

# 2016 Legislative Action Agenda



**NAIOP**

COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION

**NAIOP OF OHIO**

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## OHIO HISTORIC PRESERVATION TAX CREDIT

### ISSUE

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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, more than 200 projects approved for the Ohio Historic Preservation Tax Credit have generated a projected \$2.5 billion in private investment and created more than 30,000 jobs. The demonstrated return on investment of this program is \$6.72 for every \$1.00 of State credit.

In 2014, \$79 million of tax credits were awarded out of a requested \$260.9 million, which highlights the need for continuation and enhancement of the program.

Last year, the Senate Finance Committee considered for a short time converting the Ohio Historic Preservation Tax Credit into a grant program that would be subject to annual or biennial appropriation.

### POSITION

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NAIOP Ohio supports the continuation and enhancement of the Ohio Historic Preservation Tax Credit Program. NAIOP Ohio opposes converting the program into a grant program that is subject to appropriation because the current program is extremely efficient, attracts tax credit investors from throughout the United States into Ohio that partner with Ohio developers to rehabilitate historic buildings, and is well-understood and predictable. The Ohio Historic Preservation Tax Credit program will continue to benefit Ohio by:

**KEEPING OHIO COMPETITIVE:** Ohio is one of 35 states to offer a state historic tax credit. This coupled with the fact that Ohio has 3,800 properties listed on the National Register of Historic Places, which is the 3rd 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 it continues to receive support.

**PRIVATE INVESTMENT:** Federal and State historic credits attract investment from 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:** As reported in the economic impact study prepared by Cleveland State University's Maxine Goodman Levin College of Urban Affairs, the transformation of debilitated and often vacant properties into economic development assets is projected to provide the state nearly \$10 billion in economic impact over the 2007 – 2025 time period and create over 6,900 jobs. The report specifically provided that:

- For every \$1 of OHPTC Program investment, the 111 redevelopment projects will generate \$40.58 in total construction and operating impact to the Ohio economy.
- For every \$1 in OHPTC investment in the redevelopment of the 111 historic buildings will leverage \$8.24 in construction spending from 2007–2013. In addition, nearly 83 construction jobs were created per \$1 million awarded in Ohio Historic Preservation Tax Credits.
- For every \$1 in OHPTC investment in the redevelopment of the 111 historic buildings will leverage \$32.33 in operating benefits from 2010–2025. In addition, over 298.8 jobs in operations were created per \$1 million awarded in Ohio Historic Preservation Tax Credits.

## **EXPANSION AND ENHANCEMENT OF THE OHIO NEW MARKETS TAX CREDIT PROGRAM**

### **ISSUE**

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The New Markets Tax Credit Program (NMTC Program) was established by Congress in 2000 to spur new or increased investments into operating businesses and real estate projects located in low-income communities. The NMTC Program attracts investment capital to low-income communities by permitting individual and corporate investors to receive a tax credit against their income tax in exchange for making equity investments. The federal program is one of the Department of Treasury's most successful programs in terms of economic impact and community revitalization.

The Ohio NMTC program was created in 2009. This program predominately mirrors the federal program. Ohio's NMTC program is capped at total allocations of \$10 million in tax credits per year with a \$1 million cap per project. The Ohio NMTC can be twinned with the Federal NMTC to provide even more injection of private capital into low-income communities.

## POSITION

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NAIOP Ohio supports expansion and enhancement of the Ohio New Markets Tax Credit Program. The current limits of \$10 million on tax credits and \$1 million per project prevent this program from being more successful.

Increasing the funding for this program will allow it to be a driver of economic development rather than just an add-on to current projects. This program will benefit Ohio by:

**KEEPING OHIO COMPETITIVE:** Ohio is one of 14 states to offer a state new markets tax credit. The ability to twin the Ohio NMTC with the Federal credit provides Ohio with a competitive advantage to attract investors to inject capital into our state.

