1999 Legislative Affairs Agenda

naiop
National Association of Industrial and Office Properties

The Forum for Commercial Real Estate

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Meeting with Members of Congress in their offices shows the access that NAIOP has. Roger Anderson (left), Lynn Melby (second from left) and Pat Hamilton-Bell (right), members of the Washington State Chapter, meet with Rep. Jennifer Dunn (R-WA), a member of the House leadership who also sits on the influential House Ways and Means Committee.

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The Forum for Commercial Real Estate

Executive Summary

Introduction

The commercial real estate industry needs a voice in Washington, DC. As long as government can change the rules of the game—and wipe out years of planning, working and investing with a single bad law—getting involved in the political process is not an option, it's essential. Through the membership of over 7,000 commercial real estate professionals, the American Development Political Action Committee (ADPAC) and a dedicated national public affairs staff, NAIOP is effectively organized and designed to be that voice for commercial real estate in the legislative process—and the collective industry link to political power.

1998 Progress Report

In 1998, NAIOP made significant progress with key issues on Capitol Hill. We advanced critical legislation, actively participated in regulatory hearings affecting the commercial real estate industry and educated elected officials and administrative agencies on many of these issues. A bipartisan Congressional Real Estate Caucus was formed to focus on advancing concerns to the industry, and we contributed ADPAC funds to 61 candidates, 51 of whom were successful in their elections.

- ***Tenant Improvements:*** NAIOP worked closely with Congressman Clay Shaw (R-FL) and met with numerous members of the House Ways and Means Committee to get cosponsors for H.R. 3500, which would reduce the current 39–year depreciation for tenant improvements to 10 years. Through our efforts, 13 cosponsors were added to the bill.

- ***Capital Gains/Depreciation Recapture:*** Then-House Speaker Newt Gingrich (R-GA) introduced legislation to reduce the capital gains tax rate from 20 percent to 15 percent. This legislation also provided that the depreciation recapture tax rate would be reduced to 15 percent. NAIOP pledged to assist the Speaker with his efforts, particularly to make the depreciation recapture tax rate equal to the capital gains tax rate. Under present law, the depreciation recapture tax rate is 25 percent.

- ***Endangered Species Act (ESA) Reform:*** NAIOP helped to advance ESA reform in the Senate with a bill that would make ESA less onerous to landowners, while more effectively protecting endangered species. We also assisted in getting bipartisan support for the legislation and won support from Clinton administration officials.

- ***Superfund/Brownfields Reform:*** NAIOP continued to work closely with Congressional committees to draft a reform bill that would include incentives to redevelop brownfields sites and provide liability relief to developers who want to purchase and redevelop a Superfund or brownfields site. NAIOP conducted a panel discussion at the EPA Brownfields Conference, which discussed the developer's perspective on brownfields redevelopment.

- ***Wetlands Reform:*** NAIOP continued to push for wetlands reform legislation and worked closely with Congressional staff to draft a reform measure. NAIOP successfully lobbied for committee passage of an important wetlands mitigation banking bill. In addition, NAIOP worked with the Army Corps of Engineers to draft a replacement permit for Nationwide Wetlands Permit #26, which currently expedites the process of developing land that contains small amounts of wetlands. This new permit was part of a proposed rulemaking by the Corps but was later dropped.

"NAIOP has played an instrumental role in the establishment and growth of the Congressional Real Estate Caucus, and they have proven to be a valuable resource to my staff and me as we continue to work tirelessly to lower the depreciable life of tenant improvements and the depreciation recapture rate," says Rep. Phil English (R-PA), who visits with Larry Simpson (left), NAIOP Board member Lou Oliva (second from right) and Mary Lipovich (right), members of the Western Pennsylvania Chapter, during Capitol Hill Day at the Chapter Leadership & Legislative Retreat.

"NAIOP continues to be an effective voice for its members, providing valuable comments as we consider changes to Superfund, the Endangered Species Act and other environmental laws," says Sen. John Chafee (R-RI), Chairman of the Senate Environment and Public Works Committee, shown here (right) with NAIOP Vice President for Government Affairs Robert Landis (left) at a fund-raising event sponsored by NAIOP.

Executive Summary

- ***Dialogue With Federal Regulators:*** NAIOP again worked closely with numerous regulators in the environmental arena to articulate commercial real estate's concerns regarding environmental regulation. NAIOP is working with the EPA on the brownfields issue and has worked closely with the Army Corps of Engineers on wetlands permits.

