

NAR Statement of Policy

Environment, Energy and Development Issues

1. 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.

~~Properly conducted~~ Programs of *resource*, land *preservation* and historic preservation *designed which attempt* to protect aquifers, agricultural lands, wetlands, scenic vistas, natural areas, historic properties and open space, may have a positive effect on the *quality of life and* environment in towns, counties, and municipalities. ~~However, in establishing~~ Land use laws and regulations *enacted* for the purpose of protecting *and enhancing* these resources ~~provide, the cost of the~~ benefits to the general public *and the costs should thus* ~~all~~ be *borne by the general public.* (See *Property Rights* section).

~~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.~~

~~Every person should have the right to acquire real property with confidence and certainty that the value of such property will not be unduly diminished or jeopardized by governmental action at any level without just compensation or the owner's express consent.~~

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

~~We maintain that~~ 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 also take into account the impact of planning on housing affordability.*

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

2. *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.

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 the citizens. However, government actions or regulations which are not founded within its legitimate police power should be

required to pay compensation for the inordinate burden levied on the property owner by the action or regulation.

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.

3. Clean Air

We support the need to monitor air quality and maintain minimum standards of air quality that are based on verifiable scientific evidence. Individual state and/or local governments should have input into the development and application of federal clean air standards. Further, regulators are encouraged to examine and accommodate local diversity when defining federal guidelines. ~~In~~

~~addition, governments should encourage market incentives for clean air technologies.~~

We support the role of the federal government to: establish national ambient air quality standards for criteria pollutants and make findings on interstate air pollution issues that are based on verifiable scientific evidence; make findings on interstate air pollution issues that are based on verifiable scientific evidence; set minimum standards for emissions of hazardous air pollutants based on verifiable health risks; and establish minimum standards for emission from mobile sources. ~~Individual state and local governments should have input into the development and application of these federal clean air~~

~~standards.~~ Furthermore, we believe that individual states should be responsible for monitoring air quality and developing programs to attain and maintain clean air standards. States should be provided with adequate funding to carry out the minimum federal standards. State and local program standards which exceed federal minimum standards should balance air quality with economic development. ~~The regulators should examine and accommodate local diversity when defining what programs to implement and methods to achieve these federal standards.~~ Innovative solutions and market incentives are preferable to government imposed penalties and should be strongly encouraged.

4. Environment (*See also Hazardous Waste/Superfund; Endangered Species*).

Efforts to control pollution and to protect natural resources must be balanced with efforts to increase energy efficiency and independence and not unreasonably reduce economic activity.

~~Provisions should be included in legislation and regulation to relieve intermediaries of liability when they are unknowingly involved in property transactions where hazardous waste has been generated, stored or disposed.~~

We support the wise use and management of our nation's water resources so that residential, commercial, and industrial development can proceed unencumbered in the future. States' water rights and regional customs as they have developed over the years should be considered by all levels of government. We also recognize the importance of a well-developed infrastructure in ensuring adequate water quality and quantity.

We support a multiple use approach to the management of our nation's public lands and we oppose wide scale withdrawals of public lands for wilderness designation. We are particularly sensitive to those withdrawals and policies that reduce supplies for housing and increase costs of resources utilized in building construction.

We oppose those aspects of environmental and natural resource legislation that amount

to uncompensated condemnation of private property through government actions. It is essential that ~~the rights of~~ private property *rights, as defined in these policies*, ~~owners~~ be fully recognized in local, state and federal programs and laws.

We oppose legislation or regulation which decreases access to timber resources or prohibits the export of timber from private lands.

~~We believe the way in which the Endangered Species Act (ESA) is implemented is of major importance. We support amendments to the Threatened and Endangered Species Act that recognize socioeconomic considerations and urge that compensation be required in cases where the value of private property has been unduly diminished or jeopardized by government action under the Act.~~

5. 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.

6. Grazing Rights

We support the Public Rangelands Improvement Act of 1978 market-based formula used 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.

7. Growth Issues

We recognize that growth is an issue facing many areas of our country. We believe that growth should be encouraged as it is a stimulus to 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* ~~while~~ considers the divergent needs of transportation, housing, agriculture, commercial, industrial, and environmental concerns. ~~At the same time, the value of private property should not be~~

~~unduly diminished or jeopardized by governmental action at any level without just compensation.~~ *Government growth planning activities must take into account property rights in the manner described in the NAR Statement of Policy on Property Rights.*

8. Indoor Air Quality

We believe that all Americans are entitled to enjoy an indoor living environment where risks to health and welfare from pollution are minimized. Increased efforts by both the private and public sectors should be encouraged to characterize and evaluate the extent of indoor air quality problems and to encourage the development of meaningful and affordable monitoring and mitigation strategies.

