



# GOVERNMENT PIRATES

**THE ASSAULT ON  
PRIVATE PROPERTY RIGHTS—  
AND HOW WE CAN FIGHT IT**

**DON CORACE**

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***The Assault On Private Property Rights – And How We Can Fight It  
By Don Corace***

	<u>Page</u>
<b>General Talking Points</b>	<b>3</b>
<b>Q &amp; A / General Discussion</b>	<b>6</b>
<b>‘A Call To Action’ Excerpts</b>	<b>10</b>
<b>Eminent Domain</b>	
<b>Abuse Stories</b>	<b>12</b>
<b>Excerpts</b>	<b>13</b>
<b>Zoning</b>	
<b>Abuse Stories</b>	<b>15</b>
<b>Excerpts</b>	<b>17</b>
<b>Wetlands</b>	
<b>Abuse Stories</b>	<b>18</b>
<b>Excerpts</b>	<b>20</b>
<b>Endangered Species</b>	
<b>Abuse Stories</b>	<b>22</b>
<b>Excerpts</b>	<b>24</b>

## General Talking Points

**The American Dream is under attack.** You may think that the biggest threats to homeowners are plunging home prices, record foreclosures, or the credit crunch. Wrong. The most dangerous long-term threat to your property is posed by our own government.

**You don't have to be a constitutional scholar** to understand what these 12 words in the Fifth Amendment mean: “[N]or shall private property be taken for public use without just compensation.”

**One of the best litmus tests to judge an elected official or candidate** is not whether he or she has an (R) or (D) behind their name, but where they stand on the Fifth Amendment.

**The issue of protecting private property should transcend politics;** it is not solely a conservative, liberal, or libertarian issue...or a Republican, Democrat or Independent issue...it is an issue that strikes at the very heart of the freedoms we as Americans hold so dear.

**John McCain is the only presidential candidate** that has made property rights a campaign issue. McCain has said that, if elected, he would push to pass a constitutional amendment to protect property rights. He must be held to this promise.

**It is hard to pin down Barack Obama on where he stands on property rights.** His statement "we cannot eat what we want..." and Michelle Obama's quote that "someone is going to have to give up a piece of their pie so that someone else can have more" seems to point to government-mandated redistribution of wealth. Private property rights can become a casualty with this way of thinking. We need to question where the Obamas stand.

**The right to own property is a basic human right.** Our homes, land, and businesses are expressions of ourselves – they represent the fruits of our labors and a family's financial security.

**The *Kelo v. New London, Connecticut* Supreme Court ruling issued on June 23, 2005** was one of the worst decisions ever made by the Supreme Court. It set a precedent to allow a city to use its powers of eminent domain to seize homes and businesses and hand them over to a private developer to generate more tax revenues.

**Much of the fine work done by legal foundations and property rights groups** to curb the tide of abuse must continue, but it is clear that we are losing the battle on many fronts. Therefore, we must “take it up a notch” and use the media as a weapon – to expose the corrupt politicians, entrenched bureaucrats, NIMBY (Not-In-My-Backyard) activists, and environmental extremists. One important question to ask them when discussing an abuse case: How would you like it if this was happening to you?

**The Constitution is being trampled upon.** The root of the problem is unelected and unaccountable Supreme Court and federal judges who legislate from the bench and have become the final arbiters what is, or is not, constitutional – although *nowhere* in the Constitution does it give them these powers. Here’s a plan of action:

- we should abolish their **lifetime appointments**
- we should revise the confirmation process to **review the conduct of sitting judges**
- we should give **Congress the power to veto** Supreme Court rulings

**Polls show that 90-95% of the public opposes** government taking private property through eminent domain and handing it over to developers for the purpose of increasing tax revenue. So what is the difference between the *Kelo* ruling and other, more egregious takings like:

- A city subjecting a property owner to over 31 years of litigation because his approved hotel would block the ocean view of politically-connected neighbors;
- Putting property owners in prison for 21 months because they moved dirt around on their property;
- Stopping a needed hospital project in its tracks because of a colony of flies?

Absolutely nothing!

**Eminent domain abuse is only the tip of the iceberg** when it comes to the government’s assault on private property rights. Through local zoning and the regulation of wetlands and endangered species, the government not only “takes” private property without compensating owners, but also *extorts* land and money in return for approvals. Shockingly, this goes on every day throughout America.

**Eminent domain – and the redevelopment scams** that perpetuate them – is one form of taking. Another group of takings is called “regulatory takings.” This area of law is very complex, but Don Corace has broken it down into two basic categories and coined the terms *No-Compensation Takings* and *Pay-To-Play Takings*, or exactions – a politically correct term for extortion.