- ***Growth Management:*** NAIOP established a growth management task force to study and develop strategy and tactics to respond to state and local efforts aimed at halting development. This effort is to support NAIOP chapters as they tackle this important issue.

- ***Public Affairs Mentoring Program:*** NAIOP continued this successful program, which assists chapters in developing effective public affairs programs to impact state and local public policy.

Testimony before Congress helps NAIOP influence and advance important legislation. NAIOP Superfund Task Force Chair Barry Trilling testifies before the House Subcommittee on Water Resources and the Environment during hearings on Superfund reform.

1999 Outlook: Top Issues

Passing good, comprehensive legislation is a multi-year process. As such, it is important to set realistic goals and expectations. 1999 will once again present a unique opportunity for NAIOP and its powerful grassroots structure to influence and advance important legislation, setting us apart from other associations in the legislative and regulatory arenas. With even greater strength in 1999, we will continue to work behind the scenes to educate and influence Members of the new 106th Congress on all issues of importance to NAIOP. We plan to testify before Congress and meet personally with Members of the House and Senate and their staff on critical issues that ultimately affect your bottom line. Specifically, we will strive to ensure that any tax and environmental reform efforts recognize the important role real estate plays in the nation's fiscal system and that any changes in the law provide equitable treatment to commercial real estate activities. Our legislative goals for 1999 follow, along with the page(s) on which to find additional information.

- Concentrate efforts on the reintroduction, co-sponsorship and passage of ***tenant improvement*** legislation, which would lower the depreciation schedule from 39 years to 10 years. (See page 4.)

- Work to guarantee that parity is restored between ***capital gains*** and ***depreciation recapture*** rates. (See page 5.)

- Continue to monitor any potential legislative or executive branch proposals to alter the tax treatment of ***like-kind exchanges.*** (See page 6.)

- Renew efforts to pass important ***endangered species reform*** legislation in Congress. With strong Senate support, NAIOP will be poised to advance a new reform bill, working closely with the National Endangered Species Act Reform Coalition. (See page 7.)

- Lobby hard for comprehensive ***Superfund reform*** that includes incentives for ***brownfields*** redevelopment. NAIOP will work in coordination with the Superfund Reform Coalition to ensure passage of strong and meaningful legislation. (See page 8.)

- Work with leaders in both the U.S. Senate and House to introduce and pass legislation reauthorizing the ***Clean Water Act,*** which will make substantive reforms to the ***wetlands*** and ***storm water*** permit programs. (See pages 9 and 11.)

- Regenerate Congressional support for ***electric utility deregulation*** legislation that will ultimately provide for cheaper and more efficient power to owners and operators of commercial real estate. (See page 10.)

- Ensure that ***private property rights*** legislation is introduced in Congress to provide compensation to landowners when the affected portion of their property is devalued because of federal regulation. (See page 12.)

- Reinforce Congressional support for amending the new and onerous ***clean air*** regulations that will greatly impact commercial development.

- Develop a comprehensive strategy and become a resource center for chapters to deal with the important issue of ***growth management*** at the local and state level.

NAIOP Has The Resources To Succeed

NAIOP recognizes that the real key to legislative success is the personal involvement of its members. As such, we provide many resources to our members so that they can be more knowledgeable and active in the political arena. Through a professional national public affairs staff, an interactive web site committed to legislative affairs and an ever-growing political action committee, NAIOP is the leading association for commercial real estate in the nation's capital.

NAIOP has a ***dedicated national public affairs staff*** who is committed to identifying and advancing issues of importance to the commercial real estate industry on Capitol Hill. In addition, they are available to provide assistance or to answer any questions you may have regarding those issues.

The Legislative Affairs section at www.naiop.org provides up-to-date information on current legislative initiatives, guides and links to the political process and direct access to Congress. Members can send letters via email directly to their Representatives without ever leaving the NAIOP home page.

The American Development Political Action Committee (ADPAC) is the only federally registered political action committee that represents the interests of the commercial real estate industry and NAIOP members. ADPAC pools personal contributions to help elect to Congress individuals who understand the vital impact the development industry makes on communities throughout the United States.

As these resources are used more frequently and by more NAIOP members, the voice of commercial real estate grows even louder and our visibility increases even more on Capitol Hill.

