NCDA
WASHINGTON REPORT

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FEATURED ARTICLES

CONGRESS ATTACHES 1% ACROSS-THE-BOARD SPENDING CUT AND $29 BILLION HURRICANE RELIEF PACKAGE TO THE DEFENSE SPENDING BILL

Congress completed its work on the FY06 budget by passing the final spending bill of the year – the FY06 Defense spending bill. As the last measure to be approved, it was laden with other legislation, including a 1% across-the-board spending cut, a $29 billion hurricane relief package, and funding for the avian flu. The Senate was successful in deleting a provision sponsored by Senator Ted Stevens (R-AK) to allow drilling for oil in Alaska's Arctic National Wildlife Refuge (ANWR). Stevens had tried to include the same provision in a budget savings package (S.1932) passed by Congress earlier in the week, but was unsuccessful. Over the weekend, GOP leaders agreed to shift this controversial provision from the budget savings legislation to the FY06 Defense spending bill in hopes of quick passage of the budget savings package and eventual passage of the oil drilling provision. Supporters of the ANWR provision hoped to use the Defense spending measure as cover for passage of the provision, thinking that no one would hold up the Defense bill, which included funding for hurricane relief, to oppose this provision. "It's appalling that the United States Senate is willing to hold our troop and hurricane victims hostage to their desperate attempts to satisfy big oil and drill in the Arctic refuge," Sen. John Kerry said in a statement. In the end, however, Democrats and moderate Republicans stood together to defeat the provision. Stevens even proposed that a portion of the funds from the oil drilling be earmarked for state and local hurricane rebuilding efforts in Louisiana, Mississippi, Alabama, Texas, and Florida through a new "Gulf Coast Recovery and Disaster Prevention and Assistance Fund." Even this sweetener couldn't budge the opposition.

House and Senate conservatives were successful in attaching a 1% across-the-board cut to all discretionary programs [except for the Veterans Administration programs] to the FY06 Defense spending bill. The cut would save approximately $8 billion and would be used to help offset the $29 billion provided to the gulf coast region for hurricane relief.

The approximate $48 billion in savings from the budget savings package and the across-the-board cut does little to cover the estimated $100 billion in expected tax cuts early next year nor offset the nearly $63 billion in funding already approved this year for hurricane relief.

Senator Thad Cochran (R-MS) was successful in attaching a $29 billion hurricane relief package for the gulf coast region to the Defense spending bill, reallocating a portion of the $63 billion in funding appropriated for the gulf coast region in September to help pay for this $29 billion relief package. This hurricane relief package is $12 billion more than the $17.1 billion the President had proposed to Congress. Approximately $11.5 billion of the relief package will be funneled through CDBG. The hurricane relief funding, including CDBG, will be allocated directly to the states hit by hurricanes this year (Mississippi, Louisiana, Alabama, Texas, and Florida). Each state will be required to submit a plan to HUD as to how the CDBG funds will be used. HUD will then decide how much of the $11.5 billion in CDBG funding each of the states will receive. Mississippi and Louisiana will receive the bulk of the funding, with Alabama, Texas, and Florida receiving lesser amounts. LOCAL JURISDICTIONS IN THESE STATES NEED TO CONTACT THEIR GOVERNOR'S OFFICE IMMEDIATELY TO FIND OUT THE MANNER IN WHICH THE STATE WILL ALLOCATE THIS FUNDING. According to Senator Cochran's staff, they want this funding to be allocated to the states in the next several weeks, so it is imperative that you let your Governor know of your interest in receiving a portion of the funding, so that they can include the use in the plan that needs to be submitted to HUD. Congress decided to allocate this hurricane relief funding through the states because they wanted to ensure continuity and accountability at one level in order to ensure the least disruption as possible in allocating the assistance quickly.

