

## **ARIZONA PROPERTY INITIATIVE THREATENS CONSERVATION AT KEY BASES**

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The passage of an Arizona property rights ballot initiative Nov. 7 could hamper DOD land planning and anti-encroachment efforts - including those that aid military test and training areas - at key bases in the state for the next 10 years, an informed source says.

Establishing potentially necessary buffer zones and conservation easements around military bases in Arizona will now be much more difficult because local government partners typically seen as crucial to their success would have to pay large fees under the new law for assisting such projects.

While similar property rights measures were on ballots in several other states, the Arizona measure was the only one to pass. The Arizona initiative "was the one [DOD was] most concerned about," the source says, noting that under Arizona ballot initiative law, the language cannot be altered or reconsidered, even by the state legislature, for at least 10 years. The source says the measure "threatens" Joint Land Use Study and Army Compatible Use Buffer programs, which help protect the environmental and property needs of military bases throughout the state, predicting that local land use planners will be reluctant to assist in future anti-encroachment efforts because they would likely have to pay money to multiple landowners for taking such action.

Key test and training ranges in Arizona include Davis-Monthan Air Force Base in Tucson, already the focus of anti-encroachment efforts as the city continues to expand; Fort Huachuca in Sierra Vista; and Luke Air Force Base in Phoenix. An environmental source familiar with the measures says the Arizona "no vote" campaign "didn't come together until too late," in contrast to the organized efforts in other states.

At the same time, the defeat of similar initiatives in several other Western states, including California, Washington state and Idaho, could mean environmental groups and state legislatures will soon offer proposals to address voter concern over the issue, particularly if such a move would squelch future plans to offer similar initiatives, environmental sources say.

The ballot proposals, written similarly in each state, require a local government entity to pay a landowner "fair market value" for taking any action that makes it more difficult to build on or improve his or her property. Opponents argued the language could make it expensive for local governments to grant conservation easements or partner in training range buffer efforts because the government would then have to pay for each hypothetical housing or building project that would no longer be possible. Opponents also feared the proposals could impact a variety of broad environmental conservation efforts, including endangered species habitat management and wetlands protection.

A member of the No on 90 campaign, which defeated the California version of the measure, says environmental and business groups "expect to come back for the next state legislative session with [legal] changes to address concerns people have." The source declines to discuss specifics so soon after the election results, but says the California measure was "far too radical" and would have created "tremendous taxpayer impacts. . . . A lot of people saw this as a Trojan horse."

A source familiar with the Washington measure says, "We'll have to look at each state individually, but one thing would be to get people to say exactly what the problems are [in each state] and address them specifically. The other side creates a law that just guts all kinds of environmental regulations" - such as the Endangered Species Act and the Clean Water Act - "and we have a problem with that meat cleaver approach."

The defeat of most of the measures means "everybody following . . . thoughtful planning and conservation is breathing a collective sigh of relief," the No on 90 source says, adding that if the measures had passed, base protection "would have been in a very shaky position."

But sources who followed the measures say advocates may re-propose the initiatives in future years. The No on 90 source says the group believes advocates of the ballot initiative may renew a push for it in 2008. The source familiar with the Washington measure also says "I have no doubt they'll come up again [because supporters] are very strong-willed people."

Opponents of the measures argued they were inaccurately touted by supporters as a response to the Supreme Court's 2005 ruling in *Kelo v. City of New London*, which dramatically expanded the scope of the so-called Takings Clause of the Fifth Amendment, saying the measures were not an appropriate response to the issues raised in *Kelo*. They also pointed to a similar measure passed in 2004 in Oregon, which has already resulted in court battles and more than \$6 billion in landowner claims.

The measures were Arizona's Proposition 207, California's Proposition 90, Idaho's Proposition 2 and Washington's Initiative 933. Each was bankrolled directly or indirectly by Americans for Limited Government (ALG), a free-market political group headed by New York City real estate developer Howard Rich, according to campaign finance documents reviewed by the No on 90 source and ALG state affiliate Web sites.

The Montana supreme court struck a similar measure in Montana from the ballot due to signature-gathering irregularities. The Nevada Supreme Court also struck the financial compensation provision of that state's similar proposal because it would have violated a state requirement that an initiative address only one issue.