

Meeting Date: May 15, 2008

To: Transportation Policy Workshop (TPW)
From: Rachel Moriconi, Senior Transportation Planner
Subject: **Proposition 98 on June 2008 Ballot**

RECOMMENDATION:

Staff recommends the Regional Transportation Commission adopt an “oppose” position on Proposition 98, which is on the June 3, 2008 statewide ballot.

BACKGROUND

Over the past several years efforts have been undertaken to modify state law in order to provide additional protections for property owners in the eminent domain process. In November 2006, Proposition 90, a property-rights initiative that would have further amended the state Constitution to limit the use of eminent domain, failed by a vote of 47.7% to 52.3%. The state legislature has passed several bills focused on limiting use of eminent domain, including SB1210 which revised the process and time frame whereby public agencies can gain entry onto, and take effective possession of, property being acquired by eminent domain to construct public works projects. Restrictions to eminent domain have resulted in cost increases and delays to many transportation projects.

DISCUSSION

The June 3, 2008 ballot includes Proposition 98: Government Acquisition, Regulation of Private Property. This proposition would further limit the ability of state and local governments to use eminent domain to acquire property and phase out rent control. The RTC’s Elderly/Disabled Transportation Advisory Committee will be discussing the proposition at its May 13, 2008 meeting. Staff will report orally at this meeting on their discussion. **Staff recommends that the RTC take an “oppose” position on Proposition 98.**

The specific provisions of Proposition 98 include:

1. Bars state and local governments from condemning private property for private uses, including public-private partnership projects such as transit-oriented development, toll roads and some rail projects;
2. Prohibits rent control and similar measures. Defines “taken” to include “limiting the price a private owner may charge another person to purchase, occupy or use his or her real property.” This would prohibit local rent control ordinances;
3. Changes the evidentiary standard for challenges to the right to take. Prohibits deference to the agency’s findings in any action to challenge the take. Requires the court to consider all relevant evidence and exercise its independent judgment;
4. Expands the definition “just compensation”. Enlarges the damages an owner can recover to include temporary business losses, relocation expenses and business reestablishment costs.

5. Expands a government agency's liability for attorney's fees and other litigation expenses. Awards attorney's fees and reasonable costs whenever a property owner obtains a judgment for more than the amount offered by the public agency. Current eminent domain law awards attorney's fees and costs only when the public agency's final offer was unreasonable and the property owner's final demand was reasonable.
6. Expands property owner's right to repurchase. Requires government to offer to original owner of condemned property the right to repurchase property at condemned price when property is put to substantially different use than was publicly stated. Affords the property owner with the right to buy back the property before the agency can (a) convey the property or (b) use the property for a use "substantially different" from the stated public use. Requires the public agency to make a good faith effort to locate the property owner and make a written offer to sell the property at the price the agency paid for the property. Does not specify what constitutes a good faith effort, or include a time limit on the right of first refusal.
7. Permits withdrawal of deposit without waiving the right to challenge the take. Currently, a property owner's withdrawal of the deposit of probable just compensation constitutes a waiver of the right to challenge the take. This would make acquisition timing more unpredictable.
8. Prohibits the use of eminent domain for the consumption of natural resources. Defines "private use" to include the taking of private property "for the consumption of natural resources." This provision could preclude the use of eminent domain to construct public water projects.

The official group supporting Prop. 98 is Californians for Property Rights Protection, which is a project of the Howard Jarvis Taxpayers Association. Other supporters include the California Farm Bureau Federation, the California Alliance to Protect Private Property Rights Committee, and the California Republican Party.

Opponents of Proposition 98 include associations that represent California municipalities, tenant groups, environmental groups, and unions, such as the League of California Cities, the National Wildlife Federation, California League of Conservation Voters, AARP, the California Teachers Association, SEIU, Western Center on Law and Poverty, and the California Chamber of Commerce.

Potential Impact to Transportation Projects

This proposition would make it more expensive or even infeasible for government agencies, including the RTC, cities, counties, transit districts, and Caltrans, to use eminent domain for certain transportation projects and would lengthen the project delivery process by extending the property acquisition process. The proposition would also result in more property owners forcing eminent domain actions because the acquiring agencies would have to pay property owners' attorney fees and litigation expenses if the owner recovers even \$1 more than the amount the acquiring agency offers. Eminent domain proceedings take far longer than a negotiated, non-litigated settlement. Proposition 98 would significantly increase the cost for project delivery.

A fact sheet prepared by Caltrans on the potential impacts to transportation projects is attached (Attachment 1).

Potential Impact to Low Income Individuals/Social Services

Proposition 98 includes provisions to phase out rent control. It could eliminate local residential and mobile home rent-stabilization laws, including those enacted by voters; invalidate state laws intended to mitigate burdens on tenants, when accommodations are withdrawn from the market; invalidates

inclusionary housing requirements. Some Elderly and Disabled Transportation Advisory Committee members have expressed particular concern about these provisions.

Proposition 99

A competing measure on eminent domain, sponsored in part by the California League of Cities, would exempt state and local agency infrastructure projects, while limiting acquisition of private property for Redevelopment Agency projects as described below.

1. Prohibits - with several exceptions - the use of eminent domain to acquire an owner-occupied residence for transfer to a private person. Protects only single family residences, such as detached homes, condominiums, townhouses, or granny units, which are the owner's principal place of residence for at least one year before the agency's initial written offer to purchase the property. Does not protect apartment residents, business owners, farms, or churches.
2. Permits transfer to a private person if it is for - or incidental to - a public work or improvement. Permits transfer of an owner-occupied residence to a private person if the acquisition is for, or incidental to, a public work or improvement, to protect public health and safety, to prevent serious, repeated criminal activity, to respond to an emergency, or to remedy environmental contamination.
3. Supersedes competing measure. Supersedes any rival eminent domain ballot measure if this measure receives a higher number of votes. This means that if Proposition 99 receives more votes than Proposition 98, Proposition 99 becomes the law, even if Proposition 98 passes.

SUMMARY

The June 3, 2008 ballot includes Proposition 98 aimed at restricting the ability of government agencies to utilize eminent domain and to phase out rent control. Staff recommends the RTC take a position of "oppose" on this Proposition.

Attachments:

1. Caltrans' Fact Sheet on Impact of Proposition 98 on Transportation Agencies

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