

# NAR Statement of Policy

## Land Use Committee

### **Agriculture and Foreign Trade**

We encourage the gainful distribution and consumption of U.S. agricultural products both domestically and to foreign countries as a priority to any restriction in production. The agricultural contribution to a favorable U.S. balance of payments in foreign trade is critical. In conducting foreign policy, we urge the Federal government to recognize that agriculture produce embargoes and other trade limitations are counterproductive. Such restrictions to free trade typically create retaliatory moves and work against the export of our agricultural commodities.

We urge that when the issue of agricultural land protection is addressed, all economic factors and private property rights be fully considered before government agencies impose any restrictions on the foreign or corporate ownership or the conversion of agricultural land to non-agricultural purposes.

### **Clean Air**

The National Association of REALTORS® (NAR) promotes the continued pursuit of improving air quality in harmony with economic growth, environmental protection, and development of communities. NAR endorses federal guidelines that improve air quality in balance with housing needs and property rights. NAR supports:

- The need to monitor and maintain minimum standards of air quality that are based on scientific evidence.
- Ambient air quality standards for criteria pollutants as defined by the EPA.
- Programs that balance air quality with economic development, diversity, and property rights.
- A preference for innovative solutions and market incentives as opposed to government-imposed penalties.

### **Community Development**

REALTORS® have a stake in the long term health of their communities and neighborhoods. Community revitalization is important to the development of a competitive local economy. The growth of local economies can be energized when new jobs and migration are matched with homeownership opportunities in attractive, viable neighborhoods.

Both the public and private sectors have a mutual interest in enhancing their communities and in making their neighborhoods a better places to live, shop, work and invest. Homeownership leads to a greater interest in community affairs, better maintenance and a stronger sense of neighborhoods. Thus, an interest in community development issues provides a stake in the community and in this nation's economic prosperity.

The National Association of REALTORS® believes that the following elements be incorporated in the design of local community development strategies:

- Strategies should meet community needs as determined by each locality - whether urban or rural, using measures such as existing community facilities, income levels, extent of poverty, economic growth, population changes and employment.

- Strategies should have the objective of creating viable neighborhoods by providing economic opportunities.
- Strategies should be directed toward the revitalization of neighborhoods including the preservation and equitable development of housing and improved community facilities and services.
- Strategies should encourage public/private partnerships whenever possible.

We encourage the implementation of innovative development techniques, such as those modeled by NAR programs.

## **Endangered Species**

We believe the way in which the Endangered Species Act (ESA) is implemented is of major importance. We support amendments to the Endangered Species Act that recognize socioeconomic considerations and provide safeguards to protect property rights in the manner described in the NAR Statement of Policy on Property Rights.

In particular, revisions to the Endangered Species Act should address the following:

- Incentives provided to private property owners for species protection rather than relying solely on restrictions and penalties.
- A strict limitation on how far down the chain of sub-species will be allowed in listings.
- Listings of threatened or endangered species and the designation of critical habitat based on verifiable scientific evidence.
- Prompt notification to private property owners regarding potential species listings, and the proposed designation of critical habitat, which might impact their property.
- Prompt notification to, and consultation with, relevant state and local agencies with jurisdiction over areas proposed for the designation of critical habitat and potential species listings.
- Increased local involvement in creating and implementing recovery plans.
- Incorporation of substantial equivalency provisions for states that currently have adequate legislation.
- Express written permission of the property owner prior to implementation of a National Biological Survey of private property.
- Independent peer review committees should review both the scientific evidence and economic impacts of all listings and all proposed designations of critical habitat.
- Periodic review and expedited delisting of species, and removal of land from a critical habitat designation, when supported by verifiable scientific evidence.
- A limit on the designation of critical habitat to areas currently occupied by the species, with the preparation of maps that specify the exact boundaries of the critical habitat designation.
- The finalization of species listings only after critical habitat has been designated and after the required economic analysis has been prepared.

## **Energy**

The free market system is the most appropriate means of attaining energy conservation and production goals. Increased conservation and domestic expansion and development of existing and new energy sources are essential to our nation's security and economic prosperity.

