RESOLVED, That the American Bar Association endorses the
Recommendations for an Effective National Mitigation Effort, a white paper on
national mitigation prepared by the Association of the Directors of Emergency
Management of the U.S. States and Territories and the District of Columbia.
Report

Summary Background

The Section of State and Local Government Law urges the ABA to adopt this Resolution endorsing the White Paper on Hazard Mitigation (described more fully below with a link to the report in its entirety). The substance of the report is consistent with existing ABA policies and previous resolutions adopted by this House. By endorsing this report now, ABA representatives can participate more fully in the work of the consortium, including upcoming meetings, and preparing guidance and implementation strategies. Without the ABA’s participation, the legal profession is not represented. Because the ABA has assumed a leadership role in the area of disaster mitigation and disaster response through the efforts of a Standing Committee, Section committees, and ABA leadership, it should join with 16 government, business, insurance, engineering and construction associations in endorsing the Recommendations for an Effective National Mitigation Effort.

The ABA has endorsed papers and positions of other entities in the past, and it is appropriate to do so again.

The White Paper on Hazard Mitigation

A white paper on hazard mitigation was prepared in 2009 by the National Emergency Management Association comprised of the association of the Directors of Emergency Management of the States, the District of Columbia, and the Territories United States, under funding through a cooperative agreement between the National Emergency Management Association and the Federal Emergency Management Agency. The paper, entitled, “Recommendations for an Effective National Mitigation Effort,” has already been endorsed by 16 other organizations including: The American Public Works Association; the American Society of Civil Engineers; the Association of Bermuda Insurers and Reinsurers; the Association of State Floodplain Managers; the Central United States Earthquake Consortium; the Federal Emergency Management Agency; the Institute for Building Technology and Safety; the Institute for Business and Home Safety; the International Association of Emergency Managers; the International City/County Management Association; the International Code Council; the National Association of Counties; the National Emergency Management Association; the Reinsurance Association of America; the Western States Seismic Policy Council; and the U.S. Chamber of Commerce.

Conspicuously absent from this list are legal organizations, like the ABA, that represent the lawyers who will play a key role in adopting and implementing mitigation best practices in local communities, and whose members are also among the most likely to challenge mitigation measures at the state and local levels. The ABA’s official support of the White Paper will help ensure that the ABA and its members have a seat at the table and a voice in the ongoing
discourse about effective and efficient disaster mitigation measures. Endorsement will also send a strong signal to ABA members about the importance of long-term thinking about the best ways to mitigate the destructive impacts of disasters.

The White Paper was drafted by the professional organization for the nation's most experienced emergency managers and represents the best of current thinking about the scope and importance of disaster mitigation. The white paper originated from a meeting that brought together partner organizations concerned with the issues regarding mitigation benefits and challenges at a time when the threat of flooding, tornados, hurricanes, and other disasters was beginning to weigh heavily on economically challenged states and localities across the country. The white paper suggests several strategic themes to advance the nation’s resistance, resilience, and protection from hazards; proposes elements of a national mitigation strategy; and identifies some suggested next steps for the near-term. The overall purpose of the white paper was to set the stage for future policy and program recommendations. The fact that so many professional associations worked to develop this paper is a testament to their conviction that all-hazards mitigation is essential to effective national preparedness.

In terms of strategic themes, the white paper states that the foundation for successful mitigation programs, initiatives, and strategies should include broader collaborative partnerships, as well as non-traditional partnerships, across professional disciplines. The paper explains that an intensive effort to identify risks and communicate the threats and hazards to the public are the keys to making sound decisions in risk avoidance. It also suggests that partnerships between communities, states, and the federal government should be truly equal, rather than top-down.

Key elements of a national mitigation strategy, according to the white paper, include striving for common objectives that involve multiple parties or that support multiple desired outcomes and seeking out and encouraging activities that result in clear and obvious benefits. The paper also recommends open dialogue between mitigation advocates and opponents; educating public officials as fully as possible; creating a comprehensive body of knowledge of mitigation tools, resources, practices, and successes; and emphasizing incentive, rather than punitive, mitigation policies.

The white paper also suggests several important next steps to realize and institutionalize the foregoing themes and elements. The white paper recommends formation of a national mitigation collaborative alliance involving a variety of entities and stakeholders. It also proposes involving
and empowering “grass roots” participation by the people and communities the mitigation is intended to serve, as well as building a national mitigation knowledge repository. Finally, the white paper also emphasizes the importance of connecting mitigation to other programs and initiatives that affect public safety and comprehensively reviewing mitigation policies at all levels of government to determine “best practices” that incentivize mitigation actions.

The full text of the White Paper is accessible at


The Federal Emergency Management Agency (FEMA) is in the process of working with the National Emergency Managers Association and other organizations that have already signed onto a White Paper on Hazard Mitigation to form a National Hazard Mitigation Collaborative Alliance. The organizational meeting of this collaborative alliance is in January 2011. The ABA can play a vital role in helping develop this Alliance and steer it in a direction which supports ABA policy.

Further Background

At the February 2009 meeting, the ABA House of Delegates adopted Resolutions 107A-G, sponsored by the Tort Trial & Insurance Practice Section and based on the work of the Section’s Task Force on Disaster Insurance Coverage.

