BOARD OF SUPERVISORS
AGENDA LETTER

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

Agenda Number:

Submitted on:
(COB Stamp)

Department Name:	County Executive Office
Department No.:	012
For Agenda Of:	10/3/06
Placement:	Departmental
Estimate Time:	30 min
Continued Item:	NO
If Yes, date from:	
Vote Required:	Majority

TO: Board of Supervisors

FROM: Department Director: Michael F. Brown, County Executive Officer, 568-3400
Contact Info: Terri Maus Nisich, Assistant County Executive Officer, 568-3400

SUBJECT: Legislative Program Committee: County Position Regarding Ballot Initiatives

County Counsel Concurrence:
As to form/legality: ☐ Yes ☐ No ☒ N/A

Auditor-Controller Concurrence:
As to form: ☐ Yes ☐ No ☒ N/A

Recommended Action(s):

A. Adopt a position of "Support" on Proposition 1A, "Oppose" on Proposition 88 and "Oppose" on Proposition 90, which are ballot initiatives that are part of the November 7, 2006 general election.

B. Consider whether to take a position on the remaining statewide and local ballot initiatives.

Summary:

The Legislative Program Committee met on September 18, 2006 to consider whether the County should take a position on the thirteen statewide and seven local ballot initiatives that are part of the November 7, 2006 general election. The Committee recommended that the Board of Supervisors take a position on three initiatives that either directly benefit or adversely affect the County: (1) "Support" Prop 1A, (2) "Oppose" Prop 88 and (3) "Oppose" Prop 90.

Prop 1A would limit the State's ability to suspend or borrow Prop 42 funds, which are gasoline sales tax revenues that fund state and local transportation projects. Supporting this measure ensures that Public Works receives its share of Prop 42 monies from the State to fund transportation projects throughout the County. Prop 88 would create a statewide parcel tax of $50 a year on most parcels to fund specific education programs for schools (kindergarten through high school). Opposing this measure prevents the County from incurring costs of administering the new parcel tax and helps ensure that revenue raised locally remains within the County. (The measure would allocate funds on a per student basis so revenues raised in one county may be spent on school services in another county.) Prop 90 affects the County's use of eminent domain and opposing it means protecting the County's ability to regulate land use, plan communities and protect agriculture and open space (see attached memo from Counsel).

The Committee further recommended that the Board take "no position" on the remaining initiatives based on the following reasons: (1) it did not directly affect the County; (2) its potential effect on the County had both beneficial and negative consequences and/or (3) it was a policy decision that required a majority of the Board to determine the position. A matrix summarizing the propositions and consequences on departments is attached.

Background:

This item is on the agenda to allow the Board of Supervisors to articulate the County's position on several ballot initiatives facing the County's voters on November 7, 2006. The 2006 Legislative Program Committee, which includes Second District Supervisor Susan Rose, Third District Supervisor Brooks Firestone, County Executive Officer Michael F. Brown, Auditor- Controller Bob Geis and County Counsel Shane Stark, met on September 18, 2006 and the members present unanimously voted to support Prop 1A, oppose Prop 88 and 90 and take no position on the remaining state and local initiatives. Supervisor Rose was not present; however, she requested to be on record as supporting Prop 84 and Prop 86 and opposing Prop 85 and 90.

The goal of the Committee is to promote effective and efficient local government through the legislative process by sponsoring or supporting legislation that would benefit the County and by supporting or opposing legislation that either benefits or adversely impacts the County. Prop 1A, 88 and 90 clearly align with this espoused goal. Propositions 1B, 1C, 1D, 1E have the potential to benefit the County; however, these measures require the State to sell general obligation bonds (a total of approximately $37 billion) in order to finance this infrastructure bond package of transportation, housing, flood protection and education. Similarly, Prop 84 has the potential to benefit parks, water quality and flood control within the County, but would be financed through the sale of $5.4 billion in general obligation bonds. Since the economic benefit to the County of the passage of these various measures must be weighed against the potential adverse impact to the County of the State assuming more debt service to pay for these bonds, the Committee members present on September 18, 2006 recommended the County not to take formal position on these measures.

Prop 83, known as "Jessica's Law", increases the penalties imposed on sexual offenders, limits the area where offenders may live and requires lifetime monitoring of convicted sex offenders via GPS devises. The potential benefits to the County in terms of enhanced public safety must be weighed against the potentially significant costs of implementation of this measure. Potential ramifications of the passage of this measure include: increased inmate population housed at the County's jail; increased staff at the Public Defender to address increased caseloads of sexually violent predators, which tend to be represented by the Public Defender; and the potential cost to Probation of procuring GPS, equipping offenders with the devise and lifetime monitoring offenders via GPS.

Prop 85 requires parental or guardian notification of a pregnant unemancipated minor at least 48 hours before an abortion is performed. If the measure is passed, there may an increase in court activity. If the measures passes and decreases the number of abortions performed, there may be an increase in the use of certain programs administered by Social Services. However, the Committee recommends that the County does not take a position on this measure as it is does not fall under the guidelines of directly benefiting or adversely impacting the County and may be construed as a partisan issue.

Prop 86 increases the excise tax on cigarettes an additional $0.13 (for a total cost of $2.60 a pack in taxes) to fund treatment, prevention and research. This measure has both potential benefits and adverse consequences to the County. The increased sales tax may lead consumers to purchase cigarettes and other tobacco products on the Internet, out of state or through a black market. While Prop 86 contains a provision that it will backfill First 5 for the loss of any Prop 10 funding that results from decreased sales, the amount of the loss in tax revenue is unknown. Therefore, the potential benefits to the County in terms of area hospitals receiving funding for uncompensated care is predicated on Prop 86 increasing revenues from cigarette taxes. While Public Health would lose $237,000 it received from Prop 99, it is expected that Prop 86 revenues would offset this loss. It is unclear of the local government will be charged with administering the funding of Prop 86 revenues to hospitals and other funding recipients.

Prop 87 imposes a tax on oil production to fund $4 billion in alternative energy programs. Since there is no known impact to the County of this measure, there is no recommended position. The County has almost no oil reserves in its property taxes. It is unknown if the cost of gasoline and other petroleum products used by the County would increase with passage of this measure (the measure's language states that the cost of the tax cannot

be passed onto the consumer). If the measure is passed and gasoline use decreases, the County would lose monies for transportation funded through gasoline taxes unless the formula for calculating the funds is changed. Local businesses and educational institutions may benefit from grants and other incentives to develop alternative fuels technology and products.

Prop 89 finances public funds for candidates for statewide offices through an increased tax on corporations and financial institutions. Since there is no direct impact to the County, it is recommended that the County not take a position on this measure.

The California State Association of Counties (CSAC) is supporting Prop 1A, 1B, 1C, 1D and 1E, opposing Prop 87, 88 and 90, is neutral on Prop 84 and 86 and is taking no position on Prop 83, 85 and 89.

Fiscal and Facilities Impacts:

The ballot initiatives that have the potential to impact the County fiscally are as follows:

Prop 1A would guarantee the County receives Prop 42 funds from the State. Prop 42 requires a local match of about $440,000 from the General Fund. Public Works received $2.7 million this year from the State for previous years' Prop 42 funds that were suspended or borrowed.