**Not all government officials, neighborhood activists, and environmentalists** disrespect private property rights. Over the years, Don Corace has had the privilege of working closely with people to create a balance between development and safeguarding the environment.

**The use of eminent domain** to build roads, bridges, dams, military bases, and other projects is a legitimate public purpose – as long as owners are fairly compensated. Utilizing it to seize property and handing it over to a developer for the sake of generating tax revenues is not.

**The intent of zoning laws is to provide for orderly development** and to protect and promote the public’s health, safety, and welfare. There is no question some cities have not done enough to control “urban sprawl.” On the other hand, government officials with no-growth agendas, NIMBY (Not-In-My-Back-Yard) activists, and environmental extremists conspire and abuse the laws to stop reasonable development.

**Environmental protection and the establishment of open space can be achieved** in large scale development. In fact, these features are amenities that have become increasingly attractive to prospective homeowners and businesses wanting to relocate.

**There is no question that polluters of our rivers, lakes, and oceans should be punished** to the fullest extent of the law. Through wetlands regulations, however, overzealous bureaucrats and environmental extremists seek to assert government control over nearly every trickle of water. It is not always about protecting our water resources – it is about the abuse of power...pure and simple!

**No one would deny that we must reasonably protect animals and plants** from extinction. The Endangered Species Act, however, trumps the Fifth Amendment of the Constitution and allows governments to not only seize property without compensation, but also gives them the power to extort land and money in return for approvals.

**Achieving a balance between government regulation and the preservation of property rights** is not an easy task. But one thing is certain: If private property must be taken for a public need, the public should pay for it.

**Even though you may *think* your property rights may never be affected**, you should care:

- about **simple fairness** and decency for your fellow citizens;
- about the **ripple effect** that regulations have on the economy; and
- about how the infringement of property rights can **lead to other violations** of the U.S. Constitution.

**It is an uphill battle to turn the tide of property rights abuse.** The most effective way to press for meaningful reforms is to hold politicians and bureaucrats accountable. The best weapon: media exposure for those who disrespect property rights. Go to [www.GovernmentPirates.com](http://www.GovernmentPirates.com) and tell us your stories. The most compelling stories will then receive national media attention.

## Q & A / General Discussion

### **What will people learn from your book?**

Readers will learn:

- how unelected and unaccountable judges have eroded the intent of our founding fathers to protect private property rights
- four categories of takings by the government – **eminent domain, local zoning laws**, the regulation of **wetlands** and complying with the **Endangered Species Act**
- forty shocking stories from across America of how homes and small businesses are either being seized or whose owners are being strangled by regulations
- a blueprint on how to turn the tide of abuse

### **There has been a lot of media attention about eminent domain abuse. Explain what eminent domain is for people who are not familiar with the term.**

Eminent domain is the authority of government to seize property for a “public use.” It was widely utilized in the 1800s to acquire land for railroads and post offices and then evolved to be used to build roads, schools, dams, and military bases. The takings clause in the Fifth Amendment of the Constitution permits it: “[N]or shall private property be taken for public use without just compensation.” Unfortunately, its definition has been expanded and its use abused.

### **Tell us about the *Kelo* ruling, which you say in the book is one of the most vilified Supreme Court decisions in history.**

In 1998, a small town in Connecticut, New London, announced that Pfizer - the makers of Viagra – would build a new research facility that would employ 2,000 workers and create hundreds of badly needed jobs in the community. The city wanted to take advantage of this economic boost. It seized homes and businesses and handed them over to a developer to build a hotel, conference center, shopping, and housing in order to generate more tax revenues. Seven property owners fought the plan all the way to the U.S. Supreme Court, but lost in a 5 - 4 vote on June 23, 2005. The ruling set a dangerous precedent: the government could now seize private property that was not blighted (dilapidated or at risk to the public’s health, safety and welfare) simply for the sake of generating more tax revenue.

### **What is your background and qualifications to write a book on property rights?**

I have been a developer for over 25 years. I was born and raised in Pittsburgh, PA and learned the business from the ground up. My father was a developer and contractor... and the guy on the bulldozer. In my teens, I worked as a laborer, carpenter’s apprentice, surveyor by day and attended city council meetings with him at night. Over the years, I have had hands-on experience in every aspect of the development process with projects valued at more than \$2 billion. I have been involved in some of the most complex and controversial projects in the country. Although there have been plenty of excellent books written on property rights by lawyers or journalists,

*Government Pirates* is the first to be written by someone who has actually been in the trenches, *and* who has had their own money on the line.

### **Are you still developing property?**

Yes, I am a partner of a development company in Naples, Florida. We specialize in building beach and waterfront high-rise condominium communities.