**JOB CREATION:** This program has shown to create jobs and will continue to do so if expanded.

**PRIVATE INVESTMENT:** Federal and State NMTC attract investments from 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:** According to the U.S. Joint Committee on Taxation, the NMTC costs the federal treasury 26 cents in lost revenue for every NMTC dollar invested in a low income community. Between 2003 and 2010, the cost to the federal government to generate more than \$20 billion in NMTC investments was \$5.2 billion. During that same period, the jobs and businesses financed with NMTC capital generated \$5.3 billion in federal tax revenue. The same types of benefits can be seen in Ohio where, between 2003 and 2010 more than 29,000 jobs were created and \$141 million in tax revenue was generated as a result of the NMTC program.

**ENHANCEMENT TO THE PROGRAM:** NAIOP Ohio supports the following changes to the Ohio New Markets Tax Credit Program:

**S.B. 41:** To modify the qualifications for the New Markets Tax Credit to conform to the federal program and to modify the schedule for receiving the credit. The Ohio New Markets Tax Credit program restricts use of the credit to primarily owner occupied buildings. This restriction has limited the use of the credits. The changes that are proposed to the tax credit schedule would make Ohio's program more comparable to the federal program and also more competitive with other state New Markets Tax Credit programs.

## **HOUSE BILL 12 – PROPOSAL TO ALLOW PROPERTY OWNERS TO OPT OUT OF TIF INCENTIVE DISTRICTS**

### **ISSUE**

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Under H.B. 12, property owners in certain circumstances would be provided with an opportunity to opt out of tax-increment financing (“TIF”) incentive districts. H.B. 12 would allow property owners to opt out of TIF incentive districts if their parcels are not wholly within an overlay area of not more than 300 acres that is a square, or that is a rectangle having two longer sides that are not more than twice the length of the shorter sides, that the legislative authority delineates on a map of a proposed TIF incentive district. H.B. 12 does not impact “project/parcel” TIFs, which are the primary types of TIF used for non-residential projects, “urban redevelopment” TIFs or other types of TIFs.

### **POSITION**

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NAIOP Ohio believes it is not appropriate for the Ohio General Assembly to restrict the use of TIF by allowing property owners to opt out of TIFs. Tax-increment financing is one of the most important tools that local governments have for financing public infrastructure improvements, and local governments should be provided with the authority to work with property owners, developers and others to finance infrastructure improvements in the most efficient manner possible. Property owners already have sufficient protections under current TIF law. For example, for TIF incentive districts for which the political subdivision intends to file TIF exemption applications on behalf of property owners, property owners must receive written notice thirty days before a public hearing, which must itself be thirty days before the local legislation is approved. Moreover, in cases in which political subdivisions file TIF exemption applications, the TIF exemption is subordinate to any other exemption that may apply to the property, such as exemptions for charities, educational institutions and religious institutions. Finally, property owners pay the same amount when their parcels are subject to TIF as they would pay in property taxes if their parcels are not subject to TIF.

## **HOUSE BILL 482 – BROWNFIELD AND URBAN REDEVELOPMENT TAX INCENTIVES CLARIFICATION LEGISLATION**

### **ISSUE**

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There is a lack of clarity in two key tax incentive laws pertaining to Brownfield and urban redevelopment. First, the law that provides a property tax exemption for increased value after securing a covenant not to sue (“CNS”) from the Ohio EPA does not specify the base value from which the increase should be measured. Accordingly, the Ohio Department of Taxation has been interpreting the exemption very narrowly, ordering county auditors to treat the value in the year before the CNS is issued as the base value, even if the remediation originated years before. Second, Ohio’s community reinvestment area (“CRA”) legislation specifies that the exemption for remodeling pertains to “...the amount by which the remodeling increased the exempt value of the structure.” Some county auditors are applying this language very narrowly, taking a position that significant increases in value after remodeling should not be exempted because the increases, in the auditor’s opinion, were not attributable to the remodeling.

