea otter mortality from point and non-point pollution sources; develop treatment technologies for dealing with pathogen related and other diseases in sea otters; increase the fine for the illegal take of a sea otter to \$25,000; impose civil penalties for the discharge of any material into state waters that harm marine mammals; require any cat litter products sold in the state to contain packaging information directing users to dispose of cat litter responsibly; establish within the State Treasury a Sea Otter Protection Fund, and direct the Franchise Tax Board to provide for a voluntary contribution check-off for taxpayers to allocate a portion of their tax returns to the Fund.

Introduced 02/24/06
Last Amended 06/19/06
Status Senate Appropriations Committee

AB 2641 (Coto) Indian burial grounds

This bill would require landowners whose property contains Native American burial sites as defined in the bill, to consult with the "most likely descendents" when a burial site is discovered, and ensure that no further disturbance of the site take place until consultation is complete. The consultation shall include recommendations to the landowners from the most likely descendents on culturally appropriate methods to protect the site and the remains. The bill would also require that the Native American Heritage Commission make the final determination in the case of disputes regarding the determination of the existence of a burial ground.

Introduced 02/24/06
Last Amended 04/20/06
Status Senate Appropriations Committee

AB 2701 (Blakeslee) San Luis Obispo County

This bill would authorize the County of San Luis Obispo to undertake any efforts necessary to design, construct, and operate a wastewater collection and treatment system to service the community of Los Osos, which would otherwise be provided by the Community Services District. The County may impose and collect fees and charges to cover costs. The bill would also require the Board of Supervisors of San Luis Obispo County to prepare and submit a proposed assessment to pay for the facilities, and proceed with construction of the project. The district would retain the powers to provide all other services within their jurisdiction. After a minimum of three years and when the district and the county mutually apply for, and are granted, a modification to the waste discharge permit issued by the Regional Water Quality Control Board, responsibilities shall be transferred back to the district.

Introduced 02/24/06
Last Amended 06/21/06
Status Senate Local Government Committee

AB 2852 (Nava) Tsunami hazard mitigation

This bill would direct establish the California Tsunami Steering Committee, within the Office of Emergency Services. The steering Committee would include representatives of several state agencies, including the California Coastal Commission, as well as representatives from coastal counties and ports. The steering committee would guide statewide tsunami planning, mitigation and preparedness activities as prescribed by the bill.

Introduced 02/24/06
Last Amended 04/27/06
Status Assembly Appropriations Committee

AB 2930 (Laird) Property dedications: agricultural and open space easements

This bill would require the State Coastal Conservancy to accept any Offer to Dedicate a conservation or open space easement within 90 days of its expiration date, if no other accepting entity can be found. This bill would also exempt the Coastal Conservancy acceptance process from General Services review.

Introduced 02/24/06
Last Amended 06/22/06
Status Senate Appropriations
Commission Position Support

AB 2972 (Nava) Oil and gas leases

This bill would require the State Lands Commission to declare an application for an oil or gas lease on state lands to be considered to be withdrawn if that application remains incomplete for a period of one year after the first incomplete notice has been sent to the applicant.

Introduced 02/24/06
Last Amended 04/25/06
Status Senate third reading

AB 3028 (Laird) California Coastal Trail

This bill would authorize any state agency issuing a grant or a permit to a public agency for a project near the California Coastal Trail (CCT) to condition the funding or the permit on the requirement to accommodate development of the CCT, or public access from the trail to the coast.

Introduced 02/24/06
Last Amended 06/14/06
Status Senate Appropriations Committee

AB 3031 (Houston) Seismic retrofit projects

This bill would exempt Caltrans seismic retrofit projects from certain provisions of CEQA for seismic retrofit and replacement activities on two Oakland bridge projects.

Introduced 02/24/06
Last Amended 04/19/06
Status Assembly Appropriations Committee

SR 20 (Florez) Relative to tribal gaming

This resolution would require the Senate to adopt a new rule prohibiting the ratification of Indian gaming compacts that authorize Indian casinos on non-tribal lands. The rule would have exempted any compacts that have been negotiated and executed by the Governor prior to September 30, 2005, thus allowing the relocation of the Big Lagoon Rancheria in Humboldt County to the City of Barstow. Committee amendments on 2/28 removed the exemption for Big Lagoon, but the resolution failed passage.

Introduced 01/04/06
Last Amended 02/28/06
Status Senate Governmental Organization Committee

SB 53 (Kehoe) Redevelopment agencies

This bill would require redevelopment agencies to prepare a redevelopment plan to include a description of the agencies plan to acquire real property, including any prohibitions on the use of eminent domain.