HOUSE PASSES LEGISLATION TO DE-COUPLE BEDI FROM 108

On December 14, 2005, the House passed H.R. 280 – The Brownfields Redevelopment Enhancement Act. Introduced by Rep. Gary Miller (R-CA) earlier in the year, the bill would decouple the Brownfields Economic Development Initiative (BEDI) from Section108. Many communities have steered away from using BEDI funds because of the linkage with Section 108 and the need to pledge CDBG funds as collateral for the loan guarantee. The legislation also expands the definition of a brownfield site to include mine-scarred lands, thereby making the grants available to more rural areas. Rep. Miller's staff is working with the Senate to move a similar measure next year.

CONGRESS PASSES GULF OPPORTUNITY ZONE ACT

Congress passed H.R. 4440 – The Gulf Opportunity Zone Act of 2005 – on December 16. The President has signed the measure. Introduced by Rep. William Jefferson (D-LA) and Rep. Jim McCrery (R-LA), the bill creates Gulf Opportunity Zones in the gulf coast region to provide tax incentives to businesses. The measure also provides additional tax-exempt bond authority to Louisiana, Mississippi, and Alabama at a cost of $1.5 billion over 10 years. The measure allows each state one additional "advance refunding" of debt in the Gulf Opportunity Zones before January 1, 2011 at a cost to the federal government of $741 million over 10 years. Advance refunding allows issuing of municipal bonds to pay off outstanding bonds. Under current federal law, only one advance refunding of tax-exempt bonds is allowed. The bill also allows businesses to deduct up to 50% of the costs of site cleanup and demolition from August 27, 2005 through 2007. It also allows businesses to claim a "bonus depreciation" deduction equal to 50 percent of the cost of any new property investments made in the disaster zone, thereby spurring development in the disaster areas.

HOUSE SUBCOMMITTEE HOLDS HEARING ON HOUSING RELIEF FOLLOWING HURRICANE KATRINA

The House Subcommittee on Housing and Community Opportunity held a hearing on December 8 to examine efforts by the Federal government to assist evacuees with their housing needs. NCDA submitted written testimony for the hearing. A copy of the testimony is available at http://www.ncdaonline.org Rep. Michael Oxley, Chairman of the Financial Services Committee, told the Subcommittee..."This hearing and future hearings will provide us with an opportunity to determine if changes are necessary [at FEMA and HUD] to ensure that we are better prepared for future disasters and to more adequately meet the [housing] needs of the current hurricane victims."

On December 8, David Garratt, the Acting Director of Recovery at FEMA, testified before the Subcommittee. Mr. Garratt told the Subcommittee that FEMA is working to transition the evacuees from the temporary shelter program (Section 403) to the transitional housing program (Section 408). Mr. Garratt told the Subcommittee that FEMA has provided more than $1.2 billion to more than 500,000 applicants for the 403 program. Rep. Maxine Waters (D-CA), Ranking Member of the Subcommittee, expressed frustration with FEMA, stating that every request for information that she and Rep. Frank, Ranking Member of the Committee on Financial Services, have sent to FEMA have gone unanswered. "We cannot express how dissatisfied we are, how upset we are, how embarrassed we are [at the response to evacuees' housing needs]...FEMA is not working," said Ms. Waters. Garratt received sharp criticism from several Subcommittee members for FEMA's decision to cut-off funding for hotel/motel stays by December 15. Rep. Artur Davis (D-AL) called it "one of the dumbest decisions that has ever been made in government."

The Subcommittee was also concerned with the rate at which travel trailers were being provided to the gulf coast region. Mr. Garratt told the Subcommittee that FEMA has installed approximately 40,000 trailers in the gulf coast region, but estimates the need at 120,000 trailers. He told the Subcommittee that the process is taking longer than expected because FEMA is working with local governments to ensure that infrastructure is in place to site the trailers. Subcommittee members also questioned FEMA's decision to provide evacuees with only three-month increments of housing assistance, instead of a lump sum payment, so that evacuees can enter into longer-term leases. Many of the members were concerned that apartments would not lease to evacuees for such a short period of time, but Garratt assured them that short term leases were available. The House will continue to hold hearings on housing and other assistance being provided to the evacuees to monitor the progress of the assistance.