We support federal indoor air quality research and information dissemination.

We support both efforts to educate homeowners as to their responsibility to identify and disclose to real estate brokers or agents any known environmental hazards presenting a significant risk to health; and efforts by state associations of REALTOR® to determine the desirability of disclosure language in listings and contracts of sale.

We urge all Americans who are in areas identified with high levels of radon to test their homes to determine if elevated levels of radon gas are present. We support increased education of homeowners so that they will become aware of potential radon problems and of their responsibility to disclose to real estate brokers or agents indoor air problems that present a significant risk to health. We oppose nationwide mandatory radon testing at the time of transfer of real property.

Any regulation of asbestos in buildings should be based on scientifically-proven significant levels of exposure and hazard to the public. Such regulation should allow reasonable time periods in which to comply with regulations, provide flexibility in how to comply, require comprehensive training and certification for asbestos abatement contractors and laboratory technicians, and provide for a "prioritization" of regulation with respect to the particular hazard posed by certain building types and classes.

9. Hazardous Waste/Superfund

~~Since its passage in 1980 and reauthorization in 1986, the Comprehensive Environmental Response, Compensation and Liability Act (Superfund) has been inconsistently enforced and administered by the federal government. Confusion over potential liability and the legal and administrative costs associated with real estate which is an actual or potential Superfund site, have proved to be significant deterrents in selling, purchasing and developing such properties.~~

~~The uncertainty regarding potential liability for lenders and innocent holders of real property and the increases in risk to secured lenders generated by court decisions under the Superfund Act adversely affects commercial and residential real estate development and finance. Fear of liability exposure forces lenders to unduly restrain lending or not lend at all in fear that attempts to preserve the collateral value of contaminated property is excessive. Superfund needs significant revision to make it more equitable and to expedite the development of otherwise potentially valuable real estate assets.~~

~~Since its passage in 1980 and reauthorization in 1986,~~ Reauthorization or reform of the Comprehensive Environmental Response, Compensation and Liability Act (Superfund) ~~has been inconsistently enforced and administered by the federal government. Confusion over potential liability and the legal and administrative costs associated with real estate which is an actual or potential Superfund site, have proved to be significant deterrents in selling, purchasing and developing such properties. The uncertainty regarding potential liability for lenders and innocent holders of real property and the increases in risk to secured lenders generated by court decisions under the Superfund Act adversely affects commercial and residential real estate development and finance. Fear of liability exposure forces lenders to unduly restrain lending or not lend at all in fear that attempts to preserve the collateral value of contaminated property is excessive. Superfund needs significant revision to make it more equitable and to expedite the development of otherwise potentially valuable real estate assets. Reauthorization of the federal Superfund law~~ should *promote and support residential and commercial real estate development by* including the following modifications:

~~Where~~ *A* the party *responsible for* ~~who~~ generating ~~the waste should be responsible for the costs of its cleanup, where that party can be identified, they should be responsible for its cleanup but the Superfund should be the sole source of funding for the cleanup w~~ ~~Where the culpable party cannot be found; or is unable to pay for the cleanup; the Superfund should be the sole source of funding for the cleanup;~~

~~Where~~ *P* parties *that* have acted prudently and legally at the time the waste was generated and/or disposed, ~~they should not be subsequently held liable for cleanup costs, even if~~ ~~should~~ the Superfund statute *is* ~~be~~ *subsequently* changed;

Clarification of certain definitions in the current law are needed. "Due care" should be *defined narrowly interpreted* 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;

~~Limitation of~~ *R*etroactivity of the law *should be limited* to actual contamination which took place after amendments to the law in 1986;

~~A requirement that~~ *T*he federal government *should be required to* join all potentially known responsible parties who are believed to have contributed to waste on ~~at~~ ~~the site in any action~~, rather than placing this burden on the other parties to the action;

A proportional liability scheme should be incorporated into the ~~law~~ ~~reauthorization~~ 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;

~~Actual~~ *P*hysical identification of Superfund site boundaries before the nomination and listing of the area *should be required*.

