

1 **COMMITTEE:** Environment

2 **POLICY:** Management of Federal LandsLand Management

3 **TYPE OF POLICY:** Draft Policy Directive

4  
5 Federal Land Policy Management Act (FLPMA)

6 ~~In 1976, Congress passed the~~The Federal Land Policy Management Act (FLPMA) ~~reversing~~  
7 ~~the 200-year national policy of conveying public lands to private ownership; the Act~~ provides  
8 for perpetual federal retention of public lands unless it is in the national interest to dispose of  
9 a particular parcel. ~~Federal agencies are currently reviewing the uses of lands under federal~~  
10 ~~jurisdiction.~~

11  
12 Ninety-three percent of all lands under federal jurisdiction in the United States are located in  
13 the West, and over sixty-three percent of the land area in the twelve western states is  
14 federally controlled. Further, many federal and non-federal lands are intermingled. This limits  
15 the western states' prerogatives in managing the uses of their own land and further limits the  
16 potential base of the states' economies. Units of governments whose property tax revenue  
17 bases have been reduced by large federal land holdings also require adequate funds to help  
18 make up the shortfall. With perpetual federal retention, Congress must assure state  
19 payments in lieu of taxes in perpetuity.

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21 The National Conference of State Legislatures (NCSL) calls on Congress to restore to  
22 willing Western States the ability to own and manage public lands now under federal  
23 management by granting the land and management responsibilities directly to those  
24 states and to honor their Enabling Act Compacts to extinguish federal title to lands

25 within the states. The federal government has ceded un-appropriated lands in  
26 Tennessee and Hawaii to those states and NCSL calls on Congress to do the same in  
27 all other willing states, especially in the Western States where much of their land and  
28 economies are subject to the political policies of their federal landlord. (New Proposed  
29 language submitted by Representative Roger Barrus)

30 ~~Federal agencies are seeking to designate wilderness areas under the Federal Wilderness~~  
31 ~~Act. The decisions on the potential inclusion of lands in the National Wilderness Preservation~~  
32 ~~System or other designated use may affect the potential for state growth, energy~~  
33 ~~development, recreation opportunities, revenue, and other state concerns.~~

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35 Federal-state relations regarding federal agency land planning vary widely and suffer from a  
36 lack of specificity on how and when cooperation should take place. No meaningful  
37 mechanism currently exists in the wilderness review process for the involvement of  
38 legislatures as the state policymaking bodies.

39  
40 The federal government will not attempt to designate any federally managed lands as  
41 wilderness, wilderness study areas or national monuments without consent from the  
42 state legislatures in which those designations are proposed. (New Proposed language  
43 submitted by Representative Roger Barrus)

44  
45 The National Conference of State Legislatures (NCSL) urges all federal agencies involved in  
46 the management of public lands to incorporate within their policies and regulations provisions  
47 for a continuous and cooperative involvement of state governments in public lands policy and  
48 public lands management. Furthermore, NCSL supports remedial legislation which will

49 | guarantee a state and tribal role in public lands management and establish procedures for  
50 | designations, disposition, or use of certain public lands found to be excess property.

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52 | ~~Among the many functions of the federal agencies which have public lands management~~  
53 | ~~responsibilities are wildlife management, endangered species protection, wetlands protection,~~  
54 | ~~meeting the open space requirements of growing population, environmentally sound forest~~  
55 | ~~and rangeland management, payments in lieu of taxes to local governments, and the~~  
56 | ~~administration of mineral development impact loans. Increasing pressures on rangeland have~~  
57 | ~~made better management imperative.~~ Federal agencies managing federal land should assure  
58 | that uses, both on-site and off-site, do not cause adverse environmental impacts on the  
59 | federal land or other adjacent lands or waters and provide special protection for wetland  
60 | resources in light of the goal of no loss of wetlands.

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62 | ~~Increasing energy development will impose heavy burdens on federal agencies to process~~  
63 | ~~lease applications properly and expeditiously and will provide for protection of the~~  
64 | ~~environment.~~ As Congress considers funding for federal agencies with public land  
65 | management responsibilities, NCSL recommends that Congress assure appropriations  
66 | sufficient for the full and proper execution of the agencies' legislative mandates to process  
67 | lease applications properly and expeditiously and protect the environment during  
68 | increased energy development.