Introduced 01/10/05
Last Amended 08/15/05
Status Assembly Appropriations Committee

SB 153 (Chesbro) California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2006

This bill would authorize \$3,945,000,000 in General Obligation bonds for the purpose of financing the acquisition, development and preservation of parks, coastal, recreational, cultural and agricultural lands, and other clean air and water projects as specified. The Senate Natural Resources Committee report to the Conference Committee includes \$10 million for grants to local governments for LCP updates, \$250 million for the State Coastal Conservancy for coastal projects and acquisitions, \$100 million for the Ocean Protection Council for grants, \$350 million for the Wildlife Conservation Board for habitat acquisitions, and \$100 million for easements for “working landscapes.” No specific projects or acquisitions are enumerated.

Introduced 02/15/05
Last Amended 06/19/06
Status Assembly Appropriations Committee.

SB 168 (Chesbro) Tribal gaming: compact ratification

This bill would ratify a tribal gaming compact between the State of California, the Big Lagoon Rancheria and the Los Coyotes Band of Cahuilla and Cupena Indians to allow the transfer of rights to develop a casino at Big Lagoon in Humboldt County, to an urban site in the City of Barstow.

Introduced 02/08/05
Last Amended 04/25/06
Status Assembly Governmental Organization Committee. Failed passage. Reconsideration granted

Commission Position Support

SB 201 (Simitian) Marine finfish aquaculture: Sustainable Oceans Act

This bill would prohibit any person from engaging in finfish aquaculture without a permit from the Fish and Game Commission. It would also require that and final programmatic EIR prepared for a coastal marine finfish aquaculture project and approved by the Fish and Game Commission includes an analysis of specific impacts, and that it ensures that marine finfish aquaculture is managed in an environmentally sustainable manner. The bill would set specific standards for finfish aquaculture leases, including monitoring requirements and management practices. The bill limits finfish aquaculture to species native to California. This bill deletes Section 30411(c) from the Coastal Act, which requires the Department of Fish and Game to prepare a programmatic EIR for existing and potential commercial aquaculture operations, and incorporates that requirement into the new standards.

Introduced 02/22/05
Last Amended 04/17/06
Status **Chaptered** (Chapter 36, Statutes of 2006)

SB 426 (Simitian) Renewable energy

This bill would require the California Energy Commission to conduct a statewide needs assessment that analyzes the state's projected need for natural gas, including Liquefied Natural Gas (LNG), as part of a public process. This bill would also require the Energy Commission, in consultation with the Coastal Commission and other state agencies, to conduct a comparative analysis of the currently proposed sites to assess their relative merits as they relate to public health, environmental constraints and other impacts. Recent amendments clarify that the Federal Energy Bill of 2005 does not abrogate the State's property rights with respect to LNG facilities, and sets specific findings that must be made in furtherance of the Federal Deepwater Port Act of 1974 that would apply to the Governor's decision to disapprove a license to construct an LNG application.

Introduced 02/17/05
Last Amended 08/31/05
Status Assembly. Held at Desk.

Commission Position Support

SB 1003 (Escutia)

This bill would designate the California Energy Commission as the only state agency with permitting authority over Liquefied Natural Gas (LNG) terminals in California. This bill is double-joined with SB 426 (Simitian).

Introduced 02/15/05
Last Amended 07/13/05
Status Assembly Appropriations Committee.

Commission Position Neutral

SB 1024 (Perata) Public works and improvements: bond measure

This bill would enact the Safe Facilities, Improved Mobility, and Clean Air Bond Act of 2005 to authorize an unspecified amount in state general obligation bonds for specified purposes, including the state transportation improvement program, passenger rail improvements, levee improvements, flood control, port infrastructure and security projects, trade corridors of significance, emissions reduction projects, environmental enhancement projects, transit-oriented development, transportation needs in cities, counties, and housing, regional growth, and infill development purposes, subject to voter approval. This bill would require the Secretary of State to submit the proposed bond measure to the voters at the November 7, 2006 election.

Introduced 02/22/05
Last Amended 01/26/06
Status In Assembly

SB 1125 (Chesbro) Natural resources: funding

This bill would repeal the sunset date of July 1, 2006, in Public Resources Code Section 6217 relating to allocation of state tideland funds from the State Lands Commission. The bill would specify the amount of funds allocated to each of the several accounts in the following priority: \$10 million to the Salmon and Steelhead Restoration Account, \$5 million to the new Coastal Wetlands Account, \$10 million to the Marine Life and Marine Reserve Management Account, \$10 million to the Nongame fish and Wildlife Account, \$10 million to the State Parks Deferred Maintenance Account, and \$5 million to the new Wetlands and Riparian Habitat Conservation Account. *Proposed amendments would add \$1 million for the Coastal Commission.*

Introduced 01/09/06
Last Amended 05/01/06
Status Passed Assm. Natural Resources Committee. Referred to Assm. WP&W Committee

Commission Position: Support

SB 1434 (Kuehl) Ocean Protection

This bill would authorize the Ocean Protection Council to hire a science advisor and an executive policy officer.