In 1999, NAIOP will continue to work behind the scenes to educate and influence Members of the 106th Congress on all issues of importance to NAIOP. 1998 NAIOP Chairman of the Board Terry Stiles (left) and NAIOP President Tom Bisacquino (center) confer with Rep. Billy Tauzin (R-LA), who chairs the House Subcommittee on Telecommunications, Trade & Consumer Protection.

Connect To Public Affairs Online

Get current information—and get involved—by clicking Legislative Affairs at **www.naiop.org.** You'll find a comprehensive Public Affairs Resource Center with information about legislative issues involving commercial real estate. You'll also find strategies you can use to get involved on the federal, state and local levels. Plus, you can write letters and send emails directly to your Members of Congress. Bookmark the site and visit it often.

1999 Issues

Tenant Improvements

Issue

Office, retail or other commercial rental real estate is typically reconfigured, changed or somehow improved on a regular basis to meet the needs of new and existing tenants. These tenant improvements ensure that the work space is as modern, efficient and environmentally responsible as possible. Under current law, building owners must depreciate all tenant improvements over 39 years. The useful life of the improvement, usually determined by the life of the underlying tenant lease, is irrelevant. As a consequence, building owners are not allowed to properly match the expense of "building out" a commercial space to the income generated by these improvements. This is fundamentally unfair tax treatment, as tenant improvements do not have the same useful life as a building.

"Logically, the time period during which the costs associated with constructing leasehold improvements are recovered, through depreciation deductions, should match the time period during which the improvement is useful," says Rep. E. Clay Shaw (R-FL), who authored the NAIOP-backed bill on tenant improvements. He is flanked by past NAIOP Chairman of the Board Terry Stiles (left) and Board member Ronnie Duncan.

Background

Over the past 15 years, the cost recovery rules pertaining to tenant improvements have evolved significantly away from the fundamental tax precept of "matching"—where a business is allowed to recover costs expended on an investment over the same period of time that the investment earns income. Today, the rules say that the costs associated with tenant improvements be recovered over the same 39–year period as the useful life of the overall building. The origin of this problem can be traced to 1981. Prior to this time, real property was depreciated using a component method. Different depreciation schedules were used to write-off the basic building structure, electrical wiring and so forth. Tenant improvements were generally written off over the life of the lease on the space. In 1981, however, component depreciation was replaced by a simplified system where the entire building and all improvements were written off over a single recovery period. Because that recovery period was 15 years, this did not pose a real problem for tenant improvements. However, beginning in 1982 and continuing for the next 11 years, the recovery period for commercial property and tenant improvements was gradually extended to 18 years, then to 19 years, then 20, 31.5 and finally to the current 39–year depreciation period.

Status/Outlook

NAIOP has been gathering support for a bipartisan measure to reduce the depreciation schedule for tenant improvements from 39 years to 10 years. It is anticipated that this legislation will be reintroduced in the 106th Congress with many cosponsors.

NAIOP Position

NAIOP strongly supports efforts to reduce the depreciation schedule for tenant improvements from 39 years to 10 years or the term of the lease. We will continue to coordinate the legislative lobbying effort in Washington.

Opposition Position

Little opposition, if any, has emerged based on either the merits or the economic basis of this legislation. Opposition that may occur will most likely focus on the revenue loss to the Treasury from this shortened depreciation period.

Capital Gains

Issue

A lower tax rate on capital gains and depreciation would encourage economic growth, improve long-term productivity, make our nation more competitive and reduce the overall cost of capital. It would also "unlock" billions of dollars from passive investments for new, job-creating activities, such as the development and redevelopment of real estate.

Background

The Taxpayer Relief Act of 1997 lowered the capital gains tax rates for individuals. No changes were made in the tax rates for corporate capital gains. The maximum capital gains tax rate is 20 percent (10 percent for taxpayers in the 15 percent bracket). Tax on depreciation recaptured on the sale of depreciable real property is 25 percent. Beginning in taxable years after December 31, 2000, gains on property held by individual taxpayers for more than five years will be taxed at a maximum rate of 18 percent (8 percent for taxpayers in the 15 percent bracket). These lower rates will apply to property acquired after December 31, 2000. Existing assets owned prior to this effective date can qualify for the lower rates provided they are treated as sold and repurchased, and provided that taxes are paid on any estimated gain.