Prop 1B may result in $30-150 million for the County, depending on whether Measure D passes and provides a local match to the potential Prop 1B funds the County could receive. However, it is financed through State bonds.

Prop 1C finances housing programs through State bonds and could benefit the County's housing programs.

Prop 1D finances the construction and modernization of schools and educational institutions through a state bond. Local schools and educational institutions may benefit and may not need to issue bonds locally to fund needed improvements.

Prop 1E would indirectly protect drinking water and its quality for some parts of the County even though funding is mostly allocated to the Delta levee system. There is no money allocated to the Santa Maria levee.

Prop 83 would increase the jail population and may necessitate a need for additional staffing for the law and justice departments. Costs of the GPS monitoring requirement are unknown. It is unclear whether the state or local government will be required to incur the costs of monitoring. Probation may be tasked with implementation.

Prop 84 could result in funding to parks, flood control subvention projects and integrated regional water management within the County, but would do so through the issuance of a State bond.

Prop 85 may increase the use of certain social services, but only if the measure was successful in decreasing abortions by teen parents and single mothers over time. There is no immediate impact to the County.

Prop 86 could augment funding for local hospitals and the Children's Health Initiative if the increased sales tax does not significantly decrease the sales of cigarettes and tobacco products within the State. Public Health may be required to administer the program, which would be costly and burdensome.

Prop 87 has no immediate or direct impact to the County.

Prop 88 would require the Auditor-Controller to administer this new parcel tax, which is administratively complex and costly. The school tax generated within the County may not be allocated to schools within the County, so the extent to which local schools would benefit is unknown.

Prop 90 would be financially expensive to the County if it passes as it authorizes new lawsuits and requires the County to payout on acquired property based on the intended purpose of the land rather than "fair market value" in eminent domain cases, which may prevent parks, roads and levees projects from occurring or make them more costly to complete.

Locally, Measure D would continue to fund transportation projects throughout the County.

Budgeted: ☐ Yes ☒ No

Fiscal Analysis:

Staffing Impact(s):

Legal Positions: **FTEs:**

The implementation of some propositions, should they pass, may require additional staffing for some County Departments. It is unknown to what extent staffing would need to increase for select departments.

Special Instructions:

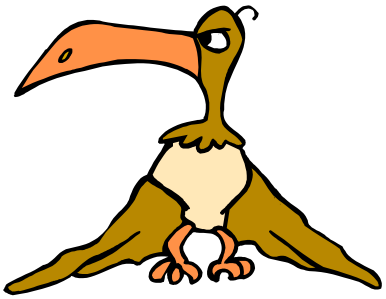
Attachments: (list all)

Matrix entitled "Summary of Statewide and Local Ballot Measures"
Memo from Counsel on Prop 90
Memo from District Attorney on Prop 83 and Measure P
Letter from the Commission on the Status of Women on Prop 85

Authored by:

Sharon Friedrichsen, 568-3107
cc:

SANTA BARBARA COUNTY COUNSEL



To: Legislative Program Committee

From: Shane Stark, County Counsel

Re: Recommendation to Oppose Proposition 90
("Protect Our Homes" Initiative Constitutional Amendment)
Committee Meeting 9/18/06

The Committee will consider and make recommendations to the Board of Supervisors on ballot propositions to be voted on at the November 2006 statewide general election.

I request the Committee to OPPOSE Proposition 90. It is a shameless abuse of the initiative power. It unnecessarily amends the State Constitution and bypasses the Legislature. Beyond "eminent domain reform," its ostensible purpose, Proposition 90 redefines "taking" of private property. This log-rolling amendment reverses 75 years of case law. It threatens the county's ability to regulate land use, abate predatory economic practices, plan communities, and protect agriculture, recreation, open space, coastal values and the environment. It effectively freezes local zoning laws and limits local police power. Proposition 90 makes one-sided and costly changes to eminent domain law that chill redevelopment and public projects. Its passage will have a direct and immediate negative effect on Santa Barbara County and its cities and districts.

The official ballot material, including the text of the measure, arguments, Attorney General title and summary, and analysis by the Legislative Analyst, are attached, as is a one-page summary.[1]
Links to materials on Proposition 90 include:
Opposition -- No on 90 -- http://www.noprop90.com/.
Support – Yes on 90 -- http://www.90yes.com/

The reasons Proposition 90 should be opposed follow, with technical comments in endnotes.[2]

0 PROPOSITION 90 IS AN ABUSE OF THE INITIATIVE POWER.

- The reserved initiative power of the people is best used when the elected government has failed to address a problem.[3] In the case of Proposition 90, there is no failure to act. The "problem" and the need to amend the State Constitution are largely manufactured.

- The impetus behind Proposition 90 is the fear that governments are using the power of eminent domain to evict people from their homes in order to sell the property to big corporations and make more money. The fear arises from the United States Supreme Court *Kelo v. City of New London*[4] decision. In that case, a majority of a divided Court took a broad view, rather than a narrow view, of the requirement of the takings clause of the Fifth Amendment that private property only be taken for "public use."

- *Kelo* follows a 50-year line of Supreme Court decisions that uphold government appropriation of private property in order to promote redevelopment plans and other economic policy goals.[5] The difference between *Kelo* and earlier cases is that Ms. Kelo's

house was not in a blighted area and was transferred by the government to a large corporation as part of an overall economic plan.[6] After taking the property, the government neither owned it nor controlled its use. The dissent argued that the majority had interpreted the "public use" requirement out of the Constitution. *In California, this cannot happen. An area must be found blighted before government can take private property for redevelopment. To qualify as a public use, the government must pursue a public purpose and own or control the use of property taken by eminent domain*[7]

- The *Kelo* decision resonated across the nation and caused a strong public reaction against the idea that government can take a family home against its will and resell it to a corporation in order to generate more tax revenue. Sensational articles appeared in magazines. A flurry of "eminent domain abuse" bills were introduced in Congress[8] and state legislatures. Several statutes and a constitutional amendment by Senator Tom McClintock dealing with eminent domain were introduced in the California Legislature.[9]

- Proposition 90, styled the "Anderson Initiative" after a San Mateo home owner, was primarily financed by a New York developer named Howie Rich. The petition was circulated and signatures were gathered by paid circulators. The signatures were gathered based on the slogan "Protect Our Homes" and the dubious premise that the measure is necessary to protect Californians' homes from government seizure.[10] The petition received more than 1 million signatures and qualified for the November ballot. The success of the initiative reflects strong post-*Kelo* hostility toward government interference with property rights.

- California eminent domain law is complicated. It is governed by a broad constitutional provision that private property may be taken or damaged only for public use and when compensation is paid[11], a detailed legislative scheme (Eminent Domain Law), and judicial interpretation. The law of regulatory takings is based on a long-settled view of the police power. Its details are devilishly complex and evolving in the courts.

