

April 5, 2007

Hon. Edmund G. Brown Jr.  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Toni Melton  
Initiative Secretary

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative (A.G. File No. 0007-03, Amdt. #1-S) related to public actions to acquire private property through the eminent domain process and public actions that reduce the economic value of property.

## **BACKGROUND**

To build public transportation and other facilities, promote economic development, and/or carry out other public policies, California state and local agencies sometime (1) acquire private property or (2) take regulatory or other actions that reduce the economic value of private property.

### **Property Acquisition**

Most property acquisitions are negotiated between private property owners and public agencies. Sometimes, however, a public agency and owner cannot agree upon the value of the property, or the owner does not want to sell the property. Under these circumstances, the matter may be resolved in court.

Under the California Constitution and other statutes, public agencies may take or damage private property (real, business, personal, tangible, or intangible property) if government pays "just compensation" to the owner. Just compensation includes (1) the fair market value of the real property and its improvements and (2) any diminution in value of the remaining property when the property taken is part of a larger parcel.

Under current statutes and case law, (1) public agencies may use their eminent domain authority to take property for a variety of public purposes and (2) courts give deference to a public agency's eminent domain findings and usually limit their review to

the information in the administrative record. Current law does not restrict how a public agency may use property acquired through the eminent domain process or require the agency to return the property to its previous owner if it no longer uses the property for its originally intended purpose.

### **Regulatory and Other Actions That Reduce Property Value**

Current statutes and case law do not require government to compensate property owners for most regulatory and other actions that reduce property value. Under various circumstances, however, the courts have ruled that government must compensate property owners. These occur when:

- A government action denies a landowner of all—or substantially all—economic use of the property.
- Government imposes a condition on property development that is unrelated to the purpose of the government regulation or is disproportionate to the impact of the proposed development on the community.
- Considerations of “justice and fairness” require that economic injuries to private property caused by government regulation be compensated. (A determination of whether compensation is required under this category requires an ad hoc, factual inquiry by the courts that considers the economic effect of the regulation, the extent to which it interferes with distinct, investment-backed expectations, and the character of the government action.)

## **PROPOSAL**

This measure constrains public agency authority to (1) use eminent domain to acquire property and (2) take regulatory and other actions that reduce the economic value of property. The measure defines “public agency” to include all state and local agencies and the electorates of these agencies.

### **Provisions Related to Eminent Domain Authority**

The measure requires government to specify a public use for any private property it acquires through the eminent domain process and prohibits government from using eminent domain for a “private use.” The measure defines the terms public and private use so as to narrow the purposes for which government may use eminent domain. Under the measure, for example, government could not use eminent domain to acquire property to (1) transfer it to a person, business, nonprofit organization, or other private entity or (2) use the property for a purpose similar to how it was used when it was under private ownership.

If a public agency wanted to put property acquired under eminent domain to a use different from its stated public use, the measure requires the public agency to offer to sell the property to the original property owner at the price the agency paid for the property, adjusted for the fair market value of changes to the property after it was acquired. If the former owner reacquires the property, the measure specifies that it shall be taxed based in its pre-acquisition value, adjusted for the market value of changes to the property, plus annual inflationary adjustments of up to 2 percent.

### **Provisions Related to Regulatory and Other Actions**

The measure expands the definition of damages in the California Constitution to include certain actions by government that reduce the value of real property. By defining these actions to be damages, the measure makes property owners eligible for compensatory payments if government implements them.

*Definition of Damaged.* The measure specifies that government damages real property if its actions result in the denial of “reasonably expected, economically viable, or productive uses of the property” by its owners. The measure exempts certain governmental actions from its definition, including actions taken by government:

- To preserve land for agricultural and forestry purposes.
- To protect public health and safety, provided that government does not limit the price an owner may charge another to buy or use his or her real property.
- As part of land-use planning, provided that the land-use measure, zoning or use restriction (1) does not include price or rent limits, (2) substantially advances a legitimate government interest, and (3) does not deny the owner economically viable or productive use of the property, including the owner’s reasonable investment-backed expectations.

### **Other Major Provisions**

*Court Challenges.* The measure specifies that in any property owner challenge regarding the validity of a taking or damage concerning his or her property, courts shall not grant deference to a public agency’s findings or limit its review to the information in the administrative record. In addition, the property owner is entitled to attorneys fees if the court finds that the public agency’s actions are not consistent with this measure.

*Rent Control.* Previously enacted governmental policies that limit the price a property owner may charge a tenant to occupy a rental unit or mobile home space may remain in effect for three years or until the unit is vacated, whichever comes first.

## **FISCAL IMPACT**

The measure's fiscal effect is subject to considerable uncertainty and would depend on (1) how the courts interpret its provisions (particularly, the range of policies for which just compensation would be required), and (2) future actions taken by governments to modify existing policies, enact new ones, and buy land.

The measure would constrain government's ability to implement certain existing policies because it requires government to compensate property owners for some actions that decrease property values. The range of government action that might be affected by the measure is not clear, but it could include such actions that (1) restrict business activities or development to protect animal life, or (2) limit the price property owners may charge (for housing or other goods and services) to promote public welfare or achieve other objectives. The measure also would restrict government's ability to enact new policies that could have the effect of decreasing the value of private property. Because implementation of these policies could require state and local governments to pay compensatory damages, governments might choose not to implement or enact these policies and select alternative ones. In other cases, government might decide to take an action that results in costs to pay compensatory damages.

The measure also would make it more difficult for government to acquire property through the eminent domain process. Because government would have an increased incentive to acquire property from *willing* sellers, property owners might charge government more for their properties and/or government might buy less property than otherwise would be the case.

The net fiscal effect on state and local governments associated with the measure's changes in policies or changes in the costs to acquire property is difficult to determine, but probably would be major annual costs.

**Summary of Fiscal Effects**

The measure would have the following major fiscal impact:

- Unknown, probably major annual governmental costs to compensate property owners for reductions in property values.

Sincerely,

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Elizabeth G. Hill  
Legislative Analyst

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Michael C. Genest  
Director of Finance