Status/Outlook

Congressional leaders have indicated their desire to further reduce the tax on capital gains. Former House Speaker Newt Gingrich (R-GA) introduced legislation to reduce both the top capital gains tax rate and the depreciation recapture tax rate to 15 percent. Further discussions regarding this proposal will occur in 1999.

NAIOP Position

NAIOP will continue to support legislation that treats real estate in a similar manner as other assets and that reduces the taxation of depreciation recapture to the capital gains tax rate.

Opposition Position

The administration, many Congressional Democrats and others oppose any further decrease in the capital gains tax rate or reduction in depreciation recapture tax rates. They feel that these are simply tax cuts for the wealthy and would not benefit the average American.

Reduced capital gains and depreciation recapture tax rates would encourage economic growth, improve long-term productivity, make our nation more competitive and reduce the overall cost of capital. NAIOP Past Chairman of the Board Paul Novak (left) welcomes Senate Budget Committee Chairman Pete V. Domenici (R-NM), a strong supporter of reducing the capital gains tax, to a NAIOP breakfast meeting.

1999 Issues

Like-Kind Exchanges

Issue

Since 1924, Congress has recognized that gain should not be taxed when property held for trade or business use or for investment is exchanged for "like-kind" property. This important principal, included in section 1031 of the Internal Revenue Code, recognizes that taxpayers exchanging like-kind property have not altered either the type or level of their investment and that the economic situation of the taxpayer has not changed. For real estate, like-kind exchanges often provide the necessary liquidity to make deals work and have become essential to the operation of real estate markets. Without like-kind exchanges, many transactions simply would not occur.

NAIOP has access to members of the House Ways and Means Committee. David M. Jellison, NAIOP Board member and Vice Chair, Public Affairs (left), meets with Rep. Jim Ramstad (R-MN), a member of the Ways & Means Committee, which has jurisdiction over tax and finance issues such as like-kind exchanges.

Background

In April 1997, the Clinton administration proposed legislation that would severely curtail the use of like-kind exchanges. This provision was part of a tax simplification package proposed by the Treasury Department and was one of the primary revenue raisers proposed to pay for the simplification initiative. Under the Treasury proposal, the like-kind standard that has existed since 1924 would be replaced with a "similar or related in service or use" standard. This new standard would require that both the end uses and the physical characteristics of the two properties be closely similar in order to qualify for deferral. Unimproved real property could not be exchanged for improved property, and even exchanges between improved property would be limited. Under a similar use standard, previous court cases have ruled that an owner-occupied billiard center could not be replaced with an owner-occupied bowling center and that an owner-managed motel could be not replaced with an owner-managed mobile home park. A similar use standard would result in numerous administrative complexities and uncertainty that would have to be resolved by the court system.

Status/Outlook

The President did not include his like-kind exchange proposal when he submitted his FY 1999 budget to Congress in February 1998. This diminishes the chance that changes to section 1031 will be considered in the near future. However, given the importance of like-kind exchanges to the real estate industry, NAIOP will continue to monitor this proposal.

NAIOP Position

NAIOP adamantly opposes proposals to alter the use of like-kind exchanges. Restricting the use of like-kind exchanges would threaten the liquidity of real estate markets and would severely curtail transactions and the efficiency of the market. It would also remove the incentive to own and repair distressed properties.

Opposition Position

Opponents of like-kind exchanges for real estate argue that section 1031 allows taxpayers to avoid gain that should be realized when real estate transactions occur. They also argue that the current law allows taxpayers to alter their real estate holdings and should be restricted to exchanges for property that are similar to the asset being replaced.

Like-Kind Exchanges Widely Used

In FY 97, a NAIOP principal member's company average total transactions value of 1031s was $47.6 million, with a median value of $5 million, as reported in the NAIOP Member Analysis Survey.

Endangered Species

Issue

Faced with the possible extinction of various species of animal and plant life, Congress passed the Endangered Species Act in 1973. The Act established a process to designate a plant or animal as being in danger of extinction, protecting that species from further decline and devising a strategy for its recovery. However, the ESA has failed to conserve the species it was meant to protect, it has impeded development of private property and it has wreaked economic havoc on private landowners who happen to have ESA-listed species on their land.