- We support continued efforts by the Federal government to remove regulatory impediments to the discovery, production, transportation, and sale of energy resources.
- We support the Federal government's role in contingency planning for severe energy supply disruptions.
- We support the role of the Federal government in joining with private enterprise to reach and develop alternative energy sources.
- We support the concept of positive, voluntary incentives for conservation activities such as energy tax credits.
- We support increased emphasis on energy efficient technology by the nation's building industry.
- We believe that in order to maintain a healthy diversity in the economy the federal government should be particularly sensitive to the over regulation of our nations natural resources. The government should implement programs which will provide our nation with the natural resources needed to create affordable housing.
- We support state involvement in the development and application of natural resource reclamation laws. Further, regulators are encouraged to examine and accommodate local diversity when developing federal guidelines. In addition, financial assurance should be guaranteed in an effort to make certain that reclamation of land is completed.

## **Environment**

NAR supports the strong protection of private property rights in balance with laws, regulations and land management practices that preserve the environment and natural resources

We support federal legislation and regulation that encourage active forest management practices which will help return the ecological benefits of fire to our forested areas, bring balance to our nation's firefighting policies, and protect homes and communities in the wildland/urban interface. These practices may include - but are not limited to - forest thinning, fuel reduction, and strategic use of prescribed burns and wildfire suppression. We support increased private sector management of public land in concert with this policy. The application of environmental laws and regulations should be coordinated with active forest management practices so as not to prohibit such practices on private as well as public land. We encourage better planning for the environmental and economic impacts on communities after wildfires have occurred.

## **Federal Ownership of Real Property**

Current government real property acquisition practices have resulted in excessive amounts of private property being placed in the government estate. Federal property acquisition agencies have been authorized by Congress to acquire private property for parks, national forests, refuges and other purposes, often with dubious need, but have not been provided with the resources to compensate promptly landowners or adequately manage acquired lands.

Congress should reform the current federal property acquisition policy from the two-step authorization/appropriation process which has resulted in large authorizations with little expectation of timely appropriation of funds for actual purchase.

Furthermore, we believe that the Federal government should conduct a thorough inventory of its real property assets and dispose of those properties which are excess to government needs. Every federal agency holding real property should participate in this inventory and utilize private sector expertise in appraising, marketing, and financing property. An aggressive, responsible, and simplified

real property disposal program, involving the private sector in transacting sales, will reduce federal property management costs, increase private property ownership opportunities, and help reduce our national debt.

In addition, NAR endorses the restoration of full funding of the Land and Water Conservation Fund (LWCF), provided that in states where less than fifty percent of property in the state is privately owned, funds should be used only for maintenance and development of properties currently managed by the LWCF; that any contemplated acquisition of properties using LWCF funds by either local, state or federal entities should only be accomplished with full public disclosure subject to open public debate, including written notice to interested parties; that any acquisition of property be from willing sellers only; and that any tax revenue lost from any land acquisition be offset by payments funded under the federal Payments in Lieu of Taxes (PILT).

## **Global Climate Change**

### Preamble

The National Association of REALTORS® (NAR) is committed to the principles of sustainability and energy conservation, the benefits of which will preserve our environment and support our nation as a vibrant, healthy and prosperous place to live and work.

NAR is committed to ensuring that its programs and policies promote environmental sustainability, resilient communities and growth in the real estate sector.

NAR's commitment to environmental stewardship is clearly visible in its Washington, D.C. office building, the first privately owned commercial building in the nation's capital to receive a Leadership in Energy and Environmental Design (LEED) certification.

NAR believes in educating real estate professionals and the public regarding the benefits of voluntary, market-based solutions for environmental stewardship.

NAR's Green Designation program educates REALTORS® on the benefits of energy-efficiency, distributed generation and sustainable development. NAR's Smart Growth program provides grants and technical assistance for Smart Growth initiatives in communities nationwide. NAR's Sustainability Program provides leadership and strategies on topics of sustainability that benefit members, REALTOR® Associations and communities.

### NAR Policy

To help advance an economically prosperous and environmentally sustainable future, NAR is committed to supporting cost-effective strategies that facilitate a positive, voluntary market response to energy efficiency, resiliency, and sustainability.

Policies should be market-based, cost-effective and energize the nation's innovative entrepreneurial spirit.

Development of public global climate change policy should be guided by, and be respectful of, the key principles of protecting private property rights, maintaining housing affordability and availability, long-term sustainability and NAR Smart Growth principles.