10. 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:

1. provide a lead hazard information pamphlet;
2. 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:

1. read and understood the lead warning statement in the contract;
2. 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:

1. 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.

2. NAR supports the goal of assuring that residential properties be made "lead-safe" rather than "lead-free".

3. 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.

4. 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.

5. NAR supports federal financial incentives and relief to encourage the abatement and/or encapsulation of lead hazards in residential premises.

6. 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.

7. 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.

11. Wetlands

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

~~A standardised definition for identification which includes hydrophilic vegetation, hydric soils and hydrology;~~

A standardized definition for identification of wetlands which includes hydrophytic vegetation, hydric soils, and hydrology, which would result in a program that focuses on important wetlands habitats.

~~A clearly defined permitting process which includes all governmental authorities thereof;~~

A clearly defined permitting process which should improve the efficiency of the program, provide binding time limits for the agencies, and should provide a guaranteed right of administrative appeal in order to reduce costly, unnecessary, and contentious litigation.

~~The creation of a priority ranking system to identify areas most essential for acquisition;~~

The program should recognize that all wetlands are not the same and, therefore, wetlands should be classified by their functions and values and the strictness of the regulatory requirements should be tailored to reflect the varying importance of these qualities.

~~The A-requirement that of all authorities with wetland regulatory powers to notify state and county governments, local media, and affected property owners whenever of wetlands inventories are to be conducted in their states; and~~

~~The use of wetlands mitigation banking.~~

The use of wetlands mitigation banking should be encouraged 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.

That there be a “single contact” wetlands regulation process which would eliminate duplicity of having to deal with multiple regulatory agencies.

12. Endangered Species

We believe the way in which the Endangered Species Act (ESA) is implemented is of major importance. We support amendments to the Threatened and 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:

~~Compensation to property owners whose land is adversely affected by implementation of any provision of the ESA.~~

~~Use of I~~ncentives *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.

~~A-L~~istings *of as* threatened or endangered ~~must be~~ based on verifiable scientific evidence.

~~Provisions to protect private property rights and narrow the reach of the ESA on private lands, to include, but not limited to, Prompt notification to of private property owners regarding of potential species listings which might impact their property.~~

Increased local involvement in creating and implementing recovery plans.

~~Incorporation~~ Support for the concept of substantial equivalency provisions for states that currently have adequate legislation.

~~Express written permission of the property owner prior to~~ No implementation of a National Biological Survey of private property. ~~without express written permission of the property owner.~~

Independent peer review committees should review both the scientific evidence and economic impacts of all listings.

Periodic review and expedited delisting of species when supported by verifiable scientific evidence.

Committee Action Sought

Approval of motion to amend NAR Statement of Policy.

EXPAND NAR'S COLLABORATION WITH OUR STATE ASSOCIATIONS ON THE USES AND MANAGEMENT OF LAND

Concept Description

NAR would enter into a financial partnership with a targeted number of State Associations to create statewide coalitions that would serve as a resource for people involved in land use discussions and policy decisions by providing a solid foundation of factual information and research upon which rational land use policies can be developed that will accurately reflect the rights and desires of the public.

Background

The Private Property Rights/Land Use Working Group believes the uses and management of land will dominate and define the environmental debate into the next century--- particularly at the state and local levels. Because land use decisions impact both the economic and environmental aspects of our lives, it becomes even more important for NAR to provide assistance to our State Associations to improve the quality of the land use debate so that we can increase the likelihood that the formulation and implementation of land use policy is balanced and rational. In order to get a better understanding of a program that recognizes these realities and is designed to achieve these objectives, the Work Group was briefed on an initiative undertaken by the Wisconsin Association of REALTORS® called "On Common Ground".

The "On Common Ground" initiative is a "501 (c) (3)" (not-for profit/non-advocacy) comprised of over 20 organizations who have committed funding to achieve the following goals in Wisconsin:

1. Enhance awareness of, and sensitivity to, the general public's understanding of, and commitment to, private property rights and responsibilities;
2. Ensure that those engaged in policy discussions and debates about land use recognize and respect the public's rights and desires for rational land use policies;
3. Educate the public, the news media, and the political community about the role played by organizations and individuals whose members are occupationally, intellectually and emotionally on the front lines of most land use issues;
4. Limit the effect of misinformation on land use policy.