- Proposition 90 amends the State constitution to take a narrow view of "public use." It bypasses the Legislature. As will be seen below, Proposition 90 goes far beyond the "problems" created by *Kelo*. The League of Cities says the measure "goes dangerously beyond what is needed or reasonable to protect homeowners from the use of eminent domain." There is absolutely no need for a constitutional amendment. The proposition is a cynical, shameless effort to play on the fears and ignorance of California voters and create radical, permanent change to California economic development and land use law.[12]

0 PROPOSITION 90 REDEFINES REGULATORY TAKINGS AND REVERSES DECADES OF LAND USE LAW.

Beyond the provisions that "respond to *Kelo*" and "address eminent domain abuse" by re-writing eminent domain law (see below), Proposition 90 threatens to change the landscape of local land use regulation. Paragraph (b)(8) defines "damage" to property as including "government actions that result in substantial economic loss to private property," including such common actions as down zoning and "limitations on the use of private air space" (presumably height limits in the zoning code). It provides an exception for takings "to protect public health and safety," but these circumstances are not defined.

This is a sharp departure from existing law, which balances property rights and public good. California and federal courts have long held that risk of loss to property value resulting from reasonable government regulation is part of the ordinary risk of owning property. Courts recognize that government could hardly function if it were required to compensate owners for regulatory effects. Rather, compensation is only required when government regulations "go too far." "Regulatory takings" are only compensable if (a) they deprive the owner of all economically beneficial use of the property; (*Lucas v. South Carolina Coastal Council* 505 U.S. 1003 (1992)); or (b) the court concludes, based on the economic impact of the regulation on the claimant, the character of the government action and other factors, that the regulation interfered to a significant extent with the owner's distinct investment-backed expectations. *Penn Central Transp. Co. v. New York City* 438 U.S. 104 (1978).[13]

Local police and land use power must be "dynamic and elastic" to adapt to changing community needs.[14] The limit on compensation for regulation protects the ability of government to function. Many governmental actions impact the value of property. Zoning and other land use decisions, regulations protecting the environment, agriculture, and affordable housing, mitigation of impacts required under CEQA, and many other actions can diminish the value of property.[15] Depending on the ultimate construction of the "public health and safety" exception language, Proposition 90 could commit California to a radical break from well-settled law. *The result will be a drastic reduction in the number of governmental regulations affecting the value of property or greatly increased cost of such regulation*.

A group of city attorneys has identified some chilling effects on development and regulation expected to result from the adoption of Proposition 90.

- The redefinition of taking could mean lawsuits for damages by neighboring landowners when they feel that approvals of zone changes, general plan amendments, specific plans, etc. reduce their property values. The specter or reality of such lawsuits would have a chilling effect on government's inclination to change existing land use designations.

    - To protect the public fisc, local agencies may be well advised to condition post Proposition 90 development approvals on indemnification commitments that include not only defense costs but responsibility for damage claims (the economic loss claimed by neighboring property owners).

    - Developers will be well-advised to negotiate and obtain waivers of such claims from neighboring property owners as part of the approval process.

    - Otherwise, changes to land use regulations will need to be credibly tied (through findings) to health and safety imperatives, since that is the only basis on which government can take an action that may result in a claimed substantial economic loss. It's not clear to what extent health and safety imperative will be demonstrable.

    - Proposition 90's eminent domain provisions will make it difficult for local government to acquire property for schools and infrastructure that make a given development an attractive place for people to locate.

    - There will be a significant period of uncertainty and land use approval inaction while ambiguities and legal challenges are resolved vis-à-vis Proposition 90. It is predicted that

local agencies will be particularly reluctant to change land use designations and incur the risk of litigation during this period.

- 0 Property values could go down over time as government loses the ability to adopt new regulations that discourage incompatible uses from locating in given neighborhoods or upgrade infrastructure that serves property.

- 0 Efforts to regulate industries may be hampered if industries affected by regulatory systems sue for compensation for substantial economic losses to their private property as the result of government actions. Similarly, deregulation efforts may be hampered by claims from persons protected by regulations.[16] Any new economic regulations will be subject to challenge if they cost the private sector more (for example, minimum wage increases or restrictions on overtime).

0 PROPOSITION 90 MAKES RADICAL, ONE-SIDED CHANGES TO EMINENT DOMAIN LAW.

The Constitution leaves the details of eminent domain to the Legislature. The California Eminent Domain Law, Cal Code Civ Proc § 1230.010, provides for government acquisition of private property for public use and the determination of compensation to owners. The legislation and interpreting court decisions balance the interests of acquiring government entities and property owners.

Constitutional provisions prevail over conflicting legislation and court decisions. Proposition 90 amends Article I § 19 in several ways. They are summarized below, with technical details in endnotes.

- o Government must own or occupy property. The property acquired by eminent domain must be owned and occupied by the condemnor or another governmental agency.[17] A former property owner has the right to re-acquire the property if it ceases to be used for the stated public purpose with the property being assessed for property tax purposes at its pre-condemnation value.

- o The property must be acquired for "public use" rather than a "public purpose." This is intended to prohibit transfers to private parties for economic development. It is likely to result in years of litigation over the permissible scope of redevelopment activity.[18]

- o All unpublished appellate opinions are declared null and void. This is a bizarre provision. Its meaning is a mystery. Under present law, unpublished opinions – such as the Court of Appeal opinion finding the County's mobilehome rent control ordinance did not cause an unconstitutional taking -- are binding on and have meaning to the parties to the case.[19]

- o All owners of property must be given the government's full appraisal report before the government takes possession of property. Under current law, appraisal reports need not be given except in narrow circumstances. The result of the change is to put agencies at a tactical disadvantage in eminent domain cases.[20]

- o The determination of whether property is taken for a public use is a jury determination, rather than a question of law to be decided by the judge, as under current law. Again, this imposes tactical disadvantages and added cost to agencies.[21]

- Changed valuation rules. Subsection (b) of the initiative contains confusing and somewhat contradictory statements about how to value property acquired or damaged. They include:

    - Property must be valued at its highest and best use, without discounting for property that must be dedicated to public use. This overturns current law, which excludes such property from "highest and best use" valuation and thus confers a windfall on owners.[22]

    - If property acquired by the government is used for "proprietary" purposes and will have a higher value than the owner could receive under the use allowed by the current zoning, the owner is entitled to compensation based on the higher government use.[23]

    - Paragraph (b)(6) defines just compensation as "the 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." This re-definition of just compensation will create enormous confusion because its meaning is uncertain and it conflicts with existing provisions of the Eminent Domain Law.[24]

    - "In all eminent domain actions…just compensation shall include…compounded interest and all reasonable costs and expenses actually incurred." (b)(6) This appears to include attorneys' fees. However, "a property owner shall not be liable to the government for attorney fees or costs in any eminent domain action." (b)(9) That an owner will always and the government will never get attorneys fees is a powerful deterrent to settlement.