NAR supports:

- Regional, state and local planning for the creation of resilient and sustainable buildings and communities.
- Regional, state and local planning efforts to implement cost effective strategies that proactively mitigate against, and facilitate the adaptation to, the effects of extreme weather events and ecosystem change.
- Regional, state and local approaches based on market principles to reduce greenhouse gases and to conserve energy.
- Solutions that encourage sustainable practices and energy efficiency through incentives such as expedited permitting and tax benefits.

NAR opposes:

- Transaction triggered mandates.
- Requirements that impose undue economic impact on property owners and managers.
- The application of laws and regulations in ways that do not meet their original intent or statutory purpose.

Because sustainability, resiliency and responsible development are not mutually exclusive, these environmental initiatives should not be barriers to the ability to own, use and transfer property.

### Conclusion

This policy balances economic development and environmental protection, while focusing on how these issues effect housing, real estate, homeowners and NAR members.

This policy reinforces and emphasizes the core principles of property rights, environmental stewardship and voluntary, local action based on market-based approaches to resolving environmental policy challenges.

This policy provides clear direction and additional flexibility for NAR staff in DC to better advocate for NAR members to address new legislative and regulatory actions that may arise at the federal government level.

### **Grazing Rights**

We support the use of a market-based formula to determine the grazing fee charged to ranchers who graze their livestock on federal lands. Any reforms to grazing law should recognize the socioeconomic impact in states dependent on access to federal grazing land. We oppose confiscation of personal property improvements on the federal lands. We support national policy that would allow for privatization of certain prime grazing lands.

### **Growth Issues**

We recognize that growth is inevitable and that guiding and controlling it is an issue facing many areas of our country. We support planned growth that stimulates the economy, increases the tax base, provides places to live and work, and offers opportunities that would not otherwise exist. We also realize the responsibility we have to educate and work with local, state, and Federal government officials in developing responsible growth planning that is equitable and which considers the divergent needs of transportation, housing, agriculture, commercial, industrial, and environmental

concerns. Government growth planning activities must take into account property rights in the manner described in the NAR Statement of Policy on Property Rights.

## **Hazardous Waste**

Reauthorization or reform of the Comprehensive Environmental Response, Compensation and Liability Act (Superfund) should promote and support residential and commercial real estate development by including the following modifications:

- A party responsible for generating waste should be responsible for the costs of its cleanup, where that party can be identified, but the Superfund should be the sole source of funding for the cleanup where the culpable party cannot be found or is unable to pay for the cleanup;
- Parties that have acted prudently and legally at the time the waste was generated and/or disposed should not be subsequently held liable for cleanup costs, even if the Superfund statute is subsequently changed;
- Clarification of certain definitions in the current law are needed. "Due care" should be defined narrowly to mean an absence of negligence. Clarification is needed in the terms "all appropriate inquiry" and "taking reasonable steps" to better enable individuals to utilize an innocent landowner defense. The term "imminent danger" also needs further clarification;
- Clarification of provisions in the law to relieve innocent potentially responsible parties, including fiduciaries, lenders and intermediaries of liability when they are unknowingly involved in property transactions where hazardous waste has been generated, stored or disposed;
- Retroactivity of the law should be limited to actual contamination which took place after amendments to the law in 1986;
- The federal government should be required to join all potentially known responsible parties who are believed to have contributed to waste on a site, rather than placing this burden on the other parties to the action;
- A proportional liability scheme should be incorporated into the law to insure fairness. The current system of strict, joint and several liability is unfair, often triggering second and third party litigation adding to costs to the litigants and taxpayers;
- Physical identification of Superfund site boundaries before the nomination and listing of the area should be required.

The federal government should provide adequate funding for cleanup and redevelopment of brownfields sites. Federal law should recognize the finality of successful state hazardous waste cleanup efforts by eliminating EPA authority to re-open completed cleanups.

## **Land Use**

We believe in the fundamental right of all private property owners to determine the highest and best use of their land, working through appropriate governmental entities. We embrace the principles of smart growth as defined in NAR's 1999 Smart Growth PAG Report.

Programs of resource, land and historic preservation designed to protect drinking water resources, agricultural lands, wetlands, scenic vistas, natural areas, historic properties and open space, can have a positive effect on the quality of life and environment in towns, counties, and municipalities. Because land use laws and regulations enacted to protect and enhance these resources provide benefits to the general public, the costs should be borne accordingly. (See Property Rights section).

