



**2011**

**NAIOP of  
Ohio**

**Government  
Affairs  
Agenda**

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COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION

NAIOP OF OHIO



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# 2011 Issues



## The Ohio Department of Development, JobsOhio privatization and HB 1

### The Issue

Private industry in Ohio, at one time, led economic development and growth, partly through individual initiative and innovation and partly through factors such as coal-fired, base load electrical utilities that actively sought out and attracted additional heavy industry. Both factors have had their effects blunted by governmental entities that over time have evolved to serve their own interests as much or more to promote free enterprise and job creation.

As Governor Kasich has pointed out, the Ohio Department of Development (“ODOD”) has become an attic into which a variety of programs beyond job creation have been placed. Interim ODOD Director and venture capitalist Mark Kvamme promises an intensive and hands-on “five-guys-in-a-garage” approach to revamping Ohio’s development efforts. The Kasich Administration sees the JobsOhio program as a key way to promote free enterprise and job creation in Ohio.

### Position

NAIOP Ohio supports Ohio House Bill 1, under the qualification that it be made to comport with the Ohio Constitution.

As a part of this effort, NAIOP Ohio encourages the following:

- The unmet promise of Governor Strickland’s Executive Order 2008-04S needs to be met by Lt. Governor Mary Taylor’s Common Sense Initiative to review and simplify Ohio’s rules and regulations.
- ODOD needs to be able to re-prioritize both the Ohio Environmental Protection Agency and the Ohio Department of Transportation.
- State government needs to inventory Ohio’s businesses and promote those that are already at or near best-in-class status before helping to develop new niches.
- Regional ODOD representatives need more real-world experience than a number of those who have served in the past.

### Legislation

Ohio House Bill 1

## Redeveloping Ohio’s Vacant Properties

### The Issue

Ohio’s weakened commercial and industrial real estate has a relatively high level of vacancy hung over with sluggish absorption and a sublease market. Couple that with a thin financing market for tenant improvements, capital maintenance and improvements, and refinancing. Finally, local real estate taxes, typically one of the largest components in a building’s expense profile, are ad valorem - the taxes are based on some notion of value on the property, and not the income generated on the building to pay taxes.

Further compounding these cash flow challenges is the fact that a number of vacant properties in Ohio are brownfields – not contaminated enough to be a priority for government enforcement action, but contaminated enough to pose financing challenges and make a property unmarketable.

Two recent proposals have been submitted to address these issues:

House Bill 10

- Authorizes a refundable credit against the personal income tax or commercial activity tax for a person who commences a voluntary action to remediate a contaminated property and who receives a covenant not to sue. The credit equals 25% of the taxpayer’s expenditures made directly to conduct the remedial activities resulting in the covenant.
- Exempts the person from fees and penalties authorized under environmental protection laws for one year after the covenant is issued.



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- Authorizes an additional refundable credit if the person returns the property to productive use.
- Provides a valuable option to seeking direct public subsidy by applying to either the Clean Ohio Revitalization Fund or the Clean Ohio Assistance Fund.

## House Bill 18

- Authorizes a nonrefundable tax credit for a business that expands into a facility that has been vacant for six months and increases payroll. The credit amount is based on the business's increased income tax withholdings adjusted for wage inflation.
- Bases the credit amount on increased income tax withholdings adjusted for wage inflation (and better promote both objective verification and linking the value of the credit to the jobs created).

## Position

NAIOP Ohio is monitoring the progress of Ohio HB10 and HB 18 and supports programs that both assist businesses with redevelopment of brownfield sites as well as programs that incentivize businesses to occupy vacant properties.

## Extension of the Ohio Historic Preservation Tax Credit Program

### The Issue

The Ohio Historic Preservation Tax Credit Program provides tax credits for the rehabilitation of Ohio's historic buildings. This program provides a 25% tax credit to owners for the rehabilitation expense of historically designated buildings. This credit can also be combined with a 20% federal historic tax credit to provide additional leverage for rehabilitating historic buildings.