- Parcel-by-parcel blight determination. Paragraph (e) contains an exemption for the use of eminent domain to "abate nuisances such as blight, ….provided those condemnations are limited to abatement of specific conditions on specific parcels." Because of the qualification limiting this exemption to specific parcels, it is only marginally useful to redevelopment agencies. Redevelopment agencies are authorized to use eminent domain to eliminate blight within a blighted area. Individual parcel by parcel determinations of blight are not required under current law. *See Berman v. Parker*, 348 U.S. 26 (1954). The change appears aimed to overrule *Berman*.

- Uncertain applicability. The provisions defining damage to property (the regulatory takings provisions, discussed below) do not apply to regulations in effect on the effective date and some new regulations. The uncertain language will likely engender litigation and give local entities great pause in adopting new regulations.[25]

CONCLUSION

Proposition 90 is a poorly drafted, one-sided and virtually unchangeable measure whose effects go far beyond the "eminent domain abuse" it is supposedly intended to correct. The League of Cities is vigorously opposing the measure. The CSAC Board of Directors voted to oppose it.

I advise the Legislative Committee to recommend that the Board of Supervisors OPPOSE Proposition 90 because it is an abuse of the initiative power, an excessive and one-sided detrimental change in eminent domain law, and a wholly unwarranted deterrent to traditional and reasonable local regulation of land use and other legislation intended to promote the welfare and well-being of the community.

END NOTES

[1] Thanks to John Murphy of the Nossaman law firm for materials on the *Kelo v. City of New London* decision and the Initiative. Available from County Counsel are a paper Kelo v. City of New London: Action…Reaction…Overreaction? (explaining eminent domain law, Kelo, and reaction), a slide show The Anderson Initiative: Will California's Eminent Domain Law be Radically Changed? (explaining initiative) and several short articles.

[2] The analysis of the initiative is drawn from a paper written by Brent Hawkins, General Counsel of the California Redevelopment Association. County counsels and city attorneys who have studied the measure generally concur with his conclusions.

[3] Cal. Const. Art. II § 8(a) "The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them." The view that the initiative is to be used sparingly as a safeguard when ordinary government processes have failed to respect the will of the people is a "progressive" rather than a "populist" view of direct democracy. ("Progressives" regard the initiative as an adjunct to the three constitutional branches of government; "populists" distrust government and regard the power of the people as paramount and properly used to make major policy decisions.) In California, the populist view prevails in law and fact. The people may directly enact laws that cannot be repealed by the Legislature. The courts broadly and deferentially interpret initiatives. Because all power of government ultimately resides in the people, the initiative is a power reserved to the people, not granted to them. (See Art. II § 1 "All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.") Courts jealously guard this right of the people; they liberally construe the initiative power and will preserve it if doubts can reasonably be resolved in favor of its use. (See Miller *& Lux v. San Joaquin Agricultural Co.* (1922) 58 Cal.App. 753. Since Proposition 13 in 1978, initiatives are responsible for major policy and structural changes in California. See Kenneth P. Miller, Constraining Populism, the Real Challenge of Initiative Reform 41 Santa Clara L.Rev. 1037.

[4] ___ U.S. ___, 125 S.Ct. 2655, 162 L.Ed.2d 439 (2005). Stevens, J., delivered the opinion of the Court, in which Kennedy, Souter, Ginsburg, and Breyer, JJ., joined. Kennedy, J., filed a concurring opinion. O'Connor, J., filed a dissenting opinion, in which Rehnquist, C. J., and Scalia and Thomas, JJ., joined. Thomas, J., filed a dissenting opinion. Justices O'Connor and Rehnquist have been replaced by Chief Justice Roberts and Justice Alito.

[5] See *Berman v. Parker* (1954) 348 U.S. 26 (D.C. redevelopment law authorizing condemnation of non-blighted parcel within blighted area served public purpose); *Hawaii Housing Authority v. Midkiff* 467 U.S. 229 (1984) (law breaking up land oligopoly had rational public purpose*); Lingle v. Chevron* 554 U.S. 528 (2005) (court should defer to local judgment on whether law limiting rent charged to gas stations served public purpose).

[6] The Supreme Court of Ohio in *City of Norwood v. Horney* 2006 Ohio 3799 (July 26, 2006) recognized that *Kelo* invites states to limit eminent domain: "In reviewing an appropriation similar to that at issue here, a sharply divided United States Supreme Court recently upheld the taking over a federal Fifth Amendment challenge mounted by individual property owners. [*Kelo v. New London*]. Although it determined that the federal constitution did not prohibit the takings, the court acknowledged that property owners might find redress in the states' courts and legislatures, which remain free to restrict such takings pursuant to state laws and constitutions.

In response to that invitation in *Kelo*, Ohio's [legislature] unanimously enacted [an Act that expressed the] belief that as a result of *Kelo*, "the interpretation and use of the **state's eminent domain law could be expanded to allow the taking of private property that is not within a blighted area**, ultimately resulting in ownership of that property being vested in another private person in violation of [the Ohio Constitution]. The Act created a task force to study the use and application of eminent domain in Ohio, and imposes "a moratorium on any takings of this nature by any public body until further legislative remedies may be considered." (Emphasis added.)

[7] See Health & Safety Code § 33037 (declaring policy that "the redevelopment of blighted areas … constitute public uses and purposes for which … private property [may be] acquired, and are governmental functions of state concern in the interest of health, safety, and welfare of the people of the State and of the communities in which the areas exist"). The law was recently amended to tighten the definition of blight.

Counties and cities are authorized by statute to exercise eminent domain to acquire property necessary to perform their municipal functions. *City of Oakland v. Oakland Raiders* (1982) 32 Cal.3d 60, 65. The Court has held that the acquisition of property to be used as a privately controlled parking lot is not a public use that supports eminent domain, but acquisition of a parking lot with public entity control and management is a public use. See *San Francisco v. Ross* (1955) 44 Cal. 2d 52, 57 (holding that lack of public control distinguished the case from redevelopment plan upheld in *Berman v. Parker*). In theory, public entity general funds could be used for economic development that served an overall community plan or other public use, so long as public control is maintained and the public use continued. In practice, economic development is overwhelmingly pursued only under the Community Redevelopment Law, which requires a blight determination.

[8] The principal *Kelo* bill in Congress is H.R. 4128, the "Sensenbrenner bill," which passed the House on November 3, 2005. Its key provision prohibits states and their political subdivisions from using eminent domain to transfer private property to other private parties for economic development — or allowing their delegatees to do so. The prohibition applies to any fiscal year after the bill's enactment in which the state received federal economic development funds. A state that violates the prohibition is ineligible to receive federal economic development funds for two fiscal years following a judicial determination of violation — a penalty enforceable by private right of action. H.R. 4128 is pending before the Senate Judiciary Committee.

The Bond Amendment to the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act for FY2006 is now enacted law: P.L. 109-115, Section 726. It provides that "No funds in this Act may be used to support any federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use: [emphasis added, note limitation to the specific appropriations bill.] Under this act "public use shall not be construed to include economic development that primarily benefits private entities." Transportation and utility projects, and projects to remove blight or brownfields are considered "public use" for eminent domain purposes.