State and Federal governments should minimize their involvement in land use decisions and not withhold government grants and programs to enforce their policies.

We believe that local authorities, in close cooperation with their citizens, are ultimately responsible for managing growth and building better communities. We support federal and state incentives that provide tools to local governments to encourage collaborative regional planning as long as it supplements, rather than displaces, local control and decision-making.

Planning for the classification and use of land must adequately consider the needs of housing, agricultural, commercial and industrial growth, as well as quality of life and a healthy local economy. Land use planning should provide for a variety of housing types, mixes, densities and pricing to meet the needs of all segments of our population.

We shall continue to develop programs and seek legislation to help state associations and local boards achieve these objectives.

### **Lead-Based Paint**

Lead should be viewed as a public health issue. We support increased education of all homeowners about lead so that they will become aware of, and motivated to test for, potential health hazards. Legislative and administrative efforts should be directed at the general public, rather than focused on the real estate transaction and we strongly oppose any form of mandatory testing tied to the real estate transaction process. We support efforts to identify and reduce the potential health threat that the presence of lead may pose.

NAR supports inclusion of the following in legislation addressing residential lead-based paint hazards: Single-family and multi-family sales of homes built prior to 1978:

- A. Seller disclosure. Before entering into the sales contract, it is the responsibility of the seller to:
- Provide a lead hazard information pamphlet;
  - Disclose any known lead paint or lead hazard in the premises, as well as, any lead inspection report of which the seller is aware.

Each sales contract must include a lead warning statement and a statement signed by the purchaser acknowledging that he/she has:

- Read and understood the lead warning statement in the contract;
- Received a lead hazard information pamphlet from the seller.

Premises may be tested only if mutually agreed upon by the parties. Placing the lead hazard warning and signature on a separate sheet is unnecessary, but the relevant section in the contract should be signed by the purchaser.

### **B. Leasing of Single and Multi-Family Properties.**

The National Association of REALTORS® strongly opposes any form of mandatory testing tied to the real estate transaction process. A decision to test or not test should be left to the discretion of the lessor and potential lessee depending upon the circumstances in all cases lessee would have to provide lessor with a copy of the test results. NAR would not oppose legislation which included the following:

Lessors shall notify existing residential tenants of potential lead hazards on a property by providing them with a lead hazard information pamphlet. Lessor could choose to test, lessee could waive having testing done and assume the risk of remaining in the premises, or lessee could test at their own expense. If a lessee was concerned about lead hazards being present and the property either had not been tested or had been tested and was not certified as lead-safe, they could terminate the lease within a reasonable period of time. If the lessor complies with the above requirements, they would be considered relieved from liability.

Lessor shall provide all potential lessees with a lead hazard information pamphlet for properties constructed before 1978. In addition, every lease for a residential dwelling constructed before 1978 shall contain standardized lead hazard disclosure and warning language.

The lessor and lessee would have three options available to them:

- Lessee could waive any opportunity to have the premises tested;
- Lessor could agree to test the premises at his expense; or
- Lessor could refuse to test the premises. In such cases, lessee could have the lead test done at their own expense. Lessee would retain the right to rescind a lease if the test results were positive. In all cases, lessee would have to provide lessor with a copy of the test results.

C. General concepts to be included in any lead legislation passed by Congress:

- Recognizing that lead hazards are a national health issue and not a housing issue, in the event the United States Congress passes a law relative to mandatory blood testing for lead, the National Association of REALTORS® would then support the position that sellers or lessors retain the option of requiring purchasers or lessees to provide copies of the latest blood test results of any children who are to occupy a property prior to its sale or lease.
- NAR supports the goal of assuring that residential properties be made "lead-safe" rather than "lead-free".
- NAR supports the "innocent owner" concept, to encourage owners to take voluntary action to eliminate lead hazards. The legal liability of the owner should be limited to the reduction of any lead hazard to a "lead-safe" level.
- NAR supports the addition of language to the bill limiting the liability of sellers and lessors who comply with the bill's provisions. We support the addition of the following language: "A seller or lessor of residential property and/or their agent shall have no liability under this Act or any other provision of Federal, state, local or common law for any lead-related injury to any person resulting from occupancy of the premises sold or leased if the seller or lessor has complied with the requirements of this Act."
- Absent the addition of such a liability limiting provision, NAR would support amendments to federal, state and local Fair Housing laws to allow sellers or lessors to refuse to rent to families with children in cases where there are known lead hazards on a property which would place the child's health at risk. NAR supports federal financial incentives and relief to encourage the abatement and/or encapsulation of lead hazards in residential premises.
- NAR opposes making lead hazard testing a pre-requisite for qualifying for any federally-backed mortgage insurance or guarantee under FHA, Farmers Home Administration, Veterans Administration or any other governmental or quasi-governmental entity.