In addition to being treasured pieces of our heritage, these buildings are economic development engines for communities and main streets throughout our great state. The rehabilitation of these buildings creates jobs, leverages private investment, strengthens our historic assets, and attracts emerging businesses.

Since its inception, 116 applications for the Ohio Historic Preservation Tax Credit have generated a projected \$1.2 billion in private investment and created more than 17,000 jobs. The demonstrated return on investment of this program is \$5.95 for every \$1.00 of State credit.

The Ohio Historic Preservation Tax Credit Program is set to expire on July 1, 2011.

### Position

NAIOP Ohio supports the extension and enhancement of the Ohio Historic Preservation Tax Credit Program. This program will benefit Ohio by:

Keeping Ohio Competitive: Ohio is one of 31 states to offer a state historic tax credit. This coupled with the fact that Ohio has 3,700 properties listed on the National Register of Historic Places, which is the 3<sup>rd</sup> most nationally, indicates the need for this credit to allow Ohio to remain competitive.

Job Creation: This program has shown to create jobs and will continue to do so if extended.

Private Investment: Federal and State historic credits are often "sold" to taxpayers that are able to utilize the credits. In today's world in which credit availability is scarce, programs such as this provide leverage needed to allow real estate development to continue.

Return on investment: The transformation of debilitated and often vacant properties into economic development assets has shown to provide the state with a return on investment of \$5.95 for every \$1.00 of state credit.

Needs: In the most recent round of applications, more than \$80 million in tax credits was requested while the program only allowed for \$24.4 million in tax credits. There is a steady need for this program to continue.



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## OEPA Rules & Culture

### The Issue

Ohio EPA rules and institutional culture impede:

- development (with regard to stream and wetland mitigation and stormwater management); and
- redevelopment (with regard to Voluntary Action Programs (VAP) of Brownfields)

NAIOP Ohio members believe in conservation and wise use – a new green environmental awareness in the market not only rewards this but demands it. Redevelopment of Brownfields in particular requires economic activity, along with known-end users such as new owners and tenants. The time is ripe for a more collaborative approach.

### Positions

1. OEPA Should Not Challenge Army Corps Jurisdictional Determinations, Including Wetland and Stream Boundaries
  - Clean Water Act delegates exclusive authority to the Corps
  - This is needed to give certainty to potential site purchasers/developers when completing their due diligence.
2. OEPA Should Verify Ohio Rapid Assessment Method (ORAM) Wetland Scores Within 30 Days Of Submittal Of Request For Verification And Supporting Documents
  - Needed regardless of whether or not a permit application has been submitted.
  - This is needed to give certainty to potential site purchasers/developers when completing their due diligence.
  - Validated ORAM scores need to be good for a period of 5 years.
3. Revise Current Laws/Rules To Require That ORAM 5.0 Be Used As The Sole Tool For Evaluating Wetland Quality For Both Wetlands To Be Impacted And Mitigation Wetlands
4. Address Personnel Issues In The 401 Regulatory Unit
  - Several members of the 401 unit have a history of implementing personal agendas and delay tactics.
  - The agency leadership from top to bottom needs to establish a new mentality with the staff that is less adversarial and more collaborative.
5. Withdraw Draft Stream And Wetland Mitigation Rules Currently out for Public Comment
  - The proposed draft rules increase complexity, expense and processing time.
  - Re-evaluate what is needed for changes to the existing wetland permitting rules, including jurisdictional wetlands and isolated wetlands (IW).
  - Stream mitigation rules are needed to provide predictability, that are cost effective and simplify the permitting process for the applicant and the permit reviewer.
6. 401 Unit Kaizen Process
  - Evaluate recommendations developed in the Kaizen process and implement those that improve the 401/IW permitting programs.
  - Allow stakeholders to continue involvement in the solution and implementation of the recommendations (OEPA staff has seemingly derailed many of the recommended solutions or bogged them down in endless analysis).
  - Develop an expedited permit review process for smaller impacts to jurisdictional waters.
7. Withdraw Draft Mitigation Bank Interagency Review Team Memorandum of Agreement (MOA)
  - The proposed MOA would impose “rules” without the state going through the required rule making process.
  - The proposed MOA would impose many unreasonable, unnecessary and costly requirements that are far reaching and not required by the Federal rules.
  - The draft MOA will be a deterrent to mitigation bank construction in Ohio.
  - The draft MOA will significantly impact the cost of mitigation bank credits in Ohio.
  - The excessive requirements are not consistent with those implemented in other states, particularly adjoining states, and place Ohio at a competitive disadvantage.



