06-0039

HOWARD JARVIS
TAXPAYERS
ASSOCIATION

HOWARD JARVIS, Founder (1903-1986)
ESTELLE JARVIS, Honorary Chairwoman
JON COUPAL, President
TREVOR GRIMM, General Counsel
TIMOTHY BITTLE, Director of Legal Affairs

November 21, 2005

Ms. Patricia Galvan
Initiative Coordinator
Attorney General's Office
P.O. Box 944255
1515 K Street, 6th Floor
Sacramento, CA 95814

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: California Property Owners Protection Act

Dear Ms. Knight:

By this letter, I respectfully request the Attorney General to prepare a title and summary of the chief purpose and points of the California Property Owners Protection Act, a copy of which is attached. I am the proponent of this measure.

Any correspondence regarding this initiative should be directed to me at Howard Jarvis Taxpayers Association, 921 Eleventh Street, Suite 1201, Sacramento, CA 95814 (916) 444-9950. My resident address is attached to this letter.

Enclosed is the required $200 filing fee as well as the certification as required by Elections Code Section 18650.

Thank you for your cooperation.

Sincerely,

Jon Coupal
President

SACRAMENTO OFFICE: 921 11th Street, Suite 1201, Sacramento, CA 95814 • (916) 444-9950, Fax: (916) 444-9823

LOS ANGELES OFFICE: 621 South Westmoreland Avenue, Suite 202, Los Angeles, CA 90005-3971 • (213) 384-9656, Fax: (213) 384-9870

SECTION 1. STATEMENT OF FINDINGS

(a) Our state Constitution provides that all people have inalienable rights including the right to acquire, possess, and protect property.

(b) Our Constitution further provides that no person shall be deprived of property without due process of law.

(c) Finally, our Constitution provides that private property may not be taken or damaged by government except for public use and only after just compensation has been paid to the property owner.

(d) Notwithstanding these clear constitutional guarantees, the courts have not protected our rights from being violated by state and local governments through the exercise of their powers to take and regulate private property.

(e) For example, the United States Supreme Court, in Kelo v. City of New London, permitted a city to use eminent domain to take private property for the purpose of transferring ownership to a private developer. In Lingle v. Chevron U.S.A. Inc., the Court allowed the government to impose regulations on the price an owner could charge for its property, with no requirement that the regulations advance a legitimate government interest.

SECTION 2. STATEMENT OF PURPOSE

(a) State and local governments may use their power to take and regulate private property only for public uses, such as roads, parks, and public facilities, for land-use planning and zoning, or to preserve the health and safety of their citizens.

(b) When state or local governments take or regulate private property for public uses, the owner shall receive just compensation for what has been taken or damaged.

(c) Therefore, the people of the state of California hereby enact the "California Property Owners Protection Act."

SECTION 3. AMENDMENT TO CALIFORNIA CONSTITUTION

Section 19 of Article I of the California Constitution is amended to read:

SEC. 19(a) Private property may be taken or damaged for a stated public use when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. Private property may not be taken or damaged for private use. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the property owner of money determined by the court to be the probable amount of just compensation.

(b) For purposes of this section:

(1) "Taken" includes the transfer of ownership or use of property from a private owner to a public agency or to any person or entity other than a public agency.

(2) "Damaged" includes denying, in whole or in part, reasonably expected and economically viable uses of property by the owner. It does not mean such actions that are undertaken:

(i) to preserve the health and safety of its citizens, including the abatement of public nuisances or criminal activity; or

(ii) as land-use planning, zoning, or use restrictions that substantially advance a legitimate government interest and do not deny a private owner economically viable use of his property, including his reasonable investment-backed expectations; or

(iii) to preserve land for, or to protect such land from encroaching uses that would jeopardize its use for, customary husbandry practices in the raising of food, fiber, livestock, or other agricultural products or timber.

"Damaged" also includes limiting the price a property owner may charge another person to purchase, occupy or use his or her property.

(3) "Public use" means:

(i) use and ownership by a public agency or an investor-owned public utility for the public use stated at the time of the taking, including public facilities, public transportation, and public utilities, except that limited private uses incidental to the stated public use shall not be prohibited; or

(ii) primarily for the use, enjoyment, or protection of the public generally.

(4) "Private use" means:

(i) transfer of ownership or use of private property or associated property rights to any person or entity other than a public agency or an investor-owned public utility;
(ii) transfer of ownership or use of private property, associated property rights, or the property of an investor-owned public utility to a public agency for the same or a substantially similar use as that made by the private owner or investor-owned public utility; or

(iii) use which provides an economic benefit to one or more private persons at the expense of the private property owner.

(5) "Public agency" means the state, special district, county, city, city and county, including a charter city or county, and any other local or regional governmental entity, public agency-owned utility or utility district, or the electorate of any public agency.

(6) "Just compensation" means:

(i) the fair market value of property or associated property rights taken; or

(ii) the value fixed by a jury, or by the court if a jury is waived, for damage to property; and

(iii) an award of reasonable attorney fees from the public agency if the property owner obtains a judgment for more than the amount offered by the public agency; and

(iv) any additional amount authorized by statute to compensate the owner for temporary business losses, relocation expenses, or other consequences deemed compensable by the Legislature.

(7) "Prompt release" means that the property owner who does not object to a public agency's right to take can immediately have possession of the money deposited by the public agency without prejudicing his right to challenge the determination of fair market value.

(8) "Owner" includes any person or entity which possesses any interest in real property including all absolute or qualified ownership interests.

(c) In any action by a property owner challenging the validity of a taking or damaging of his property under this section, the court shall consider all relevant evidence and exercise its independent judgment, not limited to the administrative record and without deference to the findings of the public agency. The property owner shall be entitled to an award of reasonable attorney fees from the public agency if the court finds that the agency's actions are not in compliance with this section.

(d) Nothing in this section prohibits a public agency from reaching an agreement with a private property owner regarding its action or proposed action, including the repeal or amendment of the action, or payment of just compensation.

(e) Property taken for a stated public use by a public agency must be offered for sale to the private owner from which the property was taken, at the current fair market value, if the public agency has abandoned the stated public use within 5 years of the taking. If such property is reacquired by the former owner under this subdivision, the property shall be taxed based on its pre-condemnation enrolled value.

(f) Nothing in this section prohibits the California Public Utilities Commission from regulating public utility rates.

(g) Nothing in this section shall restrict the powers of the Governor to take or damage private property in connection with his powers under a declared state of emergency.

SECTION 4. IMPLEMENTATION AND AMENDMENT

This section shall be self-executing. The Legislature may adopt laws to further the purposes of this section and aid in its implementation. No amendment to this section may be made except by a vote of the people pursuant to Article II or Article XVIII.

SECTION 5. SEVERABILITY

The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 6. EFFECTIVE DATE

This section shall become effective the day following the election pursuant to section 10(a) of Article II, except that any action by a public agency, enacted prior to the effective date of this section, that results in continuing damage to private property for private use shall be null and void as of the start of the next fiscal year following the effective date of this section. The provisions of this section shall apply immediately to any eminent domain proceeding by a public agency in which there has been no final adjudication.