NATaT
National Association of Towns and Townships

February 9, 2000

Dear Representative:

I am writing on behalf of the National Association of Towns and Townships (NATaT) to express our strong opposition to H.R. 2372, the Private Property Rights Implementation Act of 1999. We urge you **not** to co-sponsor this bill that would substantially infringe upon the historic rights of local governments to control local land use and zoning decisions.

NATaT represents over 11,000 mostly small and rural local governments. Our members include over 100,000 local elected officials who are responsible for, among other things, protecting the property values of all their community residents, protecting the environment and providing for the orderly development of their communities. These small communities consistently operate with very limited financial and human resources. Most of these communities do not have a municipal lawyer on staff, much less a lawyer that is qualified to practice in federal courts. These communities do not have the resources to expend on expedited lawsuits.

H.R. 2372 would unnecessarily increase the role of federal courts in local government land use disputes. Federal courts would be dragged into cases well before local governments and land owners have had the opportunity to fully consider the range of development alternatives that would be acceptable to both parties. Specifically, H.R. 2372 would make takings claims ripe for litigation simply if a locality has denied a property owner's application and if an appeal has been pursued. The result of H.R. 2372 would be more costly litigation against local governments, a further burdening of the federal courts and an erosion of the ability of states to develop a consistent land use policy.

H.R. 2372 also raises an important constitutional issue. The Supreme Court has consistently upheld its decision in *Williamson County Regional Planning Commission v Hamilton Bank of Johnson City*, 473 U.S. 172 190-91 (1985) stating that a locality must have reached a "final and definitive position," before a takings claim can be brought to federal court. *Williamson* also states that a claimant must pursue all available procedures for obtaining compensation at the state level before a federal takings suit can proceed. As the court points out, according to the Constitution, a takings claim can only be brought to federal court if a property owner has not received
'just compensation' for his or her land. Therefore, if all avenues for receiving just compensation have not been pursued, how can the federal court determine if a taking has occurred? H.R. 2372 undermines the *Williamson* ruling by allowing claimants to bypass state court and proceed directly to federal court before all of the available remedies have been actively pursued.

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The unfair presumption of H.R. 2372 is that local governments operate in bad faith when considering land use and zoning cases or that they and the state courts are not competent to deal with these types of cases under existing law. In the isolated instances, where individual property owners face delays and unnecessary bureaucracy in the local planning and zoning process, it is those local processes that need to be changed instead of sweeping, one-size-fits-all national changes.

This Congress has consistently supported the position that decisions affecting local communities are best made at the local level. H.R. 2372 directly contradicts this principle by allowing the federal courts to intervene prematurely in local land use disputes. Again, we strongly urge you **not** to co-sponsor H.R 2372 and preserve the traditional rights of local governments to make local land use and zoning decisions. Please feel free to contact me with any questions.

Sincerely,

Tom Halicki
Executive Director