REPRESENTATIVE TURNER IS SET TO RELEASE HIS REPORT ON CDBG AND SACI

On December 20, 2005, the Subcommittee on Federalism and the Census, of the Government Reform Committee alerted interested parties that its report on the CDBG and SACI programs will be made available to the general public by mid-January. We believe that the report will look favorably on CDBG and the new performance measures reporting system and not so favorably on SACI, the ConPlan, or IDIS, and will provide HUD with recommendations that are designed to improve data collection efficiencies within the office of Community Development and Planning.

Representative Mike Turner (R-Ohio) held three hearings that primarily focused on the CDBG program this year. These hearings were designed to gage support, successes and failures of the 30 year old CDBG program. The hearings also sought to compare the President's Strengthening America's Communities Initiative to the CDBG program. Representatives from the state and local public interest group community, and Federal officials provided both written and oral testimony at the hearings.

Mayors, City Councilors, County Executives, Officials from HUD, the Commerce Departments, GAO, OMB, and community development practitioners were invited to provide insight to the Subcommittee on the pro's and con's of SACI vs. CDBG, recommendations on possible formula changes for CDBG, the relevance of CPD's Consolidated Plan and IDIS system, and why the new performance measures reporting system will be able to provide better data than what IDIS is currently giving us.

As soon as Representative Turner and his Subcommittee staff have finalized the report, we will post the document on the NCDA website. It should be very interesting reading.

EMINENT DOMAIN: A PRIORITY IN 2006

For the past six months we have been tracking and keeping members up-to-date on the Supreme Court's decision in the *Kelo v. City of New London*, eminent domain case. The Court ruled in favor of the City of New London, largely on procedural and process issues, and not specifically on whether the City had the right to take (condemn) personal property for a public use, which New London defined as economic development– job creation and the expansion of the local tax base.

This case has generated much media attention, broad bi-partisan interest, and hundreds of examples of, so called, abuses by local governments' overzealous use of eminent domain and condemnation practices. The *Kelo* case has also produced a plethora of federal and state legislation that seeks to limit, what some believe, is a local government's right to determine how to govern itself. Eminent domain, the condemnation process, and individual property rights are the crux of this issue, and it is without a doubt that these very issues will figure heavily in the 2006 mid-term Congressional elections.

This issue strikes at the very foundation of personal rights in this country– the right to own property without fear, that at any given time, it could be taken by the government and given to another person or entity. It is an issue that hits home with everyone. No one wants to lose their property, particularly their homes for any reason, even for a public purpose with just compensation, however the U.S. Constitution guarantees local, state and federal governments the right of eminent domain, when it is used to benefit the general public. The definition of 'public benefit' has largely been left to the states to define so that local governments can act accordingly.

A broad definition of public benefit can be problematic, particularly when individual homes and property are being taken and viewed as being "given" to another private entity for what the local government has determined– through a public process– is a higher and better use that benefits the city as a whole.

On its face, the city would be operating within its rights to invoke eminent domain and take, private property through condemnation, for a proposed economic development project. The city adheres to all applicable laws, adequately completes its 'due diligence,' by completing all the appraisals, holding innumerable public hearings and informational meetings, and gains concurrence on the project. Still, no one wants to lose, or see anyone else lose their property and be forced to move when they don't want to.

Owning a home or a business is the American dream. Homeownership and the act of buying a home is a very large part of the American economy, the American psyche. It is an inalienable right that is guaranteed and protected by the Constitution, and government– local, state, or federal should not be allowed to take personal property without a very good reason. Traditionally a good reason has been; road/highway expansion, expanding access to power, airports/transit expansion, or other readily identifiable public works- type projects. Still, no one wants to lose or see anyone else lose their property, regardless of intended reuse. That is the very reason Congress enacted the Uniform Relocation and Real Property Acquisition Policies Act of 1970, better known by community development practitioners as the Uniform Act.

The Uniform Act seeks to protect individuals, regardless of income, in the event federal funds are used to take private property for a public use, either through condemnation or regular purchase, so that individuals are "made whole," at least financially, throughout the process. This protection and the accompanying processes have gotten lost in the media frenzy as well as in much of the proposed legislation that would limit activities a local or state government could define as a public use, and therefore fall under the eminent domain (used with federal funds) rubric. Whatever activities federal and state law makers define as a public use, regardless of the processes undertaken, there is still the core issue, no one wants to lose their property or see anyone else lose their property.