### **What motivated you to write the book?**

I picked up my morning newspaper on June 24, 2005 and read that the Supreme Court voted 5 to 4 in the *Kelo* case. I was outraged. To give government the legal authority to seize property to simply generate more tax revenues is unconscionable. At the time I was also embroiled in an ugly controversy over a bald eagle whose nest was located on some property we owned. Certain neighborhood groups were using the Endangered Species Act as tool to stop the project. I realized that eminent domain abuse like what happened in the *Kelo* case was outrageous, but at least in eminent domain cases property owners are supposed to be compensated by law. In endangered species issues, the Endangered Species Act clearly trumps the Fifth Amendment and allows government to not only **not compensate** land owners, but also to **extort** land and money in return for approvals. The same applies to local zoning laws and the regulation of wetlands – where I have also had considerable experience. I knew then that I *had* to write the book.

### **Where do you stand on environmental issues?**

I consider myself a conservationist, not an environmentalist. There is a big difference in my mind. I was raised to respect the environment and learned at an early age to hunt and fish and enjoy the outdoors. Many people who consider themselves environmentalists have made it their life's mission to protect the environment at all costs – including at the expense of private property rights and economic growth. On a deeper examination of their motives, you will find that many of them use environmental causes to further that agenda to promote an anti-capitalistic and government-mandated redistribution of wealth. It is true that environmentalists have been successful in shedding light on important environmental issues and have forced landowners and industry to find creative ways to develop property and natural resources while safeguarding the environment. Unfortunately, as evidenced by stories in my book, there are too many instances of environmentalists simply going too far.

### **What are your objectives for the book?**

Although many property rights organizations throughout the country are doing an excellent job in fighting property rights abuse, we need to take it up another notch and use the media as a weapon. We need to educate the public and get a groundswell of support to make lawmakers and bureaucrats accountable for their actions. Efforts to pass meaningful reforms will not be successful unless these officials – as well as NIMBY's and environmental extremists are exposed. I feel it is my responsibility to shed light on the issues – and make those who do not respect property rights *famous*.

**The book has several stories of abuse involving eminent domain, zoning, and the regulation of wetlands and endangered species. Give us some examples of the most egregious.**

#### Abuse of Eminent Domain Authority

Seven property owners in New London, Connecticut had their homes and small businesses seized to make way for a hotel and luxury condos to accommodate the needs of Pfizer, a pharmaceutical company. They fought it all the way to the Supreme Court – and lost.

The City of Riviera Beach, Florida, which was trying to displace over 6,000 residents, had an emergency meeting to ink a deal with a developer hours before Gov. Bush was to sign a bill to restrict the use of eminent domain for the purposes of generating more tax revenues.

#### Abuse of Local Zoning Laws

A restaurant owner in Pompano Beach, Florida endured 31 years of litigation because neighbors didn't want their ocean views blocked by a planned hotel.

In Dartmouth, Massachusetts, a family's dairy farm was lost to foreclosure after being targeted by preservation groups.

#### Abuse of Wetlands Regulations

A 70 year-old man in Michigan was branded a "dangerous criminal" and faced prison and fines of \$13 million for moving sand around on his own property.

In the Florida Panhandle, a father and son building a home spent 21 months in prison for cleaning out a ditch.

#### Abuse of the Endangered Species Act

A developer in Austin, Texas was stopped from building a Wal-Mart after cave-dwelling spiders and beetles on the property were declared endangered species.

In California, an endangered species of fly (yes, a fly!) halted the construction of a regional medical center.

#### **How did you go about researching the book?**

It was a combination of things. With the help of some of the most prominent property rights lawyers in the country, I did legal research to examine how the laws evolved to get where we are today. I read books on property rights and scoured the internet and read news articles, and essays to find compelling stories. I also interviewed property owners who had been victims of abuse.

### **Why is the protection of property rights so important?**

The founding fathers believed that “the right of property is the guardian of every other right,” but it is also a basic human right. Our homes, land, and businesses are expressions of ourselves. They represent the fruits of our labors and a family’s financial security.

## **'A Call To Action' Excerpts**

Our homes, land, and businesses are an expression of ourselves. These possessions have sentimental value, but also represent the fruits of our labor and serve as a family's financial security. When property owners are victimized by government officials, no-growth advocates, and environmental extremists, they experience intense feelings of personal violation – not unlike when someone is burglarized.

...the emotional strain and financial hardships these owners must endure can produce feelings of desperation, destroy families, and even cause illness. In the case of Joseph Hill, whose Massachusetts dairy farm was targeted by preservationists, the ordeal contributed to a series of heart attacks and his eventual death.

