

September 19, 2006

Board of Supervisors
County of Marin
San Rafael, CA 94903

Subject: Request to Oppose Proposition 90, the "Protect Our Homes Act, " also known as the "Anderson Initiative," on the November 7, 2006 statewide ballot

Dear Board Members:

Recommendation: It is recommended that your Board oppose Proposition 90, the "Protect Our Homes Act," on the November 7, 2006 statewide ballot. Adopt the attached resolution opposing the measure.

Summary: 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. In addition, governments sometimes exercise the power of eminent domain to acquire property. Eminent domain is the power to take private property for a public use so long as government compensates the property owner. Over the years, government has used eminent domain 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 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. Most government acquisitions of private property, however, are negotiated with willing sellers.

Largely in response to the U.S. Supreme Court decision in *Kelo v. City of New London (Connecticut)* in 2005, which held that a public agency may use eminent domain to take privately-owned, non-blighted property for the purpose of economic development, a number of bills in California and throughout the country have been introduced to further protect the rights of private homeowners and businesses. Proposition 90 specifies that government must pay property owners if a new law or rule imposes only "substantial economic losses" on the owners, requiring government to pay property owners for the costs of many more laws and rules than it does today – for example, laws or regulations passed to protect neighborhoods, control development, protect air and water quality, restrict undesirable businesses or enact new consumer protections.

In addition, Proposition 90 would change the requirements for property valuation such that, if a property is taken by the government and is put to use at a higher value after acquisition, then the property owner must be paid at the fair market value in accordance with the government's use. For example, if a county acquired property for an airport, the owner could seek compensation for the value of the property as an airport - even if the owner could not have obtained approval or built an airport on his or her own under the applicable zoning.

The measure includes provisions that will likely cost taxpayers billions of dollars in new payouts any time a law or regulation is passed to protect neighborhoods, control development, protect air and water quality, restrict undesirable businesses or enact new consumer protection laws. This is because Proposition 90 contains a provision that allows virtually anyone to sue claiming a new law or regulation has impacted the value of their property or business - no matter how far-fetched the claim - and would drive up the cost of infrastructure projects like schools, traffic relief and flood control.

Proposition 90 would apply to all public agencies and utilities, and all state and local government property acquisitions, impacting a wide variety of public projects including schools, roads and highways, dams, levees, and affordable housing – and would limit government's ability to adopt certain land use, housing, consumer, environmental and workplace laws and regulations.

Proposition 90 is opposed by taxpayer, homeowner, police and fire, education, business, environmental, local government and community groups across the state, including: the California State Association of Counties (CSAC); the California Police Chiefs and California Fire Chiefs Associations; California Labor Federation/AFL-CIO and California State Council of Laborers; California Small Business Association; California Housing Consortium and California Housing Partnership Corporation; The Nature Conservancy and Sierra Club California; California Council of Land Trusts; League of California Cities; California Special Districts Association; and many others.

Most agree that some reform to the eminent domain process is required to protect private interests. However, your Board's policy intent, as expressed in the 2006 Legislative Plan, has been that such protections must not compromise the use of eminent domain for legitimate public purposes, and must not compromise open space and the environment.

Because Proposition 90 would negatively impact a wide variety of public projects, and would limit government's ability to adopt land use, housing, consumer, environmental and workplace laws and regulations, it is recommended that your Board indicate its opposition to Proposition 90 by adoption of the attached resolution.

Should you have any questions, feel free to contact me or Dan Eilerman of my staff.

Respectfully submitted,

Matthew H. Hymel
County Administrator