

**NEW MEXICO HOME BUILDERS ASSOCIATION**

# INDUSTRY ISSUES

**Updated for 2009**



*Representing New Mexico Home Builders for 50 Years*

## MISSION STATEMENT

The **NEW MEXICO HOME BUILDERS ASSOCIATION** is a trade association affiliated with local associations throughout the state and the National Association of Home Builders. Chartered in 1959, **NEW MEXICO HOME BUILDERS ASSOCIATION** represents our members in the housing, light construction and associated industries.

*Our goal is to continue to improve conditions in the construction industry thereby providing the citizens of New Mexico with safe, quality housing.*

### We do this by:

- Serving as the voice of our members by being a proactive influence in the legislative and regulatory process,
- Providing industry information, services and education to our membership and the public,
- Furthering the ethical and professional standards of our members,
- Maintaining the positive image of our industry and association,
- Promoting home ownership, and
- Supporting the growth and effectiveness of the "local association."

## INTRODUCTION

**NEW MEXICO HOME BUILDERS ASSOCIATION** (NMHBA) is a 3000+ member, statewide, trade association that was chartered with the National Association of Home Builders in 1959 to improve conditions in the construction industry, thereby providing the citizens of New Mexico with safe, quality housing.

Homeownership is the cornerstone of family security, stability and prosperity. It strengthens our communities, encourages civic responsibility, and provides a solid foundation from which New Mexicans can work to support their families, enhance their communities, and achieve their personal goals.

"The strength of a nation lies in the homes of its people." Spoken by Abraham Lincoln more than 140 years ago, those simple words eloquently convey a timeless truth. The value of housing and homeownership to New Mexico and its people just cannot be overstated.

## STRENGTHENING NEW MEXICO'S COMMUNITIES

**NEW MEXICO HOME BUILDERS ASSOCIATION'S** 3000+ members employ over 75,000 people in the communities surrounding:

Alamogordo	Clovis	Las Cruces	Roswell	Santa Fe
Albuquerque	Farmington	Portales	Ruidoso	Silver City

184 workers are needed to construct 100 single-family houses, generating \$7.6 million in wages, which in turn accounts for more than \$1.3 million in local tax revenues and fees. Housing's economic reach also extends far beyond the construction of new homes; in the first 12 months after purchasing a newly-built home, owners spend an average of \$6,500 to furnish, decorate and improve it. Over the course of the first year after the home is completed, the "ripple effect" of spending the income and taxes from the construction phase results in an additional \$3.7 million in local wages and salaries, pays another \$465,000 in local taxes, and supports 100 more jobs throughout the local community.

# HOW TO REACH US

## NEW MEXICO HOME BUILDERS ASSOCIATION

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[www.nmhba.org](http://www.nmhba.org)

## New Mexico Home Builders Association's Affiliated Local Home Builders Associations

***BCA of Otero County  
(Alamogordo)***  
Phone: 437-2066  
Fax: 437-2218

***San Juan County HBA  
(Farmington)***  
Phone: 327-2678  
Fax: 326-2895

***HBA of Central NM  
(Albuquerque)***  
Phone: 344-3294  
Fax: 345-3795

***Santa Fe Area HBA***  
Phone: 982-1774  
Fax: 982-0238

***HBA of Eastern NM  
(Clovis & Portales)***  
Phone: 762-4342  
Fax: 762-4342

***South Eastern NM HBA  
(Roswell)***  
Phone: 627-7503  
Fax: 624-6870

***HBA of Lincoln County  
(Ruidoso)***  
Phone: 258-5559  
Fax: 258-5570

***South West NM HBA  
(Silver City)***  
Phone: 388-1461  
Fax: 388-2455

***Las Cruces HBA***  
Phone: 526-6126  
Fax: 525-8598





# NPDES Primacy

## **Issue:**

National Pollution Discharge Elimination System (NPDES) programs are currently regulated and administered by the Federal Environmental Protection Agency (EPA); and the EPA encourages and expects states to take over administration (assume “primacy”) for this program.

Enabling legislation would be required to allow the New Mexico Environmental Department (NMED) to assume primacy.

There are problems with interpretations of the Construction General Permit (CGP) that have yet to be resolved with its current administrator, Region 6 of the EPA.

## **NMHBA Position:**

We believe:

NMED will assume primacy for the NPDES program eventually since the EPA expects them to, and pressure on New Mexico will continue until primacy has been achieved.

NMED should include the construction industry in its drafting, and obtain consensus on the enabling legislation prior to the legislation being introduced.

NMHBA has not seen nor agreed with the regulations for the construction industry, and will not take a position in support of or opposition to NMED’s primacy goal until these regulations have been completed with NMHBA’s participation in the drafting process, and agreement with the result.

The construction industry must not be expected to subsidize NPDES primacy for New Mexico through permit fees; and additional funding mechanisms must be established to support NPDES primacy.