In addition to the personal toll owners face, the cost of government regulation impacts our economic prosperity. In the case of homebuilder Frank Kottschade, the City of Rochester (MN) imposed so many development conditions for a proposed town home project that it increased the cost of each home by 300% – far beyond the reach of middle-class buyers and much higher than market prices in the area. Thousands of cases like this exist throughout the country. Is it any wonder there is a shortage of affordable housing?

You can stand by and allow the government's assault on property rights to continue – and perhaps wait until it reaches your or your neighbor's doorstep – or you can take decisive action now. The choice is yours.

If you choose to take action:

- you must get informed and stay informed;
- you must communicate your position;
- you must band together with others;
- you must contact and engage the media;
- you must press for judicial reforms; and
- you must make politicians accountable with your vote.

Any attempt to reform property rights – like any other movement – also depends upon your aligning yourself with others who want to effect change. Well-organized groups that attend and speak at public hearings and town hall meetings, before city councils, state legislatures, or Congress will have a definite impact. If politicians and bureaucrats are convinced that a groundswell of support is building for a certain issue, they will be forced to address it. Holding protests (even if small) at these events can also be very effective.

In order for any media coverage to shape national public sentiment on property rights, however, there must be more reporting than what we have seen in the past. Producers and editors will only run compelling stories if they are convinced that there is a genuine public interest, and, of course, that coverage will boost ratings or increase circulation. The ‘*Tell Us Your Stories*’ section of GovernmentPirates.com was developed for that purpose and can serve as a clearinghouse for national media outlets – particularly in advance of an election campaign season.

You, along with the media, need to pin-down legislators on whether or not they favor Constitutional reforms to limit the powers of judges that our founding fathers never intended for them to exercise.

These reforms could include doing away with lifetime appointments by instituting term limits, revising the judicial confirmation process to include not only nominated judges, but also a review of the conduct of sitting judges, and giving Congress the power to veto Supreme Court rulings. Although the passage of meaningful judicial reforms is unlikely in today’s highly-charged partisan environment, at least you will have a better idea of where candidates stand on judicial abuse of our Constitutional rights, or if they simply favor the status quo.

Once elected, politicians who *professed* to support property rights reforms during their campaigns need to be monitored. This oversight will send a message to ambitious politicians to think twice before they cast a vote in favor of seizing property through eminent domain for private gain or extorting money or property from owners seeking approvals to utilize their land.

Making our elected and appointed officials more accountable through the ballot box and monitoring their conduct are essential steps toward preserving our private property rights – rights our forefathers deemed sacred.

We, the People, endowed by our Creator with certain unalienable rights, must protect our property from government pirates! Let’s get started.

## Eminent Domain Abuse Stories

The City of Riviera Beach, Florida – a predominantly black community – was trying to displace an estimated 6,000 residents to make way for a proposed \$2.5 billion revitalization project. It conducted an emergency meeting to ink a deal with a developer hours before Gov. Bush was to sign a bill to restrict the use of eminent domain for the purposes of generating more tax revenues. The story is filled with racism, clashes between the haves and the have-nots, political bickering, and accusations that the city sold out to developers.

### **Other stories:**

- In Ohio, a city took possession of a home while the case was being appealed. City workers spray-painted a large “X” on the front door and cut down trees to show the owners who was in control and to pressure them to drop their lawsuit.
- Donald Trump had plans to build a parking lot for limousines next to a casino in Atlantic City. His company – with the help of a State agency – used eminent domain to seize a home for the lot and paid a price based on the value of a parking lot. Then it was discovered that Trump intended to use the land to expand his casino.
- A developer who owned property in downtown Oklahoma City had his property seized by the city. He was offered 1% of its value and then the city sold it to a rival developer for three times what it paid.
- In Lancaster, California, Costco announced it wanted to expand within a shopping center. The company told the city it wanted to acquire the location occupied by another retailer and threatened to move out of the city if it didn’t seize the property on their behalf.
- The city council of Mesa, Arizona moved to seize a brake shop and replace it with a hardware store. The council even agreed to use taxpayer dollars to pay various fees for the incoming store.
- The New York Times had been threatening to move out of Manhattan if it did not receive tax subsidies for a new office building. Fearing that other businesses would move out after 9/11, the city and state granted nearly \$100 million in tax breaks.
- A property owner agreed to sell her parking lot across from two stadiums in Detroit to the city with an agreement that it could only be used for a parking lot and not be transferred to a private party. It was later proven that the owner of the Detroit Red Wings loaned the city the money to buy the land to use for a new hockey arena.
- A school district in Virginia sold an abandoned school to a couple. After the new owners spent \$400,000 to renovate it, the district changed its mind and used eminent domain to seize it for \$200,000.

