THE SECRETARY OF THE INTERIOR
WASHINGTON
FEB 15 2000

Honorable John Conyers, Jr.
Ranking Minority
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Conyers:

I am writing to express the Department of the Interior's strong opposition to H.R. 2372, the "Private Property Rights Implementation Act of 1999." Although some changes have been made to this legislation since its consideration in the 105th Congress, the bill still threatens important Departmental programs as well as state and local efforts to protect the environment For this and additional reasons discussed below, as well as the issues discussed in the Department of Justice's letter of September 14, 1999, addressed to Subcommittee Chairman Canady, I would recommend that the President veto H.R. 2372 if passed in its present form.

H.R. 2372 and similar proposals are designed to make it easier for developers to sue local and state officials in federal court in the land use planning process. By altering the legal definitions of "ripeness" and "abstention," the bill would shift substantial responsibility for decisions regarding basic local land use disputes from municipal planning commissions, city councils and other local bodies to unelected federal judges. In addition, by changing the definition of "ripeness" in claims against the United States, H.R. 2372 would allow individual property owners to go to federal court before the local decision making process is complete. The notice requirement would also place a new and virtually impossible burden on federal agencies to notify private property owners any time a federal action might affect the use of property.

I urge the Committee not to report out this legislation. It will reverse the successful improvements we at the Department of the Interior have made in working with local landowners on protection of this nation's natural resources. For example, when I arrived at the Department of the Interior in 1993, we faced a complete impasse in the old growth forests of the Northwest, an impending crisis threatening to shut down homebuilding in southern California, another timber industry standoff looming in the longleaf pine forests of the South, and numerous other ecological crises. Through a process of consultation rather than confrontation, we have changed our relationship with local landowners, moving from conflict to consensus. We have a commitment to working together with private landowners to get beyond political rhetoric, send the lawyers back to their offices, and get down on the ground to work out sensible agreements. The "litigation first" approach taken by H.R. 2372 is antithetical to these efforts.

By trading collaborative and administrative processes for federal court litigation, this bill threatens federal, state and local efforts to protect the environment. State and local governments play a pivotal role in protecting the environment, through their own environmental laws and regulations and through local zoning laws. H.R. 2372 would force local and state government to face the choice of approving environmentally harmful development plans or spending local taxpayer money on legal fees and years of federal court litigation. The middle ground would be lost. Given that choice, some local governments will lose the ability to negotiate mutually beneficial outcomes with developers and be powerless to prevent environmental and other harms. Moreover, we share the Department of Justice's concern, as stated in its September 14, 1999, letter regarding H.R. 2372, about whether Congress can eliminate the constitutionally based requirement that section 1983 takings claimants demonstrate the inadequacy of state-court compensation remedies before seeking relief in federal court.

H.R. 2372 would also frustrate state and federal partnerships. Federal and state governments usually work cooperatively as partners in protecting public health, safety and the environment. Under this bill, however, state and local communities would run a greater risk of being hauled into federal court in these efforts. For example, in the critical area of water rights, this bill appears to provide water users a direct avenue to the federal courts, bypassing long-established state law water adjudication procedures whenever they are dissatisfied with a state water administrative decision.

The new notice provision that would be imposed by section 5 of H.R. 2372 is so broad that it would be virtually impossible for federal agencies to meet its mandate. For example, within the Department of the Interior, the National Park Service and U.S. Fish and Wildlife Service impose certain reasonable limits on the use of the parks and wildlife refuges, including speed limits and other safety regulations. These regulations impose potential burdens on the use of private personal property, including automobiles, guns and pets, to name just a few. It is hard to know how the Department could identify and notify all potentially affected property owners as each regulation is established.

Finally, by short-circuiting the administrative process, and seeking to resolve disputes between property owners and the Department in federal court first, this bill undermines federal policy, and increases the regulatory cost to taxpayers and property owners. As with the interaction of local zoning bodies and developers, the beneficial give and take between federal agencies and developers would be lost in favor of burdensome and costly litigation first and foremost.

For these reasons I would recommend that the President veto H.R. 2372.

The Office of Management and Budget has advised that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Identical letter sent to:
Honorable Henry J. Hyde