Background

When the law was enacted, 109 species were listed for protection. Today, almost 1,000 species are listed, with more than 400 additional candidate species. Only 20 or so species have been removed from the species list since 1973. It is clear that the ESA does not work. The Act has created enormous bureaucratic problems for all those involved. The process for determining a listing of a species has gone beyond the bounds of strictly scientific determinations, and the paperwork, litigation and challenges to the Act's intent are more fervent than ever. Property rights have eroded and land values have dropped in many instances, and the government has failed to show any interest in just compensation for its citizens who have had their property taken under this law. According to the General Accounting Office, more than 90 percent of the species listed under the ESA rely upon private land for some or all of their habitat.

Status/Outlook

With the onset of the Republican Congress in 1995, long-awaited legislative action reforming the Endangered Species Act finally began to take place. NAIOP-supported legislation was introduced, but little substantive legislative action has occurred because of a lack of consensus on the issue. Efforts to craft bipartisan bills in both the House and Senate are expected in 1999.

NAIOP Position

NAIOP believes that the listing process threatens economic growth and is in great need of reform. Listing should be based upon more focused scientific data, with economic consequences taken into consideration. NAIOP supports efforts to conserve species more effectively while providing more assurance and fairness to individuals, communities and businesses that need government approvals involving endangered or threatened species and species habitat. NAIOP supports compensating property owners when they are substantially deprived of the economically viable use of their property because of ESA restrictions. NAIOP firmly believes in the principal that a balance must exist between economic and environmental priorities and between humans and other species. The value of human life versus that of plant and wildlife must be put into perspective.

Because more than 90 percent of the species listed under the Endangered Species Act rely on private land for some or all of their habitat, listing should be based on more focused scientific data, with economic consequences taken into consideration. Sen. Dirk Kempthorne (R-ID), author of last session's ESA reform bill, meets with NAIOP Board member and ESA Task Force Chair Cynthia Henderson.

Opposition Position

Many organizations support a strong ESA bill and feel that regulation and enforcement need to be strengthened rather than weakened. Primarily, these organizations advocate more aggressive environmental protection. They include the National Wildlife Federation, the Audubon Society, the Fish and Wildlife Service (which administers the Act), the League of Conservation Voters and the Sierra Club. These organizations would grant all species blanket protection, regardless of how small or large a role they play in the management of the entire ecosystem. They feel strongly that development has already promoted the loss of various species of wildlife.

1999 Issues

Superfund/Brownfields Reform

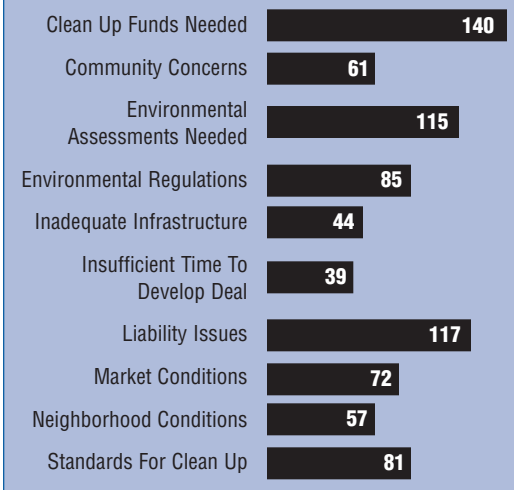
Issue

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) was enacted in 1980 to address the problem of inactive hazardous waste sites. Despite its good intentions, CERCLA has proven to be bureaucratic, complicated and costly. It has imposed retroactive, unfair burdens on private citizens and companies, without regard to their negligence or fault, and it has curtailed economic growth and development. Superfund is an expensive failure that needs to be substantially revised and reformed.

Background

CERCLA created a five-year, $1.6 billion "Superfund" to pay for national cleanup of hazardous waste sites, chemical spills and other releases of environmental contaminants. Currently, 1,230 sites are estimated to be on the Environmental Protection Agency's (EPA) National Priorities List for Superfund program cleanup. (EPA has received reports of approximately 37,500 sites that could prove hazardous.) Unfortunately, a majority of the funding has not gone toward cleaning up these sites, but instead has been wasted in litigation, so only a small percentage of these sites has actually been put back to productive use for the economic benefit of communities. Superfund is actually a "fund" created by a tax on polluters. The actual cost of cleanup is shared by the federal government, polluters, insurance companies and states. The main principle behind the establishment of Superfund was that the polluter should pay to clean up hazardous waste sites. The major problem with Superfund is that it has resulted in endless litigation over who is actually responsible for the cleanup. Under the current system, an owner is held liable regardless of whether he was involved in the handling or disposal of a hazardous substance.