## Eminent Domain & Redevelopment Excerpts

A poll conducted by *NBC* and *The Wall Street Journal* in July 2005 regarding Supreme Court issues revealed that Americans cared more about private property rights than any other issue – including the state right-to-die laws and even parental notification for abortions.

A number of Internet surveys by *CNN*, *MSNBC*, *The Christian Science Monitor*, and other major news organizations showed that over 90% of those polled opposed the government seizure of private property to turn it over to developers.

Alexander Hamilton wrote in the *Federalist Papers* that, of the three branches of government, “the judiciary...will always be the least dangerous to the political rights of the Constitution” and the Supreme and federal courts are “beyond comparison the weakest of the three [branches] of power.” Hamilton was dead wrong.

“...the right of property is the guardian of every other right, and to deprive people of this, is in fact to deprive them of their liberty.”

- Dr. Arthur Lee, a Virginian and Diplomat  
during the Revolutionary War

Justice Clarence Thomas, known to be one of the more conservative Justices on the court, feared the precedent *Kelo* would set. In his dissenting opinion, he wrote that it is wrong “when the government takes property and gives it to a private individual, and the public has no right to use the property.”

“[Redevelopment is] like playing Monopoly with real money, it’s like playing Legos with real bricks and mortar. And, on occasion, you can even help your son.”

- Las Vegas Mayor Oscar Goodman

Cities and counties throughout the country hail the virtues of redevelopment by saying it is a valuable tool to eliminate blight, generate more tax revenue for public services, and create jobs. The truth? Most redevelopment projects fail to meet their lofty expectations.

Redevelopment agencies can be created without the vote of the citizenry who will be affected. They can incur bond indebtedness without voter approval. They can use the power of eminent domain to take private property and hand it over to favored developers. If that isn’t bad enough, they can also line the pockets of those developers with our tax dollars.

...enterprising developers often argue convincingly that there is an inordinate amount of market risk and that certain financial subsidies and other incentives are needed for them to justify going ahead with the project. All too often, redevelopment staffs will also tell agency members exactly what they want to hear by using questionable statistics to justify "severe market risk." But if these projects are too risky, as many developers claim, why then should government take the risk?

## Zoning Abuse Stories

Two brothers who were successful restaurant owners in Pompano Beach, Florida fought the city in court for over 31 years because a planned hotel where their restaurant stood would block the ocean views of influential condo owners across the street. The city yanked the developers' building permit three times and forced the owners into bankruptcy. The city then turned around and bought the land at auction and turned it into a park. One brother went from a millionaire to a liquor salesman making \$12 per hour.

### **Other stories:**

- A family that owned a dairy farm in Massachusetts wanted to rezone their property for home sites. They were driven into bankruptcy by a city and preservationist groups conspiring together.
- A builder in Minnesota endured a fifteen-year legal battle with a city in building badly needed affordable town homes. The onerous conditions it placed on the project reduced the number of units from 104 to 26 and increased the cost of each unit by 300%.
- The owners of a small hotel in San Francisco were forced by the city to pay a “fee” in excess of \$500,000 to comply with an ordinance that restricted the number of rooms to be rented to tourists. Instead, those rooms were to be reserved for the homeless.
- Over 2,400 property owners in Lake Tahoe were stopped from building homes because a state agency wanted to study effects on the environment. The “temporary” freeze on any development lasted over 20 years.
- The City of Denver had an ordinance that a couple could not hold more than one private prayer meeting per month in their home. However, there were no restrictions placed on “Monday Night Football” parties, home poker games, and book club meetings.
- A family in Washington State was building a home overlooking a scenic river. A state agency demanded that they tear down the house because it did not blend into the surrounding hillside.
- An elderly couple who owned a beachfront home was told by the California Coastal Commission that they had to remove tables, a storage locker, and barbeque from their back yard. The agency said the “developments” caused a “perception of privatization” and discouraged the public’s use of the beach.
- A couple in Florida was offered \$1.2 million for property they owned that was zoned for a marina and homes. The county “down-zoned” the property to a resource protection area” and the value plummeted to only \$40,000.

- Based upon two anonymous complaints, a city in Mississippi ordered a family to tear down a properly-approved tree house in their front yard. The city council cited a technicality in the building code and even admitted the tree house was well constructed and was not an eyesore.

## Zoning Excerpts

Government is legally required to compensate property owners in eminent domain cases. Through No-Compensation and Pay-To-Play Takings, however, it can take property without compensation and also *extort* land and money in return for certain approvals. It might be legal, but it's not right.