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70 | If a federal wilderness designation occurs, state and/or tribal "inholdings" in wilderness  
71 | areas should be purchased, or exchanged with lands of equal or greater value outside of  
72 | these areas as designated by FLPMA.

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74 NCSL also urges the establishment of an interagency coordinator or coordination program to  
75 facilitate **tribal governments**, state agencies and communities addressing ability to address  
76 all relevant agencies in a "one stop" manner. (Language incorporated from existing NCSL  
77 State-Federal Partnerships In Land Management Around Federal Facilities Policy but moved  
78 to apply more broadly to all federal land management interactions.)

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### 80 **Takings and Land Use Authority**

81 NCSL strongly opposes any federal legislation or regulation that would: 1) attempt to define  
82 or categorize compensable "takings" under the Fifth Amendment to the United States  
83 Constitution; (2) interfere with a state's **or tribe's** ability to define and categorize regulatory  
84 takings requiring state **or tribal** compensation; (3) preempt state **or tribal** eminent domain  
85 constitutional provisions or statutes; or (4) infringe on state **or tribal** sovereignty under the  
86 Eleventh Amendment. NCSL supports collaborative examinations of state, **tribal** and federal  
87 use of eminent domain authority. (Language incorporated from existing NCSL Takings and  
88 Land Use Authority Policy)

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### 90 **Conservation Easements**

91 NCSL urges Congress to enact legislation ~~to~~and make permanent the tax deduction for  
92 charitable contributions by individuals and corporations of real property interests for  
93 conservation purposes through conservation easements.

94

95 ~~Conservation easements are a legal transfer of "limited rights" to use all or part of a~~  
96 property to a nonprofit conservation organization or government agency. These

easements provide a tax incentive for land owners wishing to reduce their current tax burden by lowering fair market value of the property and thus property tax assessments.

• Governments and conservation organizations are also interested in easements as a way of preserving historically important land areas, threatened ecological habitats, for use as public outdoor recreation or education areas, or for preservation of open space that will clearly yield public benefit. These easements also can benefit military installations by protecting land surrounding bases and creating a buffer.

• The tax deduction for conservation easements expired following the 2009 tax year.

• Under this policy, NCSL supports H.R. 1831 and its companion S.812 and urges Congress to enact this legislation and make permanent the tax deduction for charitable contributions by individuals and corporations of real property interests for conservation purposes.

*(Language incorporated from existing NCSL Conservation Easement Policy as passed by the NCSL Task Force on Military and Veterans' Affairs)*

### **Readiness and Environmental Protection Initiative**

The Department of Defense (DOD) Readiness and Environmental Protection Initiative (REPI) enables DOD to work with partners to protect valuable habitat and avoid land use conflicts in the vicinity of priority installations. Maintaining availability, accessibility and capability for realistic training, live fire testing and other operations is crucial to ensuring a trained and ready force to support the DOD mission to fight and win the nation's wars.

The United States originally established military installations in rural areas far from population centers. As the nation's population has grown, urban sprawl now abuts many installations. Noise, dust, and smoke from weapons, vehicles, and aircraft prompt citizen complaints about

122 military training forcing a conflict between meeting mission requirements and being good  
123 neighbors. Noise and light pollution concerns, the presence of cultural and historic resources,  
124 or endangered species can result in training restrictions affecting military readiness. This is  
125 referred to by DOD as encroachment.

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127 REPI is an innovative tool that both protects the mission and achieves conservation  
128 objectives by proactively addressing encroachment that can cause costly workarounds and  
129 compromise training and testing. REPI uses the authority at Title 10, Section 2684a of the  
130 United States Code to enter into the agreements with non-Federal governments and private  
131 organizations to share funds towards these common objectives. REPI is overseen by the  
132 Office of the Secretary of Defense and implemented through Service programs.