### **POSITION**

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NAIOP Ohio drafted statutory language to clarify these exemptions and to give property owners recourse to ensure that values are allocated appropriately among taxable portions of value and exempt portions of value. The legislation will specify that the base value for purposes of the CNS exemption is the value in the year in which remedial activities began. The legislation also will specify that the CRA exemption for remodeling or rehabilitation is for the increase in value subsequent to the beginning of the remodeling or rehabilitation. Both of these edits will make it clear that these exemptions have a scope similar to that of other key tax incentives programs – enterprise zone exemptions and tax increment financing exemptions. These edits also will eliminate confusion and uncertainty, which create obstacles to redevelopment and create administrative challenges in county auditors’ offices. Finally, the legislation will make it clear that local boards of revision have jurisdiction to determine how value should be allocated between taxable portions of value and exempt portions of value.

Developers who choose to remediate Brownfields or rehabilitate existing buildings face many hard-to-quantify risks and unknowns. By clarifying these two property tax incentive programs and offering recourse through local boards of revision, the General Assembly will effectively address two significant unknowns, and will make Brownfield remediation and building rehabilitation less risky.

## BROWNFIELD REDEVELOPMENT IN OHIO POST-CLEAN OHIO FUND PROGRAM

### ISSUE

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One of the legacies of America's and Ohio's strong manufacturing history is the "brownfield" property, which is a former industrial site that is now vacant or underutilized, and whose redevelopment is hindered because of environmental concerns.

Redevelopment of brownfields is often inhibited because potential developers are scared away by the time and cost associated with environmental cleanups. These "but-for" costs are preventing re-use of blighted urban areas and infill projects in the hearts of Ohio cities in favor of greenfield or suburban development.

The Clean Ohio Fund was originally proposed by Governor Bob Taft in his 2000 State of the State address. The Governor called for a \$400 million bond program to preserve natural areas and farmland, protect streams, create outdoor recreational opportunities, and revitalize urban areas by returning brownfield properties to productive use. The Ohio General Assembly voted by an overwhelming bipartisan majority to place Governor Taft's proposal before the voters. Former U.S. Senator John Glenn joined Governor Taft to urge Ohio voters to approve the Clean Ohio Fund, which the voters did in November, 2000. Thereafter, the Clean Ohio Fund provided millions of dollars for brownfield redevelopment projects in Ohio over the course of several years, which funding resulted in a substantial number of brownfield sites being brought back into productive use all across the state.

Historically, the Clean Ohio Fund was funded from the state's liquor profit revenue. Today, those monies are being used to fund the JobsOhio program. While the Clean Ohio Fund was reauthorized in 2008, it is currently not being funded.

### POSITION

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NAIOP is concerned that many brownfield redevelopment projects are unable to move forward today due to the failure to fund the Clean Ohio Fund program. As a result, brownfield sites often remain vacant and abandoned, and continue to pose a blighting influence and a health and safety threat to the communities of Ohio. They are a liability to the communities in which they are located, and the lack of brownfield redevelopment funding prevents the reuse of land, the full use of public infrastructure investments, and results in further impact to neighboring property values and investment. By failing to address these sites, community and economic development is inhibited. Local government services are spread over wider geographic areas, increasing taxpayer costs and challenging the creation of efficient and sustainable communities. Ohio's communities are not prepared to, or able to, finance the measures that need to be taken in order to address the problems posed by these properties.

NAIOP feels strongly that steps need to be taken in order to offset the reduction of state monies allocated toward brownfield redevelopment projects. For this reason, NAIOP would respectfully urge Ohio's legislators to support measures that are proposed to make additional brownfield redevelopment funding available going forward, including, but not limited to, proposals for state-level grant monies such as re-funding the Clean Ohio Fund in the future.