The "On Common Ground" initiative is in its first year of implementation. The program needs three years to establish itself. During this time an evaluation protocol will be used as part of the initiative to measure the success of the program in four separate areas. Based on the initial success of this initiative by the Wisconsin Association of REALTORS® the Work Group requested they make a presentation to the Environment and Land Use Committee at the 1997 NAR annual meeting. The Work Group recommends that staff develop a plan to present to the Committee at the 1998 NAR midwinter meeting, which outlines the objectives, criteria and budget that enables us to jointly field test this concept with two State Associations willing to enter into a financial partnership with NAR. The Work Group also recommends the Issues

Mobilization Committee consider supporting this concept and serving as the NAR funding source for the field tests.

Committee Action Sought

Approval of concept description and working group directives to staff.

EXPLORE THE FEASIBILITY OF CREATING AN NAR ORDINANCE REVIEW PROGRAM

Concept Description

Enhance NAR's role in providing information and services related to land use issues to state and local associations by creating a review process that analyzes, upon request, state and or local development ordinances. As a follow-up to these reviews, make NAR staff and financial resources available for on-site assistance in the negotiation of regulatory changes recommended in the reviews.

Background

The Private Property Rights/Land Use Working Group recognizes that a great majority of the legislative and regulatory landscape shaping the private property rights debate is taking place at the state and local levels. Therefore the working group feels NAR must be a more active partner with our state and local associations to become aggressively engaged in these land use battles. In order to determine the viability of this concept, the working group directed staff to explore the creation of an NAR ordinance review program. To respond to this request, staff met with officials of the National Association of Homebuilders (NAHB) to obtain information on a very successful program they have been implementing for several years.

NAHB's Land Development Service's Department provides information and services to members and affiliated state and local builder associations. NAHB staff provides analyses of state and local development ordinances for conformance with national trends in regulatory reform and housing affordability, including the following:

- Comprehensive Plans;
- Zoning Ordinances;
- Impact Fee Ordinances.
- Growth Management Plans;
- Subdivision Regulations;

As a follow-up to the reviews, staff is available to provide on-site assistance to state and local associations in the negotiation of regulatory changes recommended in the reviews. In addition, NAHB provides access to publications and other technical material on land development that promote cost-effective and environmentally sensitive development practices.

Two planners on staff do the work of the program; this totals around 2,000 staff hours. Staff receives around 50 ordinances/year to review. Most recently, the ordinances have involved tree preservation and impact fees. If necessary, staff may follow-up their legal review and analysis with a site visit to testify before the local planning or zoning board, or hold strategic planning sessions with local staff.

Based on staff's review of the NAHB model, they recommend the creation of a strategic proposal to determine the feasibility of an NAR ordinance review program. The working group instructed staff to develop a plan to share with the Committee at the 1998 NAR Midwinter Meeting. The plan will outline the strategic and key tactical elements of the program and will

define criteria for the screening of requests, along with a budget estimate -- including the staff hours required to implement and maintain the program.

Committee Action Sought

Approval of concept description and working group directives to staff.

ENHANCE NAR'S ROLE IN THE COVERAGE AND COMMUNICATION OF STATE/LOCAL LAND USE ISSUES

Concept Description

Heighten NAR's involvement in state/local land use issues by enhancing our communication efforts to increase coverage of these issues in order to inform, educate and/or persuade internal (REALTOR®) and external (general public) audiences.

Background

The Private Property Rights/Land Use Working Group believes that NAR must take a leadership role in effectively covering and communicating emerging and evolving state/local land use issues to our membership/association staff (internal) and to the general public (external). The working group instructed staff to identify ways to implement this goal to our internal audience in the beginning of 1998. The working group also requested staff to report back to the Committee at the 1998 NAR Midwinter Meeting any additional REALTOR® Association resources that can be used to achieve this goal. Finally, the working group instructed staff to develop a strategy for enhancing our coverage and communications of emerging and evolving state/local land use issues to the general public. This report should be provided to the Committee at the 1998 NAR Midyear Meeting.

Government Affairs and Publications staff have identified the following steps to implement in the first quarter of 1998 in order to increase our coverage and communication of state/local land use issues:

- More items that involve land use issues in the "State News Roundup" monthly column in the News section of Today's REALTOR® (TR).
- Feature story ideas that key on state/local land use issues such as urban growth boundaries, open-space zoning, transferable development rights, historic preservation, flood zone regulations, etc. Since TR is a national publication, these stories have to approach state/local issues either from the perspective of their potential to become a national trend or based on their uniqueness.

Committee Action Sought

Approval of concept description and working group directives to staff.