



Building A Better Long Beach

Item 12

June 2, 2008

REDEVELOPMENT AGENCY BOARD MEMBERS
City of Long Beach
California

RECOMMENDATION:

Oppose Proposition 98 and Support Proposition 99. (All Project Areas – Citywide)

DISCUSSION

Two initiatives on the June 3, 2008 Primary Election ballot seek to amend the California Constitution with regard to the use of property and the application of eminent domain.

Proposition 98

Proposition 98, sponsored by the Howard Jarvis Taxpayers Association, the California Farm Bureau Federation and the California Alliance to Protect Private Property Rights, would make major changes to laws governing the use of eminent domain and regulation of land use. Proposition 98 would make the following changes to existing law:

- **Governmental Regulations Affecting Price:** Proposition 98 would define a regulation of property that limits the price a private owner may charge another person to purchase, occupy or use his or her real property as a prohibited taking for a private use. This definition would prohibit rent control ordinances and make low- and moderate-income inclusionary housing ordinances adopted in many California communities unconstitutional.
- **Limitation on Use of Eminent Domain for Consumption of Natural Resources:** Proposition 98 would prohibit the use of eminent domain to “transfer the ownership, occupancy or use of private property...to a public agency for the consumption of natural resources...” This provision can be read, for example, to prohibit the use of eminent domain by a city to acquire new drinking water resources. The initiative would also prohibit the use of eminent domain if the public agency would use the property for “the same or substantially similar use as that made by the private owner.” This provision would likely eliminate eminent domain as a tool to acquire conservation and open space easements.

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- **Regulation of Land Use:** Proposition 98 requires a public agency to pay “just compensation” when it regulates the use of land if the regulation transfers an economic benefit from the person who owns the land to another person. Under existing law, public agencies use their police power to enact regulations governing the use of privately owned real property. These regulations range from traditional zoning to nuisance regulations and include conditions imposed on the new development of property. Nearly all of these regulations have an economic impact. Read literally, this provision would make virtually all regulation of land use unconstitutional unless just compensation is paid.
- **Restrictions on the Use of Eminent Domain:**

Property may not be taken and then transferred to a private party. For over 50 years, State and Federal Courts have held that the use of eminent domain by redevelopment agencies to eliminate conditions of blight is a public use. The initiative’s definitions of “taken” and “private use” reverse those cases and prohibit the use of eminent domain where the ownership, occupancy or use of the property acquired is transferred to a private person or entity. This would end the use of eminent domain by redevelopment agencies except for public works projects. It would also prevent the use of eminent domain by other public agencies in public/private partnerships for facilities such as toll roads and privately-run prisons.

New definition of “just compensation.” Existing law requires the payment of just compensation to the owner of property taken by eminent domain. “Just compensation” is defined in the existing eminent domain laws as “fair market value.” A body of well-established law interpreting the meaning of “just compensation” allows both public agencies and property owners to be reasonably certain about the value of property to be acquired. In large part because the value of the property is predictable, an acquisition usually does not require the use of eminent domain and rarely will an eminent domain case actually go to trial. The initiative would add a constitutional definition of “just compensation” that would prevail over this settled body of law. This will probably result in the need to have more frequent recourse to the courts to settle disputes over the meaning of “just compensation.” Among the other changes that the initiative would make are the following:

- Just compensation would include an award of the property owner's attorney's fees if the jury awards one dollar more than the amount offered by the public agency. It is unclear which offer to purchase this provision refers to.
- Just compensation would include elements not currently recognized such as temporary business losses. Relocation and other business re-establishment costs would also be elevated to constitutional status, thereby perhaps abrogating existing statutes which place limits on the type and amount of such expenses for which compensation must be paid.

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- Acquiring “immediate possession” of property made more complicated. Under existing law, after depositing with the court the estimated just compensation, a public agency can obtain possession of property prior to a final judgment based on a showing of an overriding need to take possession prior to final judgment. If the property owner withdraws the deposit, he or she waives their right to contest whether the taking is for a public use but may still contest the amount of just compensation. The initiative would change this approach to prejudgment possession by permitting the property owner to contest both public use and just compensation after withdrawing the deposit. This would make the use of prejudgment possession more problematic for public agencies since they would still be at risk of being prohibited from taking the property (if they lose the right to take issue) rather than simply paying more for it.
- Balance of power shifts. Under existing law, when a public agency makes findings in connection with the taking of property by eminent domain, those findings are entitled to strong presumptions of validity. Courts will overturn those findings only where the property owner is able to demonstrate a gross abuse of discretion, such as bribery or fraud. Courts are also limited to reviewing the administrative record before the public agency. These rules are rooted in concepts of separation of powers—the respect that co-equal branches of government have for the other's proceedings. The initiative would provide that a court must exercise its independent judgment and give no deference to the findings of the public agency. The court's inquiry would also not be limited to the administrative record, and so the property owner could introduce evidence of value and other matters not before the condemning agency at the time the decision to condemn was made.

Proposition 99

Proposition 99, also known as the Homeowners and Private Property Protection Act has been placed on the Primary Election ballot by substantially the same coalition of local government, environmental and business interests that opposed Proposition 90 in 2006. The initiative would make the following changes to existing law:

- Restrictions on the Use of Eminent Domain: In California, the only existing, explicit statutory delegation of the power of eminent domain to acquire property for resale to private parties is found in the Community Redevelopment Law. This distinguishes California from a state such as Connecticut—where the case of *Kelo vs. the City of New London* was decided—that has specific statutory authorization enabling units of local government to use eminent domain for economic development purposes regardless of blight findings. California has no comparable enabling statute.

Proposition 99 would amend the California Constitution to prohibit the use of eminent domain by the State or a local government to acquire an owner-occupied, single-family residence for transfer to a private person. "Owner-occupied residence" is defined as real property improved with a single-family residence (including a condominium or townhouse) that is the owner's principal place of residence for at least one year prior to

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the State or local government's initial written offer to purchase the property. This restriction would apply to the State and all units of local government, including redevelopment agencies.

- Exceptions: The prohibition on the use of eminent domain to acquire single family, owner-occupied homes for resale to private parties would not apply to acquisitions for a public work or improvement. A public work or improvement is defined to include what have been traditionally viewed as public facilities that may be constructed or operated as public/private partnerships (e.g., toll roads). The limitations of the initiative would also be inapplicable when the State or local government exercises the power of eminent domain to abate a nuisance, protect public health and safety from building, zoning or other code violations, prevent serious, repeated criminal activity, respond to an emergency, or remediate hazardous materials.

Effective Date: If passed, the measure would take effect the day following the election. Property acquisitions where both the initial written offer to purchase the property is made on or before January 1, 2008, and a resolution of necessity to acquire the property by eminent domain is adopted on or before December 31, 2008, could be completed.

Construction with Other Measures: The initiative contains a provision that if it appears on the same ballot with another initiative measure dealing with the same or similar subject and both measures pass, this measure will prevail over the other if it receives more votes than the other measure. In such event, the provisions of the other measure will be null and void.

SUGGESTED ACTION:

Adopt recommendation.

Respectfully submitted,



CRAIG BECK
EXECUTIVE DIRECTOR

CB:LAF:VB:vb