## **EMPLOY LAND BANKS TO FACILITATE THE REUSE OF ABANDONED COMMERCIAL AND INDUSTRIAL SITES**

### **ISSUE**

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The commercial real estate industry has undergone tremendous changes in the recent years. These changes were caused by global industrial relocations, changes in building requirements, computer and communications technology, and the consumer's use of technology. These changes resulted in a number of commercial properties becoming obsolete and abandoned. Many of these properties have no hope of future use. They are a health and safety liability for the community preventing reuse of land, and preventing the full use of public investments in infrastructure. They further impact neighboring properties values and investment. By failing to address these sites, local government services continue to be diluted over wider geographic areas at increasing cost to the taxpayer, and challenging the creation of efficient and sustainable communities. This problem plagues urban, suburban, and rural areas of the state, littering our communities with eyesores, and deterring investment in areas supported by public investment. Ohio communities are not prepared or financed to address the problems associated with these abandoned commercial and industrial properties. This dearth of funds has been exacerbated by the reduction, in recent years, of state monies allocated toward Brownfield remediation. The impact of these properties will only continue to grow, and their impact will spread unless abated.

### **POSITION**

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NAIOP Ohio recognizes that county land banks are an important tool for tackling the problems associated with blighted properties. Ohio land banks are well positioned to address this growing concern particularly with the unique authorities and environmental indemnifications provided under state statute. With these statutory provisions, land banks can serve as a valuable tool for economic development and job creation, clearing the way for private investment. Although some land banks are working in the commercial market, they do not have sufficient resources to do so in a meaningful way.

We believe that the unique and flexible character of land banks represents an ideal structure with which to address the enormous challenges associated with abandoned commercial and industrial property in Ohio.

NAIOP supports a flexible program for investing in commercial and industrial demolition and redevelopment. We are urging the General Assembly to create a program that uses land banks to specifically address the significant demands that exist in reusing Ohio's vacant and abandoned commercial properties.

## SENATE BILL 257 – MODERNIZING OHIO'S REAL PROPERTY LAW

### ISSUE

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Ohio's current curative statute, R.C. 5301.07 was passed over 55 years ago, and has not been modified since. According to this statue, when an instrument is of record for 21 years, the instrument is presumed valid despite errors and defects. Unfortunately, the current statute is out of line with curative statutes throughout the country, and is rarely applied to uphold the validity of instruments of record due to its extended cure period. The next closest state has a 10 year cure period. This outdated language has resulted in cumbersome transactions and unwarranted litigation involving Ohio real property instruments. Senate Bill 257 would amend R.C. 5301.07, and modernize Ohio's real property law to promote the validity of recorded documents and the marketability of title, which is good for the real estate business in Ohio.

Senate Bill 257 proposes to amend R.C. 5301.07 to provide that when a real property instrument has been of record for 4 years, certain defects will be deemed cured. The median cure period, even including Ohio (at 21 years), is 2 years. The average cure period is 3.87 years. Changing Ohio's value from the current 21 year period to the proposed 4 year period reduces the average to 3.48. Therefore, by looking at the average of the states analyzed, Ohio's current 21 year period, the proposed 4 year period, and the median, the average range falls between 2-3.87 years. These figures are in line with the proposed 4 year period that is set forth in Senate Bill 257.

The proposed amendments to R.C. 5301.07 contain three primary objectives:

1. Reinforce the presumption of validity of instruments of record as between the parties to instruments
2. Reduce the time period for curing certain defects in instruments to 4 years; and
3. Afford constructive notice to the world of the contents of instruments of record.

The presumption of validity is set forth in Section A of the proposed Amended Curative Statute, and recognizes that an instrument is binding and effective on a person that

signed the instrument with acknowledgment of the person's signature. Section B is largely derived from the current version of R.C. 5301.07, but it adds a 4 year cure period. Section C follows an increasing number of states that afford constructive notice of recorded instruments to third parties, despite certain defects.

