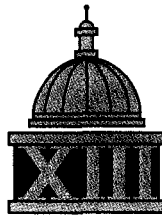


HOWARD JARVIS
TAXPAYERS
ASSOCIATION



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

SA2005RF0133

December 1, 2005

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

RECEIVED
DEC 02 2005

Re: California Property Owners Protection Act

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Ms. Knight:

By this letter, we 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. The undersigned are the proponents.

Any correspondence regarding this initiative should be directed to Jon Coupal, Howard Jarvis Taxpayers Association, 921 Eleventh Street, Suite 1201, Sacramento, CA 95814 (916) 444-9950.

Also enclosed is the required \$200 filing fee.

Thank you for your cooperation.

Sincerely,

Sincerely,

Sincerely

Jon Coupal
President
Howard Jarvis
Taxpayers Association

, Tom McClintock
Senator, 19th Dist.
State of California

Chris Norby
Member, 4th Dist.
Orange County Board
of Supervisors

SA2005RFO133

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SECTION 1. STATEMENT OF FINDINGS

(a) Our state Constitution provides that all people have inalienable rights including the acquisition, possession and protection of 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, our courts have not protected these rights from encroachment by state and local government through the exercise of their powers to take and regulate private property.

(e) For example, a recent decision of the United States Supreme Court (*Kelo v. City of New London*) permitted a city to exercise its power of 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 further eroded our constitutional protections against government takings by abandoning the requirement that a government regulation of property must substantially advance a legitimate government interest.

(f) Furthermore, the judicial processes available to an owner of property to obtain just compensation are burdensome, costly and unfair.

SECTION 2. STATEMENT OF PURPOSE

(a) State and local governments may use their powers to take and regulate private property only for public uses, like 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 government takes or regulates private property for public uses, the owner shall receive just compensation for what has been taken or damaged. If the owner and the government are unable to agree to a fair price, the owner shall be entitled to a fair and efficient judicial process to determine the appropriate amount for the government to pay as determined by a jury.

(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 public use stated in a resolution of necessity, and 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 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 or lessee to a public agency or to any person or entity other than a public agency.

(2) “Damaged” includes the enactment or enforcement of a statute, charter provision, ordinance, resolution, regulation, rule; policy or other action by a public agency that results in the denial, in whole or in part, of the economic, beneficial or productive use of property by the owner or lessee. 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 or her property, including the owner’s reasonable investment-backed expectations;

provided such actions do not limit the amount a property owner may charge another person to purchase 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 to any person or entity other than a public agency;

(ii) transfer of ownership or use of private property to a public agency for the same or a substantially similar use as that made by the private owner; or

(iii) use which provides an economic benefit to one or more private persons at the expense of the private property owner, such as a limitation on the amount a property owner may charge another private person to purchase or use his or her property.

(5) “Public agency” means the state, special district, county, city, city and county, including a charter city or county, or 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 taken by a public agency; or

(ii) the reduction in fair market value as a result of property damaged by a public agency; and

(iii) an award of reasonable attorney fees from the public agency if the property owner obtains a determination that the amount offered by the public agency was less than the amount ascertained by a jury, or the court if a jury is waived by the property owner; 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 owner of private property, who does not object to a public agency’s right to take, can immediately have possession of the money deposited by a public agency with the court without prejudicing the right of the owner to proceed to challenge the determination of fair market value.

(c) In any action by a property owner or lessee challenging the validity of a taking of, or damage to, his or her 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 or lessee shall be entitled to an award of attorney fees from the public agency if the court finds that the public 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 at its pre-condemnation 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 or her 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 beginning July 1, 2007. 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.