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134 Through REPI, the Services reach out to state and local governments, and non-governmental  
135 organizations to identify mutual conservation objectives and cost-share conservation  
136 easements from willing landowners to protect habitat or prevent development of key open  
137 areas. The easements typically permit the landowner to maintain ownership and continue  
138 current uses as a farm, forest or ranch and do not add military land for training or testing.

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140 REPI provide significant and long term benefits to the people and the landscape in  
141 communities surrounding military installations. It enhances military readiness; protects high  
142 value habitat; strengthens military/community relations; and provides the opportunity for  
143 partnerships among key stakeholders, such as state, tribal and local governments and the  
144 military. NCSL supports REPI and believes there is a limited window of opportunity for REPI  
145 partnerships to protect land and habitat in support of military training and testing. In addition,  
146 the increasing numbers of willing sellers in the existing real estate market present significant

147 near-term opportunities to leverage REPI funding with state, **tribal** and local partners. Recent  
148 studies have documented the success of the program and also the need for \$150M in annual  
149 funding over a 10-12 year period to proactively address the partnership opportunities and  
150 leverage non-federal dollars to maximize accessibility, availability and capability of current  
151 military lands for training and testing.

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153 NCSL applauds the United States Congress for recognizing the critical need to protect DoD  
154 bases and the limited window of opportunity to do so, and for continuing its strong bipartisan  
155 support for REPI. (Language incorporated from existing NCSL Readiness and Environmental  
156 Protection Initiative Policy)

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158 **State-Federal Partnerships In Land Management Around Federal Facilities**  
159 The National Conference of State Legislatures (NCSL) calls on Congress and the  
160 Administration to enable and encourage federal agencies to enter into formal partnerships  
161 with state **or tribal** governments to enable the better management of land in and around  
162 military and other federal facilities. Such partnerships will enable states, **federally**  
163 **recognized tribes**, local communities and the federal facilities, ranges, and training  
164 air/sea/land space they serve to work jointly on matters of importance to all stakeholders. The  
165 adoption of memorandums of understanding or other agreements between federal agencies,  
166 **tribal governments**, and/or state wildlife, parks, and environment agencies will establish a  
167 mechanism for the federal agencies to:

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- 169 • assist **tribal governments and** state agencies to acquire landowner agreements  
170 around military facilities;

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- 172 • assist **tribal governments**, communities and states to be better prepared for the next  
173 BRAC round by ensuring mission capabilities at military facilities; and  
174  
175 • identify within the federal agency the person or office to whom **tribal governments**,  
176 state agencies and communities may contact for assistance in coordinating  
177 conservation easement/contracts or other appropriate negotiated transaction.

178  
179 NCSL also urges the establishment of an interagency coordinator or coordination program to  
180 facilitate **tribal governments**, state agencies and communities addressing ability to address  
181 all relevant agencies in a "one stop" manner.

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183 In partnering with such agencies as the Department of Defense (DOD), the U.S. Department  
184 of Agriculture (USDA), the U.S. Department of Interior (Interior), and the U.S. Army Corps of  
185 Engineers (Corps) states, **tribal governments** and local communities will be able to:

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187 • protect water resources benefiting **tribal governments and** local communities and  
188 federal facilities ranges, and training air/sea/land space;  
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190 • improve wildlife habitat around federal facilities, ranges, and training air/sea/land  
191 space and throughout the state;  
192  
193 • expand public understanding of how critical **tribal and** state land conservation actions  
194 are to protect the mission and economic welfare of federal entities;  
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- 196 • expand public support for federal assistance of state efforts to acquire permanent  
197 conservation easements, contracts or other appropriate negotiated transactions and  
198 long term leases with landowners to protect federal installations from civilian  
199 encroachment that will adversely impact mission capabilities and economic benefits to  
200 communities, and increase land for contract training;
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- 202 • expand state agency, private landowners, and DoD facilities' ability to develop  
203 longitudinal training capabilities through partnerships that expand training opportunities  
204 in combination with preserving agricultural lands; and that permit federal and national  
205 guard training areas to be linked for expanded joint training; and
- 206
- 207 • encourage tourism to the conservation lands acquired by state agencies.

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209 (Language incorporated from existing NCSL State-Federal Partnerships In Land  
210 Management Around Federal Facilities Policy)

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