## POSITION

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The proposed amendments to Ohio's curative statute strike a delicate balance between reducing hyper-technical attacks on recorded real property instruments, while maintaining certain substantive formalities that serve a valuable purpose. This bill would also reduce unnecessary legal actions that are sometimes pursued in an effort to invalidate instruments or gain leverage of some sort based on purely technical defects. Amending the Curative Statute to modernize it and carefully expand its application would facilitate real estate transactions in Ohio.

## SENATE BILL 235 SITE READINESS FOR COMMUNITY PROSPERITY

### ISSUE

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In Ohio, private land or building owners are penalized by immediately having their taxable value increased for improvements toward industrial or commercial use. This is a deterrent to private developers who want to ready sites for business development.

A lack of pad-ready sites, combined with clear deterrents for owners to improve those sites, is a barrier to bringing new businesses to the region or to help current businesses expand their footprints. Lifting this tax burden will spur additional economic development throughout Ohio.

Ohio does not have enough pad-ready sites for industrial and commercial development. Competition is fierce when trying to bring new business to a region. Decision-makers (business owners or site selection consultants) are attracted to sites they can move into quickly. Pad-ready sites make the relocation or expansion decision easier. Currently, private land or building owners are penalized with a higher taxable value if they move a site from CAUV status (farmland) or remove a blighted building and improve the site for commercial/industrial use. This provides little incentive to the owner to proactively invest resources that move sites to competitive readiness. Readyng a site can be labor- and resource-intensive on its own include adding curbs and gutters, installing utilities, building roads, etc.

## POSITION

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NAIOP Ohio support SB 235, which allows private developers to move a piece of property along to readiness for commercial or industrial use without having an increase

to the current taxable value until a certificate of occupancy is granted or the site is sold. By removing the tax-increase barrier, economic development organizations will have better, more marketable product to sell to businesses and developers.

Pad-ready sites allow end-user companies to more easily see the site's potential while saving construction time and money. Taxes will still be paid on the site, but the value will be frozen while improved. Schools and local governments will not be affected – they will experience no net change than if the property remained in its current state. This is a good tool in the toolbox to encourage site development without penalty to the building or property owner.

In the past, it was acceptable for economic developers to offer clients sites that would take several years to make pad ready – now, clients do not want to wait more than six months to a year for a site. This is a differentiator for our region to remain competitive and perceived as an easy place to do business by decision-makers in the site selection industry. We need ready sites. Passage of this bill could result in more opportunities.

## OHIO 401 WATER QUALITY CERTIFICATION

### ISSUE

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When it is necessary to fill in or otherwise impact streams or wetlands in connection with a project, permits are often required from the United States Army Corps of Engineers (“Corps”) and the Ohio Environmental Protection Agency (“Ohio EPA”). Projects with significant impacts often require both a Clean Water Act Section 404 Permit from the Corps and a Section 401 Water Quality Certification from the Ohio EPA. Projects with minimal impacts to streams and/or wetlands are, however, often eligible for coverage under a general permit known as a Nationwide Permit.

Typically, Nationwide Permits are reissued by the Corps every five years. When that occurs, the Ohio EPA issues a corresponding Section 401 Water Quality Certification for the Nationwide Permit program.

The Nationwide Permits were last reissued by the Corps in March of 2012. The Ohio EPA issued a corresponding Section 401 Water Quality Certification at that time as well. When the Ohio EPA issued its last Section 401 Water Quality Certification for the Nationwide Permit program, however, it contained certain terms and conditions that were more stringent than the Nationwide Permits that were issued by the Corps. As a result, it has become evident that there are certain types of projects that are eligible for Nationwide Permit coverage at the Corps level but are ineligible for Nationwide Permit coverage at the Ohio level. In such situations, permit applicants have been able to obtain Nationwide Permit coverage from the Corps, but have had to obtain “individual” Section

401 Water Quality Certification for their projects from the Ohio EPA. This has caused a great deal of delay with respect to the permitting of certain types of projects in Ohio.

