



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: CEO
Department No.: 012
For Agenda Of: 5/6/08
Placement: Set Hearing
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Michael F. Brown, County Executive Officer
Director
Contact Info: Terri Maus Nisich, Assistant County Executive Officer, 568.3412

SUBJECT: **Consideration of Propositions 98 and 99- Eminent Domain Reform**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence:

Recommended Actions:

That the Board of Supervisors set a hearing for May 13th (estimated 25 minutes) to receive a report from the California State Association of Counties on Propositions 98 and 99, which pertain to eminent domain reform.

On May 13th, 2008, that the Board of Supervisors:

- (A) Receive a report from the California State Association of Counties (CSAC) on Propositions 98 and 99.
- (B) Determine whether to adopt a resolution opposing Proposition 98 and supporting Proposition 99.

Summary Text:

The June 3, 2008 Statewide Direct Primary Election will include two ballot measures pertaining to the issue of eminent domain. Eminent domain refers to the authority of a government to take property from a private owner for a "public use" such as public utilities, roads and schools provided that the government pays the property owner "just compensation" for the property (usually fair market value of the property) and relocation costs, including some business losses. According to the Legislative Analyst Office (page 4), Proposition 98 proposes to amend the State Constitution to (1) constrain state and local governments' authority to take private property and (2) phase out rent control. Proposition 99 is a countermeasure to Proposition 98 and proposes to limit governments' use of eminent domain in certain circumstances. It prohibits government from taking an owner occupied single-family home for the purpose of transferring it to a another private party except in circumstances involving public health and safety protection or public work improvements/projects (see Legislative Analyst Office Proposition 99 analysis, pages 2-3).

Background:

This item is on the Board's agenda to receive information regarding two ballot initiatives on eminent domain and determine whether to take a position on either, or both, of these ballot initiatives. The County's Legislative Program Committee met on April 21, 2008 and decided that the propositions should be brought to the Board for consideration. The Committee is recommending a position of opposing Proposition 98 and supporting Proposition 99.

Currently, government may use eminent domain authority to take property for "public use" facilities that the government will own and use or to transfer the property to private owners for development or to non-profit organizations to provide affordable housing. Proposition 98 would constrain this ability by prohibiting government from taking ownership of property for private use including to (1) transfer it to a private party be it a person, business or non-profit organization, (2) use the property for a purpose similar to how the private owner used it or (3) use the property to consume natural resources such as oil and minerals. Furthermore, Proposition 98 would eliminate rent control by (1) preventing government from enacting new rent control laws, (2) terminating rent control measures enacted after January 1, 2007 and (3) phasing out rent control measures enacted before January 1, 2007 on a unit by unit basis for apartment units and mobile home park space as they become vacated. The Legislative Analyst Office also suggests that, if enacted, Proposition 98 would prevent government from taking certain property through eminent domain, thereby constraining governmental use of land for redevelopment, affordable housing and public ownership of water or electric utility services. Proposition 98 is commonly referred to as the "California Property Owner and Farmland Protection Act" and a listing of the organizations in support of this measure is listed at <http://yesprop98.com/>

Proposition 99, the "Homeowner Protection Act," would prohibit government from taking an owner occupied single-family home for the purpose of transferring it to a another private party except in situations where the home was being taken to protect public health and safety, prevent serious repeated criminal activity, respond to an emergency, remedy environmental contamination that posed a threat to public health and safety or use the property for a public work, such a toll road or airport operated by a private party. The suggested prohibition would not apply if the property owner did not live in the home or lived there for less than one year. Proposition 99 is supported by a coalition of various organizations, including the League of Cities and CSAC. A complete list of organizations in support is available at <http://www.no98yes99.com/>

Fiscal and Facilities Impacts:

Budgeted: No

Fiscal Analysis:

Proposition 98 is estimated to increase the costs to local government for using its eminent domain powers primarily due to the proposed increase in compensation amounts to property owners. The Legislative Analyst Office also suggests that, if enacted, Proposition 98 would prevent government from taking certain property through eminent domain, which may result in either fewer acquisitions (at a lower cost) or offering property owners more to purchase property (higher cost). It is possible that Proposition 98 language that imposes government restrictions on "ownership, occupancy or use of property" may apply to and prohibit mandatory inclusionary housing programs and condominium conversion relocation benefits. The fiscal impact of enacting Proposition 99 would not be significant on government.

Staffing Impacts:

Legal Positions:

FTEs:

Special Instructions:

Attachments:

1. Resolution in Opposition to Proposition 98 and Supporting Proposition 99
2. Proposition 98 Materials: June 3, 2008 Primary Elections Materials on Proposition 98 prepared by the CA Secretary of State, including text and Analysis prepared by the CA Legislative Analyst Office
(http://www.sos.ca.gov/elections/vig_06032008.htm and http://www.lao.ca.gov/ballot/2008/98_06_2008.pdf)
(http://www.sos.ca.gov/elections/bp_06032008_direct_primary/txt_pros_law_98_99.pdf)
3. Proposition 99 Materials: June 3, 2008 Primary Elections Materials on Proposition 99 prepared by the CA Secretary of State and Analysis prepared by the CA Legislative Analyst Office
(http://www.sos.ca.gov/elections/vig_06032008.htm and http://www.lao.ca.gov/ballot/2008/99_06_2008.pdf)

Authored by:

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cc: Rachel Van Mullem, Deputy County Counsel
Paul McIntosh, Executive Director, CSAC