In Resolution 107E, the ABA urged state, territorial and local governments to use a series of tools to mitigate losses from future mega-catastrophes and to ensure the ongoing availability and affordability of insurance for natural disasters. Specific measures set forth in the resolution included: developing risk appropriate state-of-the-art building codes for new construction and cost-effective retrofitting measures for residences; adopting land use policies that discourage construction in areas that are difficult to evacuate or pose unusually high risks to personal safety of consumers and first responders and to property; enacting property tax credits that offer grants to homeowners and businesses that invest in catastrophe mitigation measures; and adopting and updating emergency management plans.

In Resolution 107F, the ABA urged the federal government to use the multiple tools available to it to mitigate losses from mega-catastrophes by, among other things, adopting “land use policies that discourage or prevent construction in areas that are difficult to evacuate or that pose unusually high risk to personal safety (to consumers and first responders) or property loss, and require FEMA to incorporate the adoption and effective enforcement of statewide building codes in its Hazard Mitigation Grant Program. The Resolution also urged FEMA and the Congress to implement a preference in making pre-disaster grants to proposals by states and localities
seeking support for the training of state and local building code inspectors to improve enforcement.”

Following the adoption of these Resolutions, the State and Local Government Law Section, through the efforts of its Homeland Security Committee, created an ad-hoc committee consisting of the Section’s Committees on Homeland Security, Land Use, and Condemnation to review the new ABA policy and make recommendations thereon. As part of its work, the Committee has initiated discussions with both the ABA TIPS Section and the ABA Special Committee on Disaster Response and Preparedness.

Conclusion

The State and Local Government Law Section seeks adoption of this resolution, that urges the ABA, lawyers and the legal profession to support hazard mitigation through disaster preparedness planning. The Resolution recognizes and respects the important roles state and local governments have in this arena, with regard to the interests of property owners. Further, by endorsing the White Paper on Hazard Mitigation, the ABA, lawyers and the legal profession will become recognized stakeholders in further discussions on next steps and implementation strategies. The ABA should seize this opportunity to participate in the development of a national mitigation strategy.

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December 13, 2010
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GENERAL INFORMATION FORM

Submitting Entity: ABA State and Local Government Law Section
Submitted By: Dwight H. Merriam, Chair

1. **Summary of Recommendation(s).**
Legal standards and regulations relating to hazard mitigation should be developed in a manner consistent with federalism and respect for the appropriate role of state and local governments, with respect for property rights. The ABA should endorse the white paper entitled **Recommendations for an Effective National Mitigation Effort**, prepared by the National Mitigation prepared by the National Emergency Management Association and already endorsed by 16 other national organizations. The endorsement will help to implement ABA policy in this area.

2. **Approval by Submitting Entity.**
The Recommendation and Report has been approved by the Council of the ABA State and Local Government Law Section at its Spring 2010 meeting.

3. **Has this or a similar recommendation been submitted to the House or Board previously?**
No.

4. **What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?**
During the 2010 Mid-Year meeting, Resolutions 107A-G were adopted by the House. In endorsing this white paper, as adopted by 16 other national organizations, the ABA will become a nationally recognized stakeholder in further deliberation in support of the Association’s adopted policies.

5. **What urgency exists which requires action at this meeting of the House?**
A “white paper” has been prepared by the National Emergency Management Association in an effort to lay groundwork for the development of implementation strategies related to Resolutions 107 E and F adopted in February 2010. This new recommendation would both give the ABA an opportunity to weigh in on the need for appropriate action, and it would further refine ABA policy to ensure that state and local governments have a role in the process and that private property rights are considered.

6. **Status of Legislation. (If applicable.)**
None.

7. **Cost to the Association. (Both direct and indirect costs.)**
None.
8. Disclosure of Interest. (If applicable.)
   N/A

9. Referrals.
   TIPS, Real Property, Standing Committee on Homeland Security, Special Committee on
   Disaster Response and Preparedness

10. Contact Person. (Prior to the meeting.)
    Patricia Salkin, psalk@albanyalw.edu – 518-445-2351

11. Contact Person. (Who will present the report to the House.)
    Patricia Salkin and Benjamin Griffith
EXECUTIVE SUMMARY

1. Summary of the Recommendation

Legal standards and regulations relating to hazard mitigation should be developed in a manner consistent with federalism and respect for the appropriate role of state and local governments, as well as with respect for property rights. The ABA should endorse the white paper entitled *Recommendations for an Effective National Mitigation Effort*, prepared by the National Mitigation Association and already endorsed by 16 other national organizations. The endorsement will help to implement ABA policy in this area.

2. Summary of the Issue that the Resolution Addresses

The development of hazard and disaster mitigation programs and strategies by all levels of government that reduce disaster risk while recognizing principles of federalism and respecting property rights.

3. Please Explain How the Proposed Policy Position will Address the Issue

The proposed policy addresses this issue by acknowledging the roles of state and local government in land use and building code regulatory regimes. It also acknowledges the need to consider private property ownership. Lastly, the ABA’s endorsement of *Recommendations for an Effective National Mitigation Effort*, makes the ABA a nationally recognized stakeholder in further deliberations in support of the Association’s adopted policies.

4. Summary of Minority Views

None known at this time.