There has been an explosive migration of people and businesses moving from the cities to the suburbs. This movement, known as “urban sprawl”, created legal and financial challenges for governments to construct highways, water, sewer, and other services to keep pace with rapid development.

Those people who escaped the cities for a better quality of life began to see subdivisions replacing green space. Retail and other commercial development followed in order to support the needs of residents.

Everyone wanted his piece of the “American Dream.” Those people who had achieved their dream, however, wanted to shut the door behind them and keep others from sharing in it.

Among the players are NIMBY'S (Not In My Back Yard activists), BANANAS (Build Absolutely Nothing Anywhere Near Anything), and Greens, environmentalists with extreme no-growth philosophies. Often, one or more of these groups seek to form coalitions in an attempt to mask their true motivations.

There is no question that some parts of the country have experienced unbridled and poorly-planned development. Community leaders – often with little or no planning or development experience – are forced to institute local planning ordinances in an attempt to manage this growth. Some policies went too far; others not far enough. As a result, there have been an unprecedented number of lawsuits across the country over the past two or three decades.

Pro-development coalitions, often referred to as the “Wise Use” movement, argue that the courts have done little to protect private property rights. Groups opposed to development, on the other hand, believe that the courts have not gone far enough. One thing they can both agree upon, however, is that rulings have done little to bring clarity to the situation.

...arrogant public officials, *using our tax dollars*, continue to resort to the tactic of ‘Sue us and we’ll see you in court.’ Many owners cannot afford to roll the dice and are forced to accept unreasonable zoning conditions placed upon their properties. Public officials, NIMBYs, BANANAs, and Greens can then declare a victory for “the public good.”

## Wetlands Abuse Stories

Ocie Mills and his son were sentenced to 21 months in federal prison and six month's probation for spreading a certain pollutant on their waterfront lot on the Florida panhandle. The pollutant was not some toxic chemical or waste product – it was sand. In comparison, in the case of the *Exxon Valdez* oil spill in 1989 – arguably the most notorious environmental disaster of the twentieth century – the captain of the tanker who was drunk at the time was sentenced to serve 1,000 community hours over five years and received no prison time.

### **Other stories:**

- A developer in Midland, Michigan was fined \$13 million dollars and endured 17 years of litigation and \$1.5 million in legal fees. His crime: moving dirt around his land that was situated over 20 miles from a major waterway.
- A property owner in Michigan whose property abutted a creek received a cease and desist letter from the state environmental department for building a dam that caused flooding to property owners downstream. The true culprit of this illegal activity: beavers.
- A man in Pennsylvania served three years in a federal prison for violating the Clean Water Act. His crime was a result of his cleaning up a 30-year-old dump filled with old tires and other debris and not maintaining a ditch that was supposed to be the responsibility of the local township.
- Even though a couple in Maine had obtained all the necessary local permits to accept some loads of dirt from a town, they were charged with violating the Clean Water Act. To make matters worse, the so-called illegal activity had taken place prior to the passage of the Act.
- A Minnesota couple contested the Army Corps of Engineers' finding that their entire thirty-three acre parcel was a wetland. In a feeble attempt to eliminate liability, the agency issued a permit with language that stated that the permit was "not valid."
- A vintner in Sonoma, California voluntarily agreed to upgrade wetlands on his property to serve as a bird sanctuary. The Army Corps of Engineers imposed so many regulations on the project that it tripled the cost and caused it to take eight months to build instead of two.
- The Town of Southampton, New York told a couple that a portion of their waterfront lot was designated as a freshwater wetland. It based its findings on the fact that rain run-off from a state highway made a puddle on their land.
- According to the Environmental Protection Agency, a cranberry farmer in Massachusetts who had farmed cranberries since the 1920s, was in violation of the Clean Water Act – even though the Act was passed in 1972. The farmer spent over \$1 million in a ten-year legal battle and was forced to restore the site at a cost of another \$1million.

- A county in the State of Washington declared that a couple's parcel of land that fronted a major highway was to be used as a retention pond for water run-off. Even though 96% of the property was to be used for the pond, the county said it would not compensate the owners since it had not taken all the property.

## Wetlands Excerpts

“Ecologically speaking, the term ‘wetland’ has no meaning...for regulatory purposes, a wetland is whatever we decide it is...”

- Robert J. Pierre, a former federal government official who helped write the 1989 U.S. Wetlands Manual

Water is our most precious natural resource. No one would argue that polluters of our rivers, lakes, and oceans should be punished to the fullest extent of the law. However, overzealous government bureaucrats have gone too far by abusing their powers to regulate wetlands and intimidating landowners with fines and jail sentences.