- NAR supports the inclusion of legislative language prohibiting lending and insurance institutions from refusing to lend or grant liability insurance on properties solely because they may contain potential lead hazards.

## **Property Rights**

Governments shall not arbitrarily infringe on the basic right of the individual to acquire, possess and freely transfer real property, and shall protect private property rights as referred to in the 5th and 14th Amendments of the United States Constitution.

We support legislative implementation of the 5th Amendment's guarantee of compensation when property rights are taken. Every person should have the right to acquire real property with confidence and certainty that the use or value of such property will not be wholly or substantially eliminated by governmental action at any level without just compensation or the owner's express consent.

In addition, we support legislation which will provide property owners expeditious access to administrative and judicial systems at all levels - local, state and federal - to pursue Fifth Amendment takings claims or relief from other property rights violations.

We recognize the need for all levels of government to be able to exercise legitimate police powers in the regulation of private property to protect the health, safety and general welfare of its citizens. However, when government actions or regulations are not founded within legitimate police powers, the government should be required to pay compensation for the inordinate burden levied on the property owner.

The federal government should not establish criteria for the use of eminent domain by state and local governments. Each state should establish its own rules and laws governing eminent domain without interference from the federal government.

Likewise, when a government entity exercises its eminent domain power to condemn private property for public use, the government should provide - as required by the 5th Amendment - "just" compensation to affected property owners that covers not only the value of the property condemned but also all other reasonable and necessary costs generated by the condemnation action including, but not limited to, hiring legal counsel, obtaining temporary housing, lost business revenue, severance damages.

Furthermore, when a government entity exercises its eminent domain authority, it should do so only when necessary to materially advance a real public use. The government should provide persuasive, objective evidence that the project, and the resulting public use, will in fact be realized.

## **Water Resources**

The National Association of REALTORS® supports healthy, clean and abundant supplies of water.

We support finding voluntary, market-based solutions to address excessive pollution and degradation of the nation's waterways, while always being mindful of, and vigorously defending,

private property rights. We also support adequate federal funding for a well-developed system of water resources infrastructure and technology to ensure water quality and quantity nationwide.

We support the responsible use and management of our nation's water resources so that residential, commercial, and industrial development can proceed without degrading the nation's water and without excessive regulatory encumbrances.

We believe that the development of a comprehensive federal water resources policy should take into account traditional state, local and private water rights and uses. We pledge to cooperate with federal, state and local agencies responsible for water resources to educate Realtors, their clients, homeowners and consumers on water resource issues and the value and benefits of protecting water supplies.

## **Wetlands**

Recognizing the environmental significance of wetlands, we believe that any wetland legislation should include language to provide for:

- A standardized definition for identification of wetlands which includes hydrophilic vegetation, hydric soils and hydrology, and which results in a program that focuses on important wetlands habitats;
- A clearly defined permitting process which should improve the efficiency of the program, provide binding time limits for the agencies, and provide a guaranteed right of administrative appeal in order to reduce costly, unnecessary and contentious litigation;
- A program which recognizes that all wetlands are not the same and classifies wetlands by their functions and values; the strictness of the regulatory requirements should be tailored to reflect the varying importance of these qualities;
- The requirement that all authorities with wetlands regulatory powers notify affected property owners whenever wetlands inventories are to be conducted in their states;
- The use of wetlands mitigation banking as a tool to both reduce the cost of compliance with mitigation requirements and to increase the effectiveness and environmental benefits associated with permitted mitigation activities;
- A "single contact" wetlands regulation process which would eliminate the duplicity of dealing with multiple regulatory agencies.