[9] The California Legislature held joint committee hearings in 2005 to consider redevelopment and blight in the wake of *Kelo*. Numerous bills and constitutional amendments were proposed. Two bills dealing with eminent domain passed the Legislature and have been sent to the Governor for signature. One bill would provide property owners with notice and an opportunity to respond before a court can grant a local government possession of private property (SB 1210 Torlakson). Another bill would require redevelopment agencies to specify when, how and where they can use eminent domain authority and would allow such agencies to ban the condemnation of residential property. (SB 53).

In January 2006, Senator Tom McClintock introduced a constitutional amendment (SCA 20) to amend Article I § 19 in light of *Kelo*. The amendment provided that private property may be taken or damaged only for a stated public use and not without the consent of the owner for purposes of economic development, increasing tax revenue, or any other private use, nor for maintaining the present use by a different owner. It required the condemnor to own and occupy the property, except as specified, and used only for the stated public use. It provided that: if the property ceases to be used for the stated public use, the former owner would have the right to reacquire the property for its fair market value and assessed at its former base value. It amended just compensation and legal procedures. It did not address regulatory takings. SCA 20 failed in committee.

[10] According to Nossaman, "proponents tout the initiative as necessary to "protect our homes" from runaway redevelopment. Some opponents point out that redevelopment does not represent a substantial threat to most of "our homes." Over the last five years, eminent domain was used in less than 3% of redevelopment agency

property acquisitions in California. Last year, a total of only 3 single family owner-occupied homes statewide were acquired for redevelopment through formal eminent domain proceedings."

Proposition 90 proponents advance a broader theme of "eminent domain abuse." They claim "strong-arm eminent domain tactics to destroy healthy businesses and vibrant residential neighbors, not for the public benefit but for the benefit of high sales-tax generators" and point to large scale economic development efforts in San Jose, Garden Grove and Lancaster. Proponents also cite the controversial Conaway Ranch case in Yolo County, which does not involve a redevelopment project. Opponents might cite the case as an example of what a county could not do if Proposition 90 passes. The county condemned the 17,300 acre ranch, long used as a hunting and recreation site, in order to protect its recreational values and agricultural water rights, after the property had been acquired by developers of housing. Fierce litigation ensued. The county won at trial on whether the taking was for a public use and got the right to purchase the property. Because of the cost of compensation, the county recently reached a settlement agreement with the owner and abandoned the condemnation. See Los Angeles Times 9/9/06 Yolo County Ends Bid to Save Ranchland via Eminent Domain.

[11] California Constitution Article I § 19 provides that: "Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. 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."

Courts consider eminent domain an inherent attribute of sovereignty that is universally recognized and necessary to the very existence of government. "When properly exercised, that power affords an orderly compromise between the public good and the protection and indemnification of private citizens whose property is taken to advance that good. That protection is constitutionally ordained by the Fifth Amendment to the United States Constitution … and Article I § 19…. The two constitutional restraints are that the taking be for a "public use" and that "just compensation" be paid therefor." *City of Oakland v. Oakland Raiders* (1982) 32 Cal.3d 60, 64.

[12] The Oklahoma Supreme Court recently declared a post-Kelo initiative petition that dealt with eminent domain laws and required damages for any zoning laws that adversely affected private property invalid and ordered it stricken from the ballot because it was improper "log-rolling" and violated the "single subject" provision of the Oklahoma Constitution. *In re: Initiative Petition* No. 382 2006 OK 45 (June 20, 2006). The Court agreed with the challengers that the initiative covered two separate subjects – eminent domain and land use; the proponents of the initiative argued that regulatory takings and eminent domain were part of a single subject – takings. The California Constitution has a similar single subject rule (Art. II § 8(d)); the same argument can be made against Proposition 90. California courts interpret the rule liberally to promote the reserved initiative power (see note 3); an initiative will not violate the single subject rule if its separate provisions are reasonably germane to a single purpose. See *Wilson v. Superior Court* (1982) 134 Cal.App.3d 173.

[13] The United States Supreme Court has stated: ". . . we must remain cognizant that 'government regulation -- by definition -- involves the adjustment of rights for the public good." *Andrus v. Allard* 444 U.S. 51, 65. "Government could hardly go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." *Pennsylvania Coal Co. v. Mahon* 260 U.S. 393, 413. However, there is no precise formula for determining when a land use action or regulation will cause a taking, leaving the regulatory takings analysis an "ad hoc inquiry". *See Penn Central*, 438 U.S. at 124.

[14] See *Miller v. Board of Public Works* (1925) 195 Cal. 477, 485 ("the police power is not a circumscribed prerogative, but is elastic and, in keeping with the growth of knowledge and the belief in the popular mind of the need for its application, capable of expansion to meet existing conditions of modern life and thereby keep pace with the social, economic, moral, and intellectual evolution of the human race….")

[15] A modest list of local regulations that could potentially cause economic loss includes: Growth Management measure, Open space, wetland, habitat or farmland protection, View shed protection, Historical preservation; Affordable housing (inclusionary, linkage fee, other), Mobilehome regulations, Building limitations, Height, setback, or bulk regulations, Access requirements including Coastal Access, Parking restrictions, Economic regulations that affect businesses, Changing Zoning classifications (e.g., from commercial to residential), Traffic generation requirements, Restrictions on hours of operation, Density or Lot Size requirements, Design and Architectural review, Logging, Mining or Resource Extraction Regulations, Water Use, Noise or lighting regulations, Air quality standards that affect the use or value of property, Adult business regulations.

[16] There is no language in Proposition 90 restricting the compensation requirement to economic losses clause to real property, and the voters' pamphlet (which will be a source of legislative intent) also construes the concept of economic losses broadly.

[17] The provisions that require property taken by eminent domain to be owned and occupied by the condemnor contain an exception for leases to "any other entity that the government assigns, contracts or arranges with to perform a public use project." This was probably intended to preserve the ability to privatize certain public services, but the language is so broad that it may include ground leases to private developers to carry out redevelopment projects.

[18] According to redevelopment counsel "Section (b) of the initiative attempts to draw a distinction between 'public use' and 'public purpose,' a task the courts have abandoned as impossible and not meaningful. Subsection (b)(1) states that: "'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." The language seems to create a distinction between takings that are for a 'public use' and those that are for a 'public purpose,' permitting the former and prohibiting the latter. However, the condemnation of property by a redevelopment agency to eliminate blight has been declared by the Legislature to be both a public use and a public purpose. (Health & Saf. Code § 33037.) Does this mean that the condemnation of property by a redevelopment agency for transfer to a private developer is permitted because the Legislature has defined it as a public use?"

"The proponents would probably say no and point to subsection (b)(2) which states that '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 . . . ' However, that same phrase goes on to say '. . . 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.' Nearly all property acquisitions by redevelopment agencies are preceded by contracts with private developers pursuant to which the private developer agrees to carry out the redevelopment of the property pursuant to a specific scope of development, which assures that the property will be redeveloped for uses consistent with the redevelopment plan, and a defined schedule of performance, which assures that the property will be developed promptly and prohibits land speculation. The combination of this language of the initiative with the existing provisions of the Community Redevelopment Law arguably defines redevelopment acquisitions as a permitted public use, an outcome undoubtedly unintended and likely to require years of litigation to sort out."