Introduced 02/22/05
Last Amended 03/27/06
Status Senate Appropriations Committee

SB 1494 (McClintock) Transportation

This bill would authorize the commission to designate transportation projects of statewide significance as top priority projects. The bill would exempt these projects from the California Environmental Quality Act, and would authorize the Department of Transportation or other implementing agency to use design-build and design-sequencing procedures for the project, notwithstanding any other provision of law.

Introduced 02/23/06
Status Senate Transportation and Housing Committee. Held in Committee.

SB 1650 (Kehoe) Eminent Domain

This bill would require that any public agency exercising eminent domain authority may only use such property for the use stated in its original resolution of necessity and approved by a vote of 2/3 of the body. This bill would also require that any real property acquired through eminent domain that has not been used for its stated purpose within a period of 10 years must be sold to the owner from whom it was acquired unless authorized for another use or reauthorized for its original use by a 2/3 vote of the agency.

Introduced 02/24/05
Last Amended 06/12/06
Status Assembly Judiciary Committee

SB 1800 (Duchenev) General Plan: housing plans

This bill would require local governments, when updating their housing element, to also prepare a “housing opportunity plan” as defined by the bill. Among other requirements, Housing Opportunity Plans must contain zoning to accommodate projected housing needs for low and very low-income residents for a period of 10 years. The bill also establishes the Housing Planning Trust Fund to offer loans to local governments for plan preparation, to be administered by the Department of Housing and Community Development. The program would be funded by an unspecified fee increase on local building permits.

Introduced 02/24/06
Last Amended 05/23/06
Status Senate Transportation and Housing Committee

SB 1843 (Committee on Natural Resources) California Coastal Act

This bill would make technical, non-substantive changes to the Coastal Act, delete obsolete sections, and make other conforming changes to the statute. This bill would also authorize the Commission to process a consolidated permit application for projects which span two jurisdictions split between the Coastal Commission and a local government, when requested to do so by both the local government and the applicant, and approved by the Commission’s Executive Director.

Introduced 02/07/06
Last Amended 04/17/06
Status Assembly Floor

Commission Position: Recommend Support

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: Recommend Oppose (Secretary of State Ballot Pamphlet Material attached)

Please contact Sarah Christie, Legislative Coordinator, at (916) 445-6067 with any questions on material contained in this report.

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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) 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.

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.

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 of 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.
Proponent: Anita S. Anderson

Date: July 20, 2006

BALLOT LABEL

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

Bars state/local governments from condemning or damaging private property to promote other private projects, uses. Limits government's authority to adopt certain land use, housing, consumer, environmental, workplace laws/regulations. Fiscal Impact: Increased annual government costs to pay property owners for losses to their property associated with new laws and rules, and for property acquisitions. These costs are unknown, but potentially significant on a statewide basis.

**SUBJECT TO COURT
ORDERED CHANGES**

PROPOSITION 90
Government Acquisition, Regulation of Private Property.
Initiative Constitutional Amendment.
Proponent: Anita S. Anderson

Date: July 20, 2006

BALLOT TITLE AND SUMMARY

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.

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ORDERED CHANGES**

ANALYSIS BY THE LEGISLATIVE ANALYST

Proposition 90
Government Acquisition, Regulation of Private Property.
Initiative Constitutional Amendment.

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.

ANALYSIS BY THE LEGISLATIVE ANALYST

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

ANALYSIS BY THE LEGISLATIVE ANALYST

(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:

- 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

ANALYSIS BY THE LEGISLATIVE ANALYST

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.

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.

ANALYSIS BY THE LEGISLATIVE ANALYST

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

ANALYSIS BY THE LEGISLATIVE ANALYST

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 is it likely to result in significant net costs on a statewide basis.

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 Augustin 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.

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ORDERED CHANGES**

ARGUMENT IN FAVOR OF PROPOSITION 90

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.

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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

**SUBJECT TO COURT
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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.

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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.

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ARGUMENT AGAINST 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

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[FINAL 7/11 @ 2:25pm]

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

**SUBJECT TO COURT
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[7/20/06 @ 1:06]

REBUTTAL TO ARGUMENT IN FAVOR OF
PROPOSITION 90

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

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REBUTTAL TO ARGUMENT AGAINST

PROPOSITION 90

DON'T BE FOOLED BY SPECIAL INTERESTS!!!

Proposition 90 protects our fundamental right to
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.

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REBUTTAL TO ARGUMENT AGAINST
PROPOSITION 90

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

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ORDERED CHANGES**

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 ~~adding sections thereto~~; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

amending a section thereof

SECTION
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.
Section 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."

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Printer - set underscored material in italic type without underline.

SEC
Section 3

AMENDMENT TO THE CALIFORNIA CONSTITUTION

California

Section 19 of Article I of the state 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.

11-5-74
JICA

(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 non-governmental 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.

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- (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.

~~Section 4.~~ ^{SEC.} 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.

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of the California Constitution

Section 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.

Section 6. EFFECTIVE DATE

of the California Constitution

This section shall become effective on the day following the election pursuant to section 10(a) of Article II.

subdivision (a) of

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.

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