Local Government Concerns

Once again, local governments are being perceived as bullies, who will use practically any excuse to take private property, specifically a person's home, to allow the city to expand its tax base by developing a alternate use that generates higher taxes. The U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, the National Conference of Black Mayors, and the state and local practitioner groups, are very concerned that this issue will overtake all others during the upcoming year. With the overwhelming passage in the House of HR 4128, *The Private Property Rights Protection Act of 2005,* there is little doubt that the Senate will be pressed to put forward a companion bill. [*Please see the November 21 issue of the NCDA Washington Report for information on HR 4128.*] Given that the Senate tends to be more deliberate and thoughtful in its legislative endeavors, there might be time for us to offer an alternative to HR 4128. However, with the passage of the TTHUD appropriations bill, the eminent domain language, sponsored by Senator Bond contained therein, has become law. That language outlines that:

> "No funds in this Act may be used to support any federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use.
>
> Provided, That for purposes of this section, public use shall not be construed to included economic development that primarily benefits private entities:
>
> Provided further, That any use of funds for mass transit, railroad, airport, seaport or highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water- and wastewater-related infrastructure),other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. Law 107-118) shall be considered a public use for purposes of eminent domain:
>
> Provided further, That the Government Accountability Office, in consultation with the National Academy of Public Administration, organizations representing state and local governments, and property rights organizations, shall conduct a study to be submitted to the Congress within 12 months of the enactment of this Act on the nationwide use of eminent domain, including

> the procedures used and the results accomplished on a state-by-state basis as well as the impact on individual property owners and on the affected communities."

This language defines public use, but does not define economic development, and requests a study by the GAO and stakeholders on the nationwide use of eminent domain and its impact on individual property owners. This study could also provide state and local government groups time to show the Congress that eminent domain is being use judiciously and with great deliberation, forethought and most importantly, with public input.

NCDA has agreed to work with the above mentioned interest groups as well as the members from the Real Estate industry and the Chambers of Commerce in a coalition whose main goal is to maintain local decision making and dispel the myth that cities are overzealous in their use of eminent domain. Shortly, NCDA staff will send out an "Alert" requesting members to forward successful examples of projects that could not have been completed, but for eminent domain.

HOUSE PASSES BILL EXEMPTING SMALL PHAs FROM PLAN REQUIREMENTS

The House passed H.R. 3422 – The Small Public Housing Authority Act – on December 13. Introduced by Rep. Randy Neugebauer (R-TX) on November 16, the bill would exempt Public Housing Authorities with fewer than 250 units from filing an annual public agency plan, except the civil rights certification. In addition, the bill was amended in Committee to require small PHAs to establish resident advisory boards and provide for public hearings to garner public feedback on the PHA's goals, objectives and policies. The Senate has not introduced similar legislation.

HOUSE AND SENATE SET 2006 CONGRESSIONAL CALENDAR

The House and Senate have approved the following calendar for the 2006 year. Please use these dates in arranging meetings with your congressional members to advocate for increased funding for CDBG and other HUD programs. It is also an opportune time to invite them to a CDBG-funded project.

<u>2006 House Calendar</u>

January 31	House convenes
February 20-24	Recess
March 20-24	Recess
April 10-21	Recess
May 29-June 2	Recess
July 3-7	Recess
July 31-September 4	Recess
October 6	Adjournment

<u>2006 Senate Calendar</u>

January 18	Senate convenes
February 20-24	Recess
March 20-24	Recess
April 10-21	Recess
May 29-June 2	Recess
July 3-7	Recess
August 7-September 4	Recess
October 6	Adjournment

HUD NEWS

According to our sources at HUD, the anti-pirating rule will be posted to the *Federal Register* as an interim rule this week. Apparently, the Office of Management and

Budget finally signed off on it and the interim rule is slated to be published. Please go to the NCDA web site, click on *Important Links*, then on *Federal Register*. Go to the "Browse" icon and click 2005 and any date after December 21and look for HUD rules. At this writing, the rule had not been posted.