[19] Paragraph (b)(3) of the initiative states that "Unpublished eminent domain judicial opinions or orders shall be null and void." The meaning of this sentence is a mystery. Superior Court decisions (judgments and orders) are never published. Appellate Court opinions may or may not be published, depending upon whether they meet the guidelines established by the Supreme Court for the publication of judicial opinions. They remain binding on the parties for purposes of the matters adjudicated. Taken literally, the language of this section would annul judgments in every eminent domain action which does not result in a published appellate opinion, leading to absurd results.

The provision is of particular concern in Santa Barbara County. The county won an unpublished Court of Appeal decision holding that its mobilehome rent control ordinance did not constitute a taking of the park owners' property. Heath v. County of Santa Barbara (1991) 2 Dist. B054566. Div. 6, review denied (1992). This judgment has precluded facial attacks on the County's ordinance for 15 years. If this unpublished decision is considered "void", a new facial takings challenge to the ordinance might be mounted. The law is in flux. The federal trial court in recently ruled in Guggenheim v. City of Goleta that the city's ordinance did not cause a taking. Appeal is likely. Compare *Cashman v. City of Cotati* 374 F.3d 887 (9th Cir. 2004) (mobilehome rent control resulted in unconstitutional taking – dubious in light of the Supreme Court's later repudiation of the "substantially advances" test for regulatory takings in *Lingle v. Chevron*) with *Sandpiper Mobile Village v. City of Carpinteria* (1993) 10 Cal.App.4th 542 (ordinance did not cause physical taking or deprivation of due process).

[20] Subsection (b)(4) would require that the owner of property be given copies of all appraisals of the property prepared by the condemning authority "prior to the government's occupancy," (presumably prior to requesting an order of pre-judgment possession). Current law requires that when the condemning authority seeks to acquire residential properties with fewer than four units, the owner must be given, upon request, a copy of the full appraisal on which the statutorily-required pre-condemnation offer is based. Gov't Code § 7267.2(c). Other than this specific circumstance, full appraisals need not ever be exchanged. Instead, the property owner must initially be given only a summary of the appraisal that is the basis of the condemning authority's initial offer of purchase. Further, if a timely demand for exchange has been filed (Code of Civ. Proc. § 1258.210(a), both sides must exchange "valuation statements" for all valuation witnesses not less than 90 days before trial (CCP § 1258.220). Neither the summary of appraisal nor the exchanged valuation statement need include the full appraisal (although the agency may use the full appraisal to satisfy the "summary" requirement if it so chooses. Gov't Code 7267.2(c).) If the expert witness on valuation is the same person who prepared the pre-trial offer, then the original appraisal is discoverable as part of his or her file. If the expert witness is not the same person who prepared the pre-condemnation appraisal, then that appraisal is neither discoverable nor admissible at trial. *See* Evid. Code §§ 822(a)(2), 1152; *People v. Southern Pacific Transp. Co.*, 33 Cal.App.3d 960 (1973).

The proposed change in the initiative would put public agencies at a tactical disadvantage because, in formulating the property owner's negotiating position, the appraiser for the property owner would know in advance the basis on which the public agency determined just compensation, while the public agency would not have similar knowledge. The condemning agency could minimize this disadvantage at trial by utilizing a separate valuation expert witness, and thereby exclude the original appraisal from being offered as evidence or referred to in testimony. However, the agency would then have to incur the cost of two appraisal experts in each action.

[21] Section (b)(4) changes existing law by giving a property owner an entitlement to a jury determination of whether the taking is for a public use before the agency takes possession. Under current law, all right to take issues (including whether the use is a public use) are considered legal issues to be determined by the judge, not the jury. *See People v. Ricciardi*, 23 Cal. 2d 390, 402 (1943) (court determines all issues in eminent domain trial except compensation, which is decided by the jury). If right to take issues are raised, the property owner may request a court hearing on that issue (before the judge, not a jury) and the court may stay an order for pre-judgment possession until that issue has been decided. (CCP § 1255.430.) This proposed change puts a jury in a position to overrule the judgment of an elected legislative body on the issue of whether or not the use is a public use. It would also delay for unknown, but potentially significant, periods of time the issuance of orders of prejudgment possession since, apparently, a jury would have to be impaneled to hear the right to take issues.

[22] Paragraph (b)(5) states that property taken or damaged shall be valued at "its highest and best use without considering any future dedication requirements imposed by the government." Current law requires that the acquired/damaged property be valued at its "highest and best use" unless, under the so-called *Porterville* doctrine, the owner would have to dedicate some or all of the property at issue in order to achieve that use. *See City of Porterville v. Young*, 195 Cal. App. 3d 1260 (1987); *see also City of Fresno v. Cloud*, 26 Cal. App. 3d 113 (1972). For example, assume that a property fronting a proposed road-widening project is zoned to allow commercial

uses, but is currently used as grazing land. In order to obtain entitlements for a commercial development (the "highest and best use"), the owner would be required by city zoning ordinances to dedicate the area proposed for the road-widening project. In a condemnation before such possible commercial development, the land sought for the road project would then be valued at only a nominal value because of the dedication requirement. The proposed initiative language appears designed to eliminate the *Porterville* doctrine, which would result in a windfall to the owner (i.e. he gets BOTH the benefit of the higher and better commercial use valuation AND he gets paid for the land he would otherwise have to dedicate).

[23] Paragraph (b)(5) goes on to state that if property is taken for a proprietary governmental purpose (whatever that is -- no definition is included), 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." Presumably this means, for example, that if a city were to condemn agricultural land for a municipal airport (from which the city would receive revenues from airline and commercial leases), then the owner must be paid fair market value in accordance with the city's use, whether or not the owner could have achieved such a use under the applicable zoning.

[24] Examples of changes to valuation law are:

> (1) Under current law, the measure of just compensation is "the fair market value of the property taken." (Code of Civ. Proc. §1263.310.) It is unclear to what extent the language of paragraph (b)(6) is intended to change this measure of compensation. Paragraph (b)(7) of the initiative contains a definition of the term "fair market value," but "fair market value" is not used in subsection (b)(6) defining "just compensation."
>
> (2) The phrase "any governmental offsets" is not defined in the proposed initiative and is not a term recognized in existing eminent domain law. Speculation is that this phrase may be targeted at "special benefits," a term used in the context of severance damage awards. The eminent domain law now codifies court-developed rules and allows the courts to continue developing the law in the area of severance damages. *See* Code of Civ. Proc. § 1263.430. The current general rule is that severance damages to the remainder parcel in a partial take situation may be reduced by benefit to the remainder caused by the construction and use of the proposed project. *See, e.g.*, Code of Civ. Proc. § 1263.410(b). The proposed change may be targeting these severance damage rules, but the terminology makes the intent and effect unclear.
>
> (3) Paragraph (b)(7) defines fair market value as "the highest and best use the property would bring on the open market." This departs from the current statutory definition of fair market value, which has several variables. It is unlikely a jury would remember to include all the variables referenced in the current statutory definition unless reminded and required to do so. The uncertain consequences of this proposed change could create enormous confusion, making it extremely difficult for public agencies to budget for property acquisition.