Impediments To Redevelopment



In *Recycling America's Land,* published by the U.S. Conference of Mayors, 149 cities were asked to identify the impediments they encounter in redeveloping brownfields sites.

Status/Outlook

For the past several years, Congress has made serious, though unsuccessful, attempts at forging a comprehensive Superfund reform bill. Several Members of Congress have introduced NAIOP-supported legislation over the years, but none of the proposals has generated the consensus necessary to ensure enactment. In 1999, Congressional leaders hope to develop bipartisan consensus necessary to pass comprehensive changes. Redevelopment of brownfields (polluted, abandoned industrial sites) may be a rallying point for both parties as the process begins anew in 1999.

NAIOP Position

Reform legislation must provide for a fault-based system of environmental cleanup, exempt innocent people from liability and provide incentives for expediting redevelopment. NAIOP strongly supports providing state voluntary cleanup programs with more flexibility. We also support changes to define more clearly the specific due diligence requirements that will be a prerequisite for qualification as a "bona fide prospective purchaser" or as an "innocent landowner" so that the purchaser or owner may avoid the liability arising from cleanup of sites contaminated by hazardous substances. NAIOP seeks removal of legal obstacles for obtaining financing for the acquisition and environmental remediation of properties with development potential. NAIOP strongly favors a brownfields provision that would give states greater authority in cleanup decisions. NAIOP advocates changes to what it currently sees as an inequitable application of the law's retroactive and joint and several liability provisions and believes a compromise needs to be reached on this issue.

Opposition Position

Those opposing Superfund reform, such as the National Resources Defense Council, feel that changes to the current liability scheme and cleanup standards will undermine the intent of the program, which was to identify and finance cleanup of those industrial and hazardous waste sites that were found to harm the environment.

Wetlands

Issue

Wetlands are important to our environment, and their declining acreage is a legitimate national concern. However, the way the government regulates the use of these wetlands has resulted in unnecessary increased costs and delays in real estate development and redevelopment.

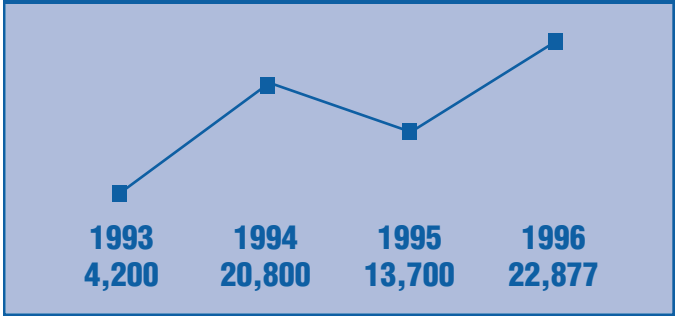
Background

Because of dwindling wetland acreage, Congress passed several laws that provide varying levels of regulatory protection under different circumstances. The federal wetlands program in effect today is a mishmash of these laws—it is not the product of a carefully studied, considered or debated legislative policy. One major law, passed in 1972, was Section 404 of the Clean Water Act. The CWA is not a wetlands protection law; it is a water quality law that has been used to attempt to achieve wetlands protection, a goal for which it was not designed. The Army Corps of Engineers (Corps), the Environmental Protection Agency (EPA), the Fish and Wildlife Service and the National Marine Fisheries Service are involved in wetland delineation and management. These agencies often make contradictory decisions, leaving the public without secure knowledge or guidance. In addition, 75 percent of all wetlands are privately owned, and many wetlands are located near large population centers.

Status/Outlook

Reauthorization of the Clean Water Act, including proposals to reform the wetlands permitting program, is expected to be considered in 1999. Substantive legislative work has already been done. The National Wetlands Coalition, of which NAIOP is a member, recently assisted in developing a "discussion draft" of a bill that would amend the 404 program, as opposed to rewriting the statute. Many reform supporters hope this draft will eventually be introduced as legislation in 1999 as part of a Clean Water Act reauthorization.