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8. Revise Laws/Rules Such That All 401 And IW Permit Applications Will Be Processed Under The Time Lines And Requirements Contained In ORC 6111.02 Et Seq.
  - Restore “Completeness Review Coordinator” position.
  - Require completeness determinations to be made within 15 days, with applications deemed complete if no response is received from the agency within 15 days.
  - Make 401 process independent of the Army Corps process (i.e., Army Corps public notice should not be required for OEPA completeness determination), or, following other states and as discussed in the Kaizen process, allow 401 OEPA applications and 404 Army Corps applications to proceed simultaneously.
  - Afford only one opportunity to request additional data from the applicant.
  - Incorporate a waiver provision if OEPA fails to process applications within statutory time frames.
9. Promulgate A Permit By Rule Limiting Storm Water Management Requirements Applicable To The Redevelopment Of Previously Developed Sites
10. Improve Operation Of The Voluntary Action Program for Brownfield Remediation
  - Eliminate the practice of “scoring” Certified Professionals based on the number of issues that arise during the No Further Action (NFA) letter review process, thus essentially forcing CPs to take every NFA through the Technical Assistance (TA) process to generate revenue for the agency.
  - Impose limits on the TA process so as to make review costs more predictable (i.e., develop limits on the amount of time the agency can spend on any given issue during the TA process; set caps on TA costs, etc.).
  - Develop time limits for agency reviews of volunteer submittals during the Notice of Intent to Deny (NOID) process.
  - Establish a deadline for the processing of NFA letters once an NFA letter has been deemed complete.
  - Establish background levels (statewide, or regional) to address naturally occurring compounds so that we are not trying to mitigate below natural levels in Ohio.
  - Establish higher action levels for anthropogenic contaminants (such as benzo(a)pyrene) in urban environments developed before a certain date (such as 1950). Benzo(a)pyrene has low action levels and there are numerous sources for it that can be attributed to many sources of combustion (fireplaces, woodstoves, furnaces burning coal or oil and from food preparation), coal tar and asphalt, coal coking operations and asphalt and aluminum production.
11. Require Municipalities to prove the environmental benefit of EPA Grants Earmarked for Municipalities which are used to create expensive bioswale and rain garden projects in city parks. The municipalities should weigh the costs and benefits and provide real opportunity for public comment on the use of tax dollars. These projects have reduced the opportunity for the public to enjoy city parks with little to no measurable environmental benefit. The grants are also being used to exclude adjoining private landowners from accessing park land. Specific examples are Hoover, O’Shaughnessy and Griggs Reservoirs.

## Legislation

SB 2 – Sen. Jim Hughes  
SB 4 – Sen. Tim Schaffer

**Some of the above issues require immediate action, while others will require continuing vigilance. Please contact your committee chairs and legislative colleagues with oversight responsibility for the OEPA.**



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NAIOP of Ohio  
470 Olde Worthington Road  
Suite 200  
Westerville, OH 43082  
(614)235-0311  
Fax (614)410-6708  
[www.naiop.org](http://www.naiop.org)

**NAIOP**  
COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION  
NAIOP OF OHIO

DebbieLee Dougherty, CAE, Executive Director, [debbielee@centralohionaiop.org](mailto:debbielee@centralohionaiop.org)