[25] Under Section 6, the measure would be effective the day following the election and apply to any eminent domain proceeding in which no final adjudication has been obtained as of that date. The provisions of the initiative defining a damaging of property (i.e., the regulatory takings provisions) would not apply to regulations in effect at the time of enactment of the initiative, nor to any amendment of such regulations after the date of enactment if the amendment "both serves to promote the original policy of the [regulation] and does not significantly broaden the scope of the application of the [regulation] being amended." The meaning of this sentence will likely cause endless litigation. The effect of all this would be to lock in place the regulatory status quo, further restricting government's ability to make changes needed to deal with changed conditions.

Summary of Statewide Ballot Initiatives

For Election: November 7, 2006

Proposition Number	Title	Summary	Recommended Position	Potential Impact to the County
1A	Transportation Investment Fund	Proposition 1A is a Constitutional amendment which limits the conditions under which Proposition 42 transfer of gasoline sales tax revenues for transportation uses can be suspended.	Support	Increases the stability of this funding source to the County by limiting the State's ability to suspend or borrow Prop 42 funds. SBC has received $8.8M in Prop 42 funds to date, including $2.7M received this year from previously years' allocations that were suspended when the State borrowed from the fund.
1B	Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006	Prop 1B authorizes the state to sell $19.9 billion of general obligation bonds to fund transportation projects to relieve congestion, improve the movement of goods, improve air quality, and enhance the safety and security of the transportation system.	No Position	The County is estimated to receive between $30-$150M. The ability to leverage these funds is contingent on the passage of Measure D. 60% of traffic congestion projects will go to 13 southern counties, including SBC.
1C	Housing and Emergency Shelter Trust Fund Act of 2006	Prop 1C authorizes the state to sell $2.8 billion of general obligation bonds to fund 13 new and existing housing and development programs.	No Position	The impact to the County is unknown at this time. However, the County may be eligible to receive funding for its housing programs.
1D	Education Facilities: Kindergarten-University Public Education Facilities Bond Act of 2006	Prop 1D authorizes the state to sell $10.4 billion of general obligation bonds to fund the construction and modernization of both K-12 school facilities and higher education facilities.	No Position	Local schools within the County may be eligible to receive funding for new construction (including retrofit), modernization of existing facilities, classroom construction to relieve overcrowding, construction of facilities for technical careers and for environment-friendly facilities. UCSB may be eligible to receive funding to construct new buildings and related infrastructure, alter existing buildings and purchase equipment for use in these buildings. (UC system is in support of Proposition).
1E	Disaster Preparedness and Flood Prevention Bond Act of 2006	Prop 1E authorizes the state to sell $4.1 billion of general obligation bonds to fund various flood management projects, with $3 million allocated to the Central Valley/Delta levee system.	No position	Impact to the County is minimal. Most of the funding is specifically for the Central Valley and funding for flood control subvention projects is qualified to projects with federal approval. The County currently only has one project that qualifies for subvention funds, Mission Creek, but that project has not received any funding in over five years. However, funding to levees and the state water system would protect the County from the loss of drinking water and improve the quality of water for Santa Maria and Guadalupe.

Summary of Statewide Ballot Initiatives

For Election: November 7, 2006

Proposition Number	Title	Summary	Recommended Position	Potential Impact to the County
Prop 83	Sex Offenders. Sexually Violent Predators. Punishment, Residence Restrictions and Monitoring. Initiative Statute.	Prop 83 increases the penalties for specified sex offenses by: broadening the definition of certain sex offenses; providing for longer penalties for specified sex offenses; prohibits probation in lieu of prison for some sex offenses; eliminates early release credits for some inmates convicted of certain sex offenses and extends parole for specified sex offenders. Also requires GPS devices for registered sex offenders; limits where registered sex offenders may live (no offender may live within 2,000 feet or 2/5 of a mile of a school or park) and makes more offenders eligible for a sexually violent predator commitment.	No position	Impacts to County are potentially significant: (1) Offenders subject to sexually violent predators (SVP) proceedings are usually represented by public defenders and the measure makes more sex offenders eligible for a SVP commitment, so there is a strong possibility that the caseload of the County Public Defender would increase. Staffing impacts unknown at this time. (2) The measure will increase the prison population of the County jail, which is already at capacity. (3) Sex offenders are required to wear GPS devices while on parole and for the remainder of their lives. Probation is in support of the measure, but may be financially impacted as it is unclear if the state or local government would bear the cost of the GPS and monitoring. (4) It is unknown to what extent the residency restrictions would affect the number of registered sex offenders located within the County. Financial and operational impacts need to be balanced against the potential enhancement to public safety.
Prop 84	Water Quality, Safety and Supply. Flood Control. Natural Resource Protection. Park Improvements. Bonds. Initiative Statute.	Prop 84 authorizes the state to sell $5.4 billion of general obligation bonds to fund safe drinking water, water quality and supply, flood control, waterway and natural resource protection and state and local park improvements.	No position	While the Proposition allocates most of the funding to the State or other specific areas within the State, the County may benefit from the measure. SBC may be eligible to receive funding for local flood control subvention, for integrated regional water management, for local and regional parks and/or from grants passed through the State Coastal Conservancy. Funding is allocated to state parks and beaches, which, while not County-owned facilities, do enhance the quality of life within the County.
Prop 85	Waiting Period and Parental Notification Before Termination of Minor's Pregnancy. Initiative Constitutional Amendment.	Prop 85 amends the California Constitution to require, with certain exceptions, a physician to notify the parent or legal guardian of a pregnant unemancipated minor at least 48 hours before performing an abortion.	No position	Fiscal impact on County is unknown. Potential impacts, if the proposition decreases the number of abortions, may include: more teen parents accessing publicly-funded programs targeted to them; more single mothers with babies potentially qualifying for an array of welfare benefits if they choose to apply; more prenatal and postnatal health care provided via County clinics and MediCal benefits. There may also be an increase in child welfare (neglect or abuse) referrals as teen parents often have parenting difficulties.

Summary of Statewide Ballot Initiatives

For Election: November 7, 2006

Proposition Number	Title	Summary	Recommended Position	Potential Impact to the County
Prop 86	Tax on Cigarettes. Initiative Constitutional Amendment and Statute.	Prop 86 increases the excise tax on cigarettes an additional $0.13 (or $2.60 per pack) and increases the excise tax on other tobacco products to fund treatment, prevention and research after backfilling Proposition 10 programs for early childhood development.	No position	Prop 86 is expected to decrease smoking and infuse major funds into the underfunded health care delivery system for uncompensated care. The impact to the County may be significant. Since Prop 10 will be backfilled for the loss of potential funding (as the increased excise tax could result in reduced sales of tobacco products), the County's First 5 early childhood programs will remain intact and First 5 would be able to significantly fund the Children's Health Initiative. It appears that all hospitals in SBC would be eligible to receive funds (Marian, SB Cottage, SY Cottage, Goleta Valley Cottage, Lompoc District) with the possible exception of the Rehabilitation Institute. Public Health would loss $150K for tobacco prevention and $87K pass thru to local Hospitals/Physicians from Prop 99, but Prop 86 would make up the loss. The Breast Cancer Early Detection Program receives more than $100K---there is a provision to provide funding for these types of services, but it is not clear if the funding would come to the County. Administration of the program is unclear--County administration of payments to hospitals/funding recipients will be burdensome and costly to PHD.