Wetlands Gains This Decade In The United States As A Result Of The Section 404 Regulatory Program (In Acres)



NAIOP Position

NAIOP supports the reform provisions incorporated in the discussion draft and will strongly lobby to ensure that they are part of a Clean Water Act reauthorization bill in 1999. Furthermore, NAIOP will lobby for a similar House reform bill that is likely to be developed by Rep. Richard Baker (R-LA). NAIOP would like to see a balanced approach to the federal wetlands permitting program (Section 404), one that provides simplification and efficiency toward the permitting process while protecting sensitive environmental areas. We strongly support the concept of mitigation banking, which offsets destroyed or degraded wetlands in one area with newly created, enhanced or restored wetlands elsewhere, thereby balancing the needs of developers and the environment.

Opposition Position

Many organizations that support strong environmental regulation advocate an enhanced role for federal regulators in the permitting process. They want to expand those activities that will require permits, including those that only have a negligible impact on the environment. They believe that loss of wetlands will accelerate deterioration of the ecosystem. Groups such as the American Wildlife Federation, the Sierra Club, the League of Conservation Voters and the Natural Resource Defense Council strongly endorse this view and dismiss any mitigation efforts as a poor attempt to restore or replace a natural wetland that has been destroyed in the name of economic progress.

1999 Issues

Electric Utility Deregulation

Issue

Electricity is one of the largest operating expenses for owners of commercial real estate. Legislation at both the federal and state levels would deregulate and promote competition in the electric utility industry, thus providing for cheaper, more efficient power to owners and operators of commercial real estate and presenting commercial real estate developers with choices regarding utility providers.

Background

Since the inception of the electric industry during the 19th century, local, state and federal officials have attempted to structure the industry in such a way as to ensure reasonable rates for all consumers. This "regulatory compact" between the utilities and the government allowed electric utilities to have exclusive franchises in return for limited rates, while still allowing the industry to receive a "reasonable" rate of return on their investment. The Energy Policy Act passed in 1992 established a new national energy policy strategy and dramatically changed how the electric industry operated. Under the regulatory guidance of the Federal Energy Regulatory Commission (FERC), the Act established a long-term comprehensive mandate to bring competition into the electric utility industry. The Act authorized FERC to order transmission-owning utilities to open their lines to parties desiring to buy or sell electricity at wholesale.

Status/Outlook

In 1996, Congress began to take a serious look at this issue. In the 105th Congress, several bills were introduced pertaining to electric deregulation, but no one bill gained significant support among the various stakeholders. This reflects the complex nature of the issue and the expected difficulty in reaching consensus on the issue. Many predict it will be a few years before a deregulation bill passes Congress. Meanwhile, the hotbed of deregulation efforts is at the state level, with several states enacting some sort of pro-competition legislation, additional states having various regulatory orders in place and most other states having pending proposals or ongoing investigations.

NAIOP Position

NAIOP supports a strong pro-competition bill and will once again be working with an industry coalition to ensure that a fair deregulation bill emerges in Congress over the next few years. Commercial customers are often discriminated against in pricing in favor of residential and industrial users. We simply want to be treated equitably with respect to electric costs in any deregulation effort. NAIOP will lobby to ensure that any legislation that emerges on this issue treats the commercial sector fairly.

Opposition Position

Most large utility companies and certain state public utility commissions oppose deregulation because they argue that under a competitive market system, small customers would be forced to bear stranded costs (the existing investments undertaken by electric utility companies to fulfill obligations to serve all customers within a geographic area, no matter what the financial costs). Utility shareholders also fear they may be burdened with these stranded costs. In addition, numerous environmental groups oppose any deregulation effort, fearing that any legislation would weaken the Clean Air Act. Finally, some analysts believe a competitive industry will encourage short-range decision-making based predominantly on current price, rather than on future needs and environmental concerns, resulting in delayed development of new power plants or innovative technology.

The Power Of Deregulation

History has shown that deregulation can save you money. During the first five years after deregulation, natural gas prices fell between 23–45 percent, long distance telephone service costs decreased 23–41 percent and railroad costs decreased 20 percent. Economists for the federal government and universities predict savings of at least 20–25 percent during the first five years after utility deregulation.

Reduced utility costs will also translate into freed-up capital that can spur economic growth, create jobs and increase your company's and our nation's competitiveness.

Source: Americans for Affordable Electricity

Storm Water Permits

Issue

A provision in the Clean Water Act of 1972 required that all sources of pollution be regulated to attain certain water quality standards. The Environmental Protection Agency (EPA) has been regulating point sources, places where water is directly emitted from industrial and waste water sites, and non-point sources, which include storm water runoff. Regulations affect developers of commercial real estate because of the restrictions that are put on construction and commercial activities.

