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**Amdt. #18**

February 28, 2007

**RECEIVED**

**FEB 28 2007**

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Ms. Patrician Galvan  
Initiative Coordinator  
Attorney General's Office  
1515 K Street, 6th Floor  
Sacramento, CA 95814

Re: Proposed Initiative No. 07-0003

Dear Ms. Galvan,

Enclosed please find the complete text of an amended version of Proposed Initiative No. 07-0003, which we submitted for title and summary on or about February 13, 2007. Please substitute this version for the one previously filed. Thank you for assistance. If there is a problem, or if you have any questions, please call Jon Coupal at 916-444-9950.

Sincerely,

Doug Mosebar  
President, California  
Farm Bureau Federation

Jon Coupal  
President, Howard Jarvis  
Taxpayers Association

Jim Nielsen  
Chairman, Cal. Alliance to  
Protect Private Property  
Rights

## 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 another recent case, 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 only for a stated public use and 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. Private property may not be taken or damaged for private use.

(b) For purposes of this section:

(1) "Taken" includes the transfer of ownership, occupancy 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 actions by a public agency denying reasonably expected, economically viable or productive uses of real 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 or productive use of his property, including his reasonable investment-backed expectations;

provided such actions under subdivision (i) or (ii) do not limit the price a property owner may charge another person to purchase, occupy or use his real property; or

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

(3) "Public use" means:

(i) use and ownership by a public agency or a regulated public utility for the public use stated at the time of the taking, including public facilities, public transportation, and public utilities; or

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

except that nothing herein prohibits leasing limited space for private uses incidental to the stated public use; nor is the exercise of eminent domain prohibited to restore utilities or access to a public road for any private property which is cut off from utilities or access to a public road as a result of a taking for public use as otherwise defined herein.

(4) “Private use” means:

(i) transfer of ownership, occupancy or use of private property or associated property rights to any person or entity other than a public agency or a regulated public utility;

(ii) transfer of ownership, occupancy or use of private property or associated property rights to a public agency for the consumption of natural resources or for the same or a substantially similar use as that made by the private owner; or

(iii) regulation of the ownership, occupancy or use of privately owned real property or associated property rights in order to transfer an economic benefit to one or more private persons at the expense of the 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, municipal corporation, public agency-owned utility or utility district, or the electorate of any public agency.

(6) “Just compensation” means:

(i) for property or associated property rights taken, its fair market value; or

(ii) for property or associated property rights damaged, the value fixed by a jury, or by the court if a jury is waived; and

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

(iv) any additional actual and necessary amounts to compensate the property owner for temporary business losses, relocation expenses, business reestablishment costs, other actual and reasonable expenses incurred and other expenses deemed compensable by the Legislature.

(7) “Prompt release” means that the property owner can immediately have possession of the money deposited by the condemnor without prejudicing his right to challenge the determination of fair market value or his right to challenge the taking as being for a private use.

(8) “Owner” includes a lessee whose property rights are taken or damaged.

(9) “Regulated public utility” means any public utility as described in Article XII, section 3 that is regulated by the California Public Utilities Commission and is not

owned or operated by a public agency. Regulated public utilities are private property owners for purposes of this article.

(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 costs and 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 or regulated public utility 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) If property is acquired by a public agency through eminent domain, then before the agency may put the property to a use substantially different from the stated public use, or convey the property to another person or unaffiliated agency, the condemning agency must make a good faith effort to locate the private owner from whom the property was taken, and make a written offer to sell the property to him at the price which the agency paid for the property, increased only by the fair market value of any improvements, fixtures, or appurtenances added by the public agency, and reduced by the value attributable to any removal, destruction or waste of improvements, fixtures or appurtenances that had been acquired with the property. If property is repurchased by the former owner under this subdivision, it shall be taxed based on its pre-condemnation enrolled value, increased or decreased only as allowed herein, plus any inflationary adjustments authorized by subdivision (b) of Section 2 of Article XIII A. The right to repurchase shall apply only to the owner from which the property was taken, and does not apply to heirs or successors of the owner or, if the owner was not a natural person, to an entity which ceases to legally exist.

(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 January 1, 2007, that limits the price a property owner may charge a tenant to occupy residential property may remain in effect until the first day of the thirty-seventh month following the effective date of this section; provided that if, at any time after the effective date of this section, an individual rental unit or mobile home space is vacated by all the tenants thereof, then this section shall be effective immediately as to that unit or space.