Therefore, while the Nationwide Permits are not scheduled for reissuance until 2017, the Ohio EPA has recently proposed to modify its Ohio Section 401 Water Quality Certification for the Nationwide Permit program in order to remove some of the inconsistencies that currently exist between the Nationwide Permits at the Corps and Ohio EPA levels. In connection with that effort, the Ohio EPA has held two stakeholder forums in order to obtain input regarding the modification of the Ohio Section 401 Water Quality Certification for the Nationwide Permit program.

## **POSITION**

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While the Ohio EPA's goal of streamlining the Nationwide Permit process is certainly a good one, the agency's current proposal represents a significant shift in the manner in which the Nationwide Permit program would be implemented in Ohio. Specifically, under the Ohio EPA's current proposal, the State of Ohio would be divided into three different coverage eligibility areas based on the quality of the streams within the watersheds in the coverage areas:

- an area that would be automatically eligible for Nationwide Permit coverage (comprising approximately 63% of the State of Ohio)
- an area that would be ineligible for Nationwide Permit coverage (comprising approximately 18% of the State of Ohio)
- an area that would be possibly eligible for Nationwide Permit coverage (comprising approximately 19% of the State of Ohio)

Unfortunately, the net result of the Ohio EPA's current proposal makes almost 40% of the State of Ohio either ineligible or possibly ineligible for coverage under the Nationwide Permit program. This reflects a dramatic shift in the manner in which the Nationwide Permit program is currently implemented in Ohio. Moreover, such an approach could have a significant negative impact on the ability to permit projects of various types in the future, whether the projects are residential, commercial, industrial or of some other nature.

For the foregoing reasons, various trade associations, including NAIOP, submitted comment letters to the Ohio EPA in order to express their concerns with respect to the agency's latest proposal to modify the Ohio Section 401 Water Quality Certification for the Nationwide Permit program. At this point, however, the Ohio EPA has not yet indicated what, if any, modifications it intends to make to the proposed modification to the Section 401 Water Quality Certification as a result of the public comments that were submitted.

Notwithstanding the foregoing, the trade associations remain committed to working with the Ohio EPA in order to develop appropriate and necessary modifications to the Ohio

Section 401 Water Quality Certification for the Nationwide Permit program. Until such time as NAIOP is able to assess whether the Ohio EPA has adequately addressed the comments that were submitted to the agency, however, NAIOP would respectfully urge Ohio's legislators to oppose the Ohio EPA's proposal to modify the Section 401 Water Quality Certification for the Nationwide Permit program as previously drafted.

## **OHIO 401 PROGRAM RULES / STREAM EXISTING USE AND MITIGATION RULES / WATER QUALITY CERTIFIED PROFESSIONAL RULES**

### **ISSUE**

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In addition to modifying the Ohio 401 Water Quality Certification for the Nationwide Permit program, the Ohio EPA is currently planning to not only modify the existing Section 401 program rules, but to issue new stream existing use and mitigation rules and Water Quality Certified Professional rules as well. These rule packages will affect the implementation of the Section 401 program in general, establish rules for determining existing stream uses and mitigation requirements, and create rules governing Water Quality Certified Professionals in Ohio.

### **POSITION**

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While the Ohio EPA's goal of improving the implementation of the Ohio Section 401 program is certainly a good one, the Ohio EPA has not yet presented any of the foregoing rule packages to the public for review and comment. Therefore, NAIOP has not yet been able to determine whether it will have any concerns with respect to any of the planned rule packages. Accordingly, until such time as NAIOP is able to evaluate the proposed rules and the manner in which they will affect the regulated community, NAIOP would respectfully urge Ohio's legislators to seek input from NAIOP and the other trade associations in Ohio before acting on any of the aforementioned rule packages that may be proposed by the Ohio EPA in the near future.