NCDA NOTES

PREPARING TO MEET WITH YOUR CONGRESSIONAL MEMBERS

NCDA has prepared and attached guidance for you in scheduling and meeting with your congressional members in the coming year. With the cuts to CDBG and HOME in FY06, it is imperative that you plan to meet with your congressional members to seek higher funding for both programs in FY07. Most congressional members do not consider these programs in need of higher funding, unless they hear from you, so make your voice heard by scheduling a meeting with your member in the coming months. We have heard from some CD practitioners who have said that their congressional members are too conservative to support these programs and meeting with them won't make a difference. These are the very members that you must meet with to change their position in supporting the program. The more Congress hears the drumbeat from constituents that these programs need to be increased, the more likely we will see the programs increased. We have also attached the 2006 congressional calendar, which shows the dates that Congress is in recess next year. This is the opportune time to schedule a face-to-face meeting with your member or invite them to a CDBG- or HOME-funded project. We urge you to meet with your member in April or early May, prior to the mark-up of the HUD spending bill in Congress, which occurs in late May through late June. NCDA and the CDBG Coalition are advocating for $4.5 billion in formula funding for CDBG in FY07. We would like to obtain this level – or a higher level – during subcommittee mark-up of the HUD bill to guard against possible cuts later in the appropriations process. Please feel free to call Vicki Watson at 202-887-5532 with any questions or assistance in meeting with your congressional members.

2006 NCDA WINTER LEGISLATIVE POLICY, AND TRAINING MEETING AT THE WYNDHAM HOTEL IN WASHINGTON, DC – JANUARY 24-26, 2006:

The 2006 NCDA Winter Legislative, Policy and Training Meeting is fast approaching. It is NCDA's intent to build on our successes in saving the CDBG Program by recognizing the efforts of the CDBG Coalition, showcasing outstanding community development achievement with the return of the Audrey Nelson Community Development Achievement Awards, and moving forward with the grantee designed performance measures reporting system.

This meeting will be packed with opportunities to meet with your congressional delegations to thank them for their continued support of the CDBG program and to urge them to increase funding for the program next year, hear from CPD Assistant Secretary Pamela Patenaude and her staff on the new initiatives HUD will implement in the upcoming year. We will also get a sense from Congressional staff of their legislative priorities, particularly those that will affect the housing and community development programs that we administer.

Conference participants will also have the opportunity to provide input on the Association's legislative and regulatory agenda for the second half of the 109th Congress by attending the Community Development, Housing, Economic Development, and Technology workshops. This is a meeting that you won't want to miss. An agenda and registration form is attached. Please book your hotel rooms early. The tourism industry has made a complete recovery and hotel rooms are at a premium in Washington. We cannot promise any additional rooms at the conference rate once our room block has been exhausted. So please register early!!

CALL FOR ITEMS FOR THE BOARD AGENDA

The next NCDA Board of Directors meeting will be held on Thursday, January 26, from 4:30 p.m. to 6:30 p.m. during the Winter Meeting. Please forward any items that you would like included on the Board agenda to Chandra Western at chandra@ncdaonline.org on or before January 18, 2006.

ANNOUNCEMENTS AND ATTACHMENTS

Please go to NCDAonline (http://ncdaonline.org) to access the files below.

- *Winter Meeting Agenda and Registration Form*
- *Preparing to Meet with Your Congressional Member*