Summary of Statewide Ballot Initiatives

For Election: November 7, 2006

Proposition Number	Title	Summary	Recommended Position	Potential Impact to the County
Prop 87	Alternative Energy. Research, Production, Incentives. Tax on California Oil. Initiative Constitutional Amendment and Statute.	Prop 87 would impose a severance tax on oil production in CA to fund $4 billion in alternative energy programs that would be administered through a reorganized authority for the expressed purpose of reducing the use of petroleum within the state by 25% by 2017.	No position	The severance tax would impact property tax revenues in oil-producing counties by decreasing the assessed value of the oil wells due to their incremental loss of profitability. However, the County has almost no oil reserves in its property taxes as nearly all reserves are offshore in federal/state waters. Unsecured property tax rolls includes about $5 million for both mining and oil, which equal $12,500 for the County. If the measure is successful in reducing gasoline use, gasoline taxes that fund roads and transportation projects would also decrease (see Prop 1A). There may be some potential for educational institutions and/or businesses within the County to benefit from grants and other incentives related to the development of alternative fuels technology and products, which, in turn, may increase the taxes the County receives.
Prop 88	Education Funding. Real Property Parcel Tax. Initiative Constitutional Amendment and Statute.	Prop 88 adds a new section to the CA Constitution that creates a statewide parcel tax of $50 a year on most parcels to fund specific K-12 education programs related to class size reduction, textbooks, school safety, Academic Success facility grants, and a data system to evaluate educational program effectiveness.	Oppose	Exact costs of administration of the new parcel tax on the County is unknown at this time; however, in general, county auditor-controller's staff reports that such a parcel tax is administratively complex and costly and will likely exceed the 0.2%, or ten cents per successfully taxed parcel allocated to counties for the cost of implementation. CSAC contends that Prop 88 significantly erodes the link between the local property tax and local property-related services. Because funds would be allocated on a per student basis statewide, revenues raised in some counties would presumably be spent on school services in others.
Prop 89	Political Campaigns. Public Financing. Corporate Tax Increase. Contribution and Expenditure Limits. Initiative Statute.	Prop 89 establishes a system for candidates for statewide office to receive public funds to pay for the costs of campaign by increasing the taxes on corporations and financial institutions by 0.20%. For those candidates choosing not to receive public funds, Prop 89 imposes new limits on the amount of campaign donations to candidates.	No position	Impact to the County is unknown at this time. Corporations and financial institutions within the County would be subject to an increase in state taxes to finance this Proposition.

Summary of Statewide Ballot Initiatives

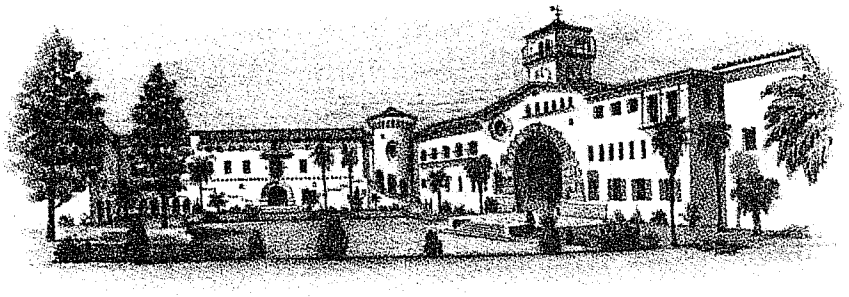
For Election: November 7, 2006

Proposition Number	Title	Summary	Recommended Position	Potential Impact to the County
Prop 90	Government Acquisition, Regulation of Private Property. Initiative Constitutional Amendment.	Prop 90 requires government to pay property owners if it passes certain new laws or rules that result in substantial economic losses to their property. Restricts the purpose for which government may take property, increases the amount that government must pay property owners and requires government to sell property back to its original owners under certain circumstances.	Oppose	The impact to the County is significant. If the County acquires property for infrastructure like parks, roads and levees, the compensation is no longer "fair market value", but payouts based on the value of the property as the government intends to use it. Prop 90 also has the potential to authorize new lawsuits that will negatively impact the County's ability to enact and enforce environmental, land use, consumer protection and housing laws and regulations.

THOMAS W. SNEDDON, JR.
District Attorney

MARNIE B. PINSKER
Assistant Director

DAVID M. SAUNDERS
Chief Investigator



PATRICK J. McKINLEY
Assistant District Attorney

CHRISTIE STANLEY
Assistant District Attorney

ERIC A. HANSON
Chief Trial Deputy

COUNTY OF SANTA BARBARA
DISTRICT ATTORNEY

September 1, 2006

In an effort to assist the Board in deciding whether to support or oppose certain local and state legislative initiatives there are two law enforcement and public safety matters of interest to your District Attorney's office. They are State proposition 83 and the City of Santa Barbara Marijuana Ordinance.

Proposition 83
It is the recommendation of the District Attorney and the District Attorney Elect that you should support this initiative. It will provide longer sentences for violent and habitual sexual offenders and child molesters. Additionally it provides many tools to keep track of registered sex offenders. History has proven that this category of offenders repeat their crimes, often escalating in violence and serious injuries or death to the victims. This legislation will protect the public and future victims from that next crime in many cases.

Santa Barbara City Marijuana Initiative
It is the recommendation of the District Attorney and the District Attorney Elect that you should oppose this initiative. In our opinion it is unconstitutional, illegal and even a serious hindrance to effective law enforcement. While on its face this is a city matter, the operation of this initiative would have far reaching consequences beyond the city limits in narcotics enforcement as well as other crime prevention.

We would be happy to go into greater detail to explain why this initiative has the potential to actually be a threat to public safety should you be interested. Possession of less than an ounce of marijuana is a low level misdemeanor that results only in a citation and possible fine at this time.

Our experience with the drug and therapeutic courts has proven that marijuana is a serious drug that frequently serves as a gateway to the harder drugs. It is one thing should the city council choose to tell the police that they should not enforce parking violations and quite another to have them and their "oversight commission" second guessing important law enforcement duties and operations. This is a dangerous ordinance.

Sincerely,

Thomas W. Sneddon, Jr., District Attorney

Christie Stanley, Assistant District Attorney, District Attorney Elect

❑ Santa Barbara Office
1112 Santa Barbara Street
Santa Barbara, CA 93101
(805) 568-2300
FAX (805) 568-2453

❑ Lompoc Office
115 Civic Center Plaza
Lompoc, CA 93436
(805) 737-7760
FAX (805) 737-7732

❑ Santa Maria Office
312-D East Cook Street
Santa Maria, CA 93454
(805) 346-7540
FAX (805) 346-7588