Background

According to EPA studies, commercial and light industrial activities do not contribute significantly to the degradation of storm water and therefore should not be singled out for a separate and expensive permitting program. In addition, an EPA study and other recent surveys found that agriculture, erosion, illicit discharges and sanitary and combined sewer overflows are responsible for a great majority of problems associated with storm water runoff. However, environmental groups and some regulators are convinced that storm water must be regulated through land use control, including restrictions on construction and commercial activities. For the past several years, Congress has attempted to reauthorize the Clean Water Act and make proposed changes to the storm water permitting program. However, with the strong opposition of environmental groups and the Clinton administration, the legislation has not moved.

Rep. Bud Shuster (R-PA) (left), Chairman of the House Committee on Transportation & Infrastructure, meets with NAIOP Board member Ronnie Duncan of Florida at the Chapter Leadership and Legislative Retreat. Rep. Shuster's Committee has jurisdiction over storm water permits.

Status/Outlook

The 105th Congress failed to take substantive action. With a lack of consensus in Congress, focus has shifted to EPA and regulatory actions. Sen. John Chafee (R-RI), Chairman of the Senate Environment and Public Works Committee, plans to markup a Clean Water Act reauthorization bill sometime in 1999. He is expected to propose changes to the storm water permit program at that time.

NAIOP Position

NAIOP agrees with the EPA's finding that commercial and light industrial activities do not contribute significantly to the degradation of storm water and therefore should not be singled out for a separate and expensive permitting program. NAIOP will continue to urge Congress to adopt statutory reforms and will monitor the EPA and other agencies' regulatory actions to ensure that storm water management requirements do not unnecessarily burden our industry.

Opposition Position

Several environmental groups adamantly believe that commercial runoff contributes to the degradation in storm water and that it should be heavily regulated. Some environmental organizations are seeking to delay storm water legislation.

1999 Issues

Property Rights/Regulatory Reform

Issue

Private property rights advocates are concerned that federal regulatory actions diminish the value of private property and violate the "takings" clause of the Fifth Amendment to the U.S. Constitution. These actions leave landowners no recourse to receive compensation for lost value, except through the courts, but remedy through federal courts is a painstaking process. Supporters of regulatory reform believe that regulatory agencies overstate the risks to health and the environment in order to justify aggressive regulations that result in substantial compliance costs but little actual benefit. Both property rights and regulatory reform are needed to ensure landowners are not deprived of the use of their property and that new regulations are not overly burdensome.

"The foes of freedom have long recognized that if you can do away with property, you can eventually and very quickly do away with freedom."

—Sen. John Ashcroft (R-MO)

Background

The "takings" clause of the Fifth Amendment to the U.S. Constitution states, in part, "nor shall private property be taken for public use without just compensation." Despite this protection, more and more regulations have increased government "takings" without compensation and have galvanized private property owners into action to defend their property rights. Laws such as the Endangered Species Act and Section 404 of the Clean Water Act, which limits the development of wetlands, have driven down market value and often rendered private property useless for development purposes.

Status/Outlook

Private Property Rights: A number of legislative efforts to protect private property have been initiated over the past several years. Efforts to reintroduce property rights legislation are expected in the 106th Congress, with hearings and markup in committees in both the House and the Senate.

Regulatory Reform/Risk Assessment: Legislation that ensures that risk assessment and cost/benefit analyses are conducted before federal regulations are adopted is expected to be reintroduced in the 106th Congress.

NAIOP Position

Property Rights: NAIOP strongly supports compensating landowners whose property values are diminished as a result of regulatory action, particularly those under the Endangered Species Act and wetlands permitting under Section 404 of the Clean Water Act. A reasonable level of compensation must be granted to a landowner when the affected portion of his property is diminished in value because of federal regulation.

Regulatory Reform/Risk Assessment: Federal regulatory agencies have the tendency to choose policy options that overestimate risk to human health. A balanced approach, which reduces the enormous regulatory compliance costs businesses incur, must be established. The incremental costs of a regulation should be comparable to the benefits.

Opposition Position

Efforts to improve private property owners' access to the courts are opposed by the administration, environmental groups and the U.S. Conference of Mayors. They argue that these bills would allow local and state laws to be circumvented and that they would upset judicial precedent. Environmental, labor and health and safety groups oppose regulatory reform bills, saying that they assault federal safeguards and that they are anti-labor.

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