U.S. Department of Housing and Urban Development

Program	FY05 Enacted Level	FY06 President's Request	FY06 Enacted Level
Community Development Fund	$4.660 billion	$0	$4.220 billion
Set-Asides:			
EDI Special Purpose Grants	$262 million	$0	$310 million
Neighborhood Initiatives	$42 million	$0	$50 million
Youthbuild	$61.5 million	$0	$50 million
Native American Block Grant	$68.4 million	($58 million)*	$60 million
Working Capital Fund	$3.4 million	$0	$1.6 million
Brownfields	($23.8 million)*	$0	($10 million)*
SHOP	$25 million	($30 million)**	($20 million)*
NCDI	$33.5 million	$0	($30 million)**
(LISC/Enterprise/Habitat)	$3.3 million	$0	($3 million)**
Housing Assistance Council	$2.3 million	$0	($1 million)**
Nat. Am. Indian Hsg. Council	$4.8 million	$0	($2 million)**
Nat. Housing Dev. Corp.	$4.8 million	$0	($4 million)**
National Council of La Raza	$1.8 million	$0	($1 million)**
Special Olympics	$43 million	($29 million)***	($20.6 million)***
Section 107 (University Prog.)	*$555.8 million*	*$0*	*$471.6 million*
Total Set-Asides			
Formula Grants	**$4.105 billion**	**$0**	**$3.748 billion**
Brownfields	$23.8 million	$0	$10 million
Section 108	$6 million	$0	$3 million
HOME Program	**$1.896 billion**	**$1.941 billion**	**$1.775 billion**
Set-Asides			
ADDI	$50 million	$200 million	$25 million
Housing Counseling	$42 million	($42 million)*	$42 million
HOME/CHDO TA	$17 million	$10 million	$10 million
Working Capital Fund	$2 million	$1 million	$1 million
Total Set-Asides	*$110.3 million*	*$211 million*	*$78 million*
Formula Grants	**$1.785 billion**	**$1.730 billion**	**$1.697 billion**

Program	FY05 Enacted Level	FY06 President's Request	FY06 Enacted Level
Self-Help/Assisted Homeown. Opport. Program Account			
SHOP	Funded under CD Fund	$30 million	$20 million
NCDI	Funded under CD Fund	$0	$30 million
(LISC/Enterprise/Habitat)	Funded under CD Fund	$0	$3 million
Housing Assistance Council	Funded Under CD Fund	$0	$4 million
La Raza	Funded Under CD Fund	$0	$2 million
National Housing Dev. Corp.	Funded Under CD Fund	$0	$1 million
Native Am. Ind. Hsg. Council	Funded under CD Fund	$0	$1 million
Special Olympics			
Total		**$30 million**	**$61 million**
EZs/ECs	$10 million	$0	$0
Homeless Assistance Grants	$1.240 billion	$1.440 billion	$1.340 billion
Elderly Housing (Section 202)	$741 million	$741 million	$742 million
Housing for the Disabled (Section 811)	$238 million	$120 million	$239 million
Tenant-Based Rental Assistance	$14.766 billion	$15.845 billion	$15.574 billion
Project-Based Rental Assistance	$5.298 billion	$5.072 billion	$5.09 billion
Public Housing Capital Fund	$2.58 billion	$2.33 billion	$2.46 billion
Public Housing Operating Fund	$2.438 billion	$3.407 billion	$3.6 billion
HOPE VI	$143 million	$0	$100 million
Native Am. Hsg. Block Grant	$621 million	$583 million	$630 million
Native Haw. Hsg.Block Grant	$8.8 million	$8.8 million	$8.8 million
Indian Hsg. Loan Guarantee	$4.9 million	$2.6 million	$4 million
Native Haw. Loan Guarantee	$992 thousand	$882 thousand	$900 thousand

Program	FY05 Enacted Level	FY06 President's Request	FY06 Enacted Level
HOPWA	$282 million	$268 million	$289 million
Rural Hsg. & Econ. Dev.	$24 million	$0	$17 million
Fair Housing	$46 million	$32 million	$46 million
Lead Hazard Control	$167 million	$119 million	$152 million****
Faith-Based Prisoner Re-Entry	$0	$25 million	$0

* Funded as a separate program

** Funded under the Self-Help Assisted Homeownership Opportunity Program Account

*** Funded under Policy Development & Research. Includes funding for Alaska Native and Native Hawaiian Institutions, Tribal Colleges and Universities, Historically Black Colleges and Universities, and Hispanic Serving Institutions.

**** $76.9 million for the lead-based paint hazard control grant program, $8.8 million for Operation LEAP, $8.8 million for TA,$9.5 million for Healthy Homes Initiative, and $48 million to initiative to target fund to areas with highest abatement needs.