Wetlands – often referred to as giant kidneys – filter out pollutants, help replenish drinking water supplies, protect against floods by capturing and storing excess surface water, and provide habitat for more than a third of the country’s threatened and endangered animal and plant species. In addition, they provide a number of agricultural products (such as timber and berry crops) and recreational opportunities for millions of Americans. However, wetlands across America have been declining at an alarming rate.

Wetlands do not, however, have to be as enormous as the Everglades or the Louisiana Bayou to fall under the government’s regulatory control. Waters considered to be large puddles or ponds also fall under this authority and have created a bitter controversy between developers and environmental groups.

The National Association of Home Builders (NAHB) insists that the Army Corps of Engineers, the agency responsible for authorizing construction projects in wetland areas, is overburdening developers. Environmental groups, such as the Audubon Society, claim that the Corps of Engineers is instituting adequate protections. This tug of war has led to several lawsuits. At the heart of the debate is defining the Corps’ regulatory jurisdiction and guidelines under the Clean Water Act.

To avoid uncertain and protracted court battles (and since 75% of the remaining wetlands lie on private lands), some progressive property owners and conservationists are working in good faith with the Corps on the creation of innovative wetlands protection programs. These programs seek to achieve a balance between protecting private property rights and safeguarding the environment by encouraging, rather than discouraging, landowners to maintain wetlands. Unfortunately, the Corps, in many instances, continues to overstep its authority and is not being held accountable. In fact, very few of the ensuing controversies are ever reported.

...many small private property owners cannot afford to fight the regulators. Since the average cost to process a Section 404 Permit is \$275,000 and can take over two years to obtain, owners either abandon their plans to develop their property or agree to onerous conditions in order to move forward.

The cost to obtain approvals of large scale projects can be much higher and take several years to secure. Since developers of these projects are deemed to have “deep pockets,” the Corps, other regulators, and environmental groups are often able to extort large tracts of land and considerable sums of money in exchange for not creating a public controversy. Developers consider this extortion a cost of doing business, but homebuilders (for example) pass these costs on to the consumer. This is a contributing factor in the lack of affordable housing in some areas of the country.

The courts have failed to provide a clear definition of the Corps’ authority. Bureaucrats and environmental litigants continue to use the Clean Water Act as a tool to control local land use decisions. Many landowners throughout the country are required to go through the regulatory meat grinder to obtain permits – permits they shouldn’t have to get in the first place.

## Endangered Species Act Abuse Stories

One of the most outrageous stories in *Government Pirates* involves the Delphi Sands Flower Loving Fly in southern California. A \$487 million regional medical center was about to break ground in the City of Colton – a town that badly needed an economic boost. Construction was halted, however, when the U.S. Fish & Wildlife Service declared that the fly was an endangered species. At one point, the agency demanded that traffic on Interstate 10, an eight-lane, heavily traveled cross-country freeway, be shut down during the months of August and September due to the fly’s breeding habits. The county was also required to set aside ten acres valued at \$4 million for a preserve – which came out to \$500,000 per fly. The fly wreaked havoc elsewhere. Colton city officials estimated it cost the community \$175 million in economic development.

### **Other stories:**

- A developer in Austin, Texas was stopped from selling prime commercial land to Wal-Mart and others by the U.S. Fish & Wildlife Service because six species of cave bugs – spiders and beetles that were no larger than a thumbnail – were found on the property.
- A Montana rancher, acting in self defense, killed a grizzly bear – a threatened species. He was fined and endured an eight-year legal battle because a judge said he and his dog “provoked” the attacking bear.
- A couple in Oregon could not harvest timber on their property to sustain them during retirement because of a nesting pair of Northern Spotted Owls. The owls were not even located on their land.
- Due to erosion problems, a Maryland couple’s Chesapeake Bay home was beginning to slide down a cliff. They needed to build a stone retaining wall to save it, but were stopped by a preservation group because it would disturb the habitat of an endangered beetle that lives underground twenty-two months of the year.
- The Office of Homeland Security sought to build a 3.5 mile fence south of San Diego to stop the illegal flow of immigrants. The California Coastal Commission and a host of environmental groups sued the agency because the fence would have disturbed the habitat of two pairs of endangered birds.
- A developer in Utah had his RV campground and golf course project halted after the U.S. Fish & Wildlife Service found and “emergency- listed” one-inch snails. The man was threatened with a fine of \$50,000 for each snail that was eaten by a flock of geese.
- A listing of an endangered mouse forced several developments to be stopped in Colorado and Wyoming and blocked construction of a badly needed reservoir to deal with a five-year drought. It was found later that the mouse had been misidentified and did not need protection.

- A family-owned company wanted to expand its existing gravel mine in upstate New York. Even though it was supported by the community and would have created fifty jobs, the project was denied because a den of “threatened” rattlesnakes was found within 260 feet of the property.
- A Minnesota landowner was denied a permit to build five modest cabins because of the existence of a bald eagle nest. He sued the U.S. Fish & Wildlife Service and forced it to live up to a previous commitment to remove the bald eagle from the endangered species list and won, but the new protection guidelines still restrict building the cabins.

## Endangered Species Excerpts

“The Endangered Species Act is one of the worst laws that has ever been passed in American history. It is bad for people and it is bad for species.”

- R.J. Smith, Senior Environmental Scholar,  
Competitive Enterprise Institute

No one would deny that we must reasonably protect animals and plants from extinction. But the federal law designed to protect species is being abused by bureaucrats, environmental extremists, and NIMBY (Not In My Back Yard) groups who seek to undermine our fundamental private property rights.

Are we facing an endangered species extinction crisis? Environmentalists like William Snape believe so.

Snape, the Chairman of the Endangered Species Coalition, says that “... species and the habitat they depend upon, are declining by the day” and that scientists have concluded that “we are facing the sixth extinction spasm that our planet has ever known.”

Patrick Moore, the Co-founder of Greenpeace, disagrees. Moore, who left the group in 1986 because he said its focus was anti-capitalism, says the biodiversity on earth today is higher now than at any time during the 3.5 million year life on our planet. “There is no mass extinction of species taking place on earth today,” he says. “It is a complete fabrication.”

...the U.S. Fish & Wildlife Service (USFWS) and other supporters of the Endangered Species Act of 1973 (ESA) claim an estimated 227 animal and plant species would have become extinct from 1973 to 2004 without the law. One of the more notable, and most recent, success stories they cite is that of the bald eagle.

Beginning in the mid-1960s, scientific testing confirmed that the pesticide DDT and related chemicals were found to contaminate the fish eaten by us and the eagle. Research indicated that the pesticides impaired the birds’ calcium levels resulting in egg shells that were too thin to withstand the weight of incubating parents.

Today, it is estimated that there over 9,700 breeding pairs of bald eagles in the lower 48 states and their numbers continue on the rise. Environmental organizations attribute the bird’s removal, or “delisting” from the endangered species list to ESA regulation. Critics of the Act argue, however, that the banning of DDT by the Environmental Protection Agency in 1972 was the primary reason that the number of eagles has increased – not legal protections under the Act.

The campaign to protect the endangered grey whale, which popularized the bumper sticker ‘Save the Whales,’ is another case in point. The grey whale, which was near extinction 60 years ago due to commercial whaling, was originally protected under the Marine Mammal Protection Act of 1972. It was then listed as an endangered species under the ESA.

Today, between 15,000 and 18,000 whales live in the eastern Pacific Ocean. Again, environmentalists maintain the Act was the chief contributor to the increase in the whales’ population. However, ESA regulations had little to do with it since whalers stopped harvesting grey whales in the 1940s – and their numbers have increased as a consequence.

A study conducted by The Heritage Foundation, a Washington think tank, indicates that over 1,300 animal and plant species have been listed since 1973. Sixty species have been targeted for delisting and only 27 (not counting the Bald Eagle or the Yellowstone Grizzly) have been delisted. The foundation’s research claims that none of those species “recovered because of positive actions instituted by the federal government under the ESA.”

...no one argues that the original intent of the Endangered Species Act – to provide federal protection of species – is an admirable goal. However, the bureaucratic process, coupled with how the regulations are applied, continues to foster divisiveness between property owners and environmentalists.

...not only must the species itself be protected, but also the area in which the species lives. This definition, of course, has wide-ranging implications. The habitat of a species could be one acre, 100 acres, or much more. In the case of the Northern Spotted Owl, for example, its foraging area can cover up to four square miles.

Obviously, designating habitat to be protected could greatly impact the ability of property owners to use their land. Not surprisingly, the debate has led to several landmark court decisions.

Some environmental leaders recognize that there are problems with the ESA. Michael Bean, an attorney with Environmental Defense Fund, recognizes that there is “increasing evidence that some private landowners are actively managing their land so as to avoid potential endangered species.” That’s putting it mildly. In fact, some owners whose very livelihoods may be at stake have adopted a ‘shoot, shovel, and shut up’ attitude.’

...William Snape, Chairman of the Endangered Species Coalition downplays the impact on property owners. He says, “There just aren’t private landowners that I can identify where the value of their property has radically declined as a result of the [Act]. These landowners just don’t exist.”