The EPA and the NMED should establish and maintain an effective outreach program through which the construction industry can understand the NPDES regulations and can work to achieve compliance prior to the initiation of enforcement actions.

NMED should help NMHBA resolve problematic issues in interpreting the CGP at the EPA Region 6 level prior to seeking primacy for New Mexico. Failure to resolve these issues will result in NMED accepting a flawed program that will only result in conflicts between the construction industry, NMED, and Region 6, as other states have seen.



# New Mexico Water Issues

## **Issue:**

Water quality, quantity, and conservation are issues important to all New Mexicans. New Mexico's water law, water policy, and current usage patterns are under increasing pressures from a growing population, natural drought cycles, federal interventions, and a changing economy.

## **NMHBA Position:**

We believe:

A free enterprise system of trade relative to water is necessary. The actions of large numbers of buyers and sellers of water will cause water to be properly valued and encourage water to seek its highest and best use. We will not support, or we will actively oppose initiatives which have goals contrary to this commerce of water.

NMHBA encourages pursuit of innovative and new solutions to our water challenges and actively promotes construction details which advance the goals of water quality, quantity and conservation of water relative to domestic water uses.

We believe conservation solutions should:

1. Be easily understood,
2. Result in every water user bearing a share of the burden, and
3. Be perceived as fair by all who are impacted.

NMHBA supports solutions that create water-conserving motivations within all impacted water users.

Water policy must not be used as a tool of "no growth" movements. We believe our water challenges can be solved in a manner that allows continued population growth and continued economic prosperity into the foreseeable future.

The Endangered Species Act must allow capacity for human population growth and continued economic prosperity within the geographic areas impacted by that law.

Our Association will support regulation to protect our water quality by requiring every domestic liquid waste disposal system be fully functional to current standards upon the transfer of the home from one owner to another owner.

Our Association will promote legislation to reduce the allocation allowed for household and domestic use, from the currently allowed three acre feet annually to one acre foot annually. For areas not served by municipal water systems we will oppose efforts to grant the power to stop the drilling of wells for household and domestic use. We will promote the goal of statewide requirements for meters on all domestic wells, which must be coupled with creation of a meaningful process of verification that the amount of water drawn annually is appropriate under the law.



# Public Policy on Housing

## **Issue:**

Government and private sector enhancements to funding attainable housing and infrastructure are necessary as political leaders have called for a significant increase in the rate of homeownership in New Mexico.

During the 1990s governments directed housing development funding disproportionately, and supported the development of multi-family housing at the expense of single-family development for home ownership.

## **NMHBA Position:**

We believe:

State and local governments should encourage financing for housing in all price categories to meet the needs of those seeking homeownership and the needs of the business community seeking economic development. Federal, State and local government should use its resources to encourage this goal.

Whenever possible and practical, the costs of essential infrastructure should be financed through programs that avoid impact-type fees. Government's tax-free debt servicing ability and/or other creative financing methods, such as Special Assessment Districts, Public Infrastructure Financing, or the developer's use of Public Improvement Districts should be used to pay the costs of essential infrastructure.

Governmental entities should utilize available resources, and create new resources, to encourage and develop affordable housing. The proper utilization of funding sources creates partnerships between government, non-profit entities and the private sector in the development of affordable and workforce housing. When the state and/or local governments utilize public funds to assist with the development or production of affordable housing, all possible effort should be made to maximize the participation of private sector developers, builders and service providers in the production of that housing.

Mortgage Finance Authority housing programs such as the New Mexico Affordable Housing Trust Fund, The New Mexico Affordable Housing Tax Credit and the Affordable Housing Act (which allows for the donation of publicly owned property to be donated for the development of affordable housing) should be continued and expanded. These programs should be promoted by local governmental entities to assist in attaining the goal of increased home ownership.

Development programs designed by the Mortgage Finance Authority should strive to balance the development of multi-family and single-family housing appropriate to the needs of our communities.



# Inclusionary Zoning

## **Issue:**

In the United States there is a common belief that those who are in sound financial shape should subsidize housing for the poor. In decades past, this was accomplished through public housing, but had been replaced by subsidies such as housing vouchers. As governments find themselves with less money to spend they have sought to shift the burden of supplying subsidized housing to developers who theoretically receive economic incentives in return for building projects affordable to those toward the lower end of the income scale.

Inclusionary zoning practices where some houses must be offered for sale at below-market prices to low-income buyers are just another form of subsidy. Inclusionary zoning typically offers developers a “density bonus” to build more homes on smaller lots in order to recoup the costs of providing a certain percentage of homes to people in a specific income range. Unfortunately many “density bonuses” are never realized as neighboring residents are allowed to oppose the density levels proposed by the developers, and local governments give way to the existing residents over the interests of those who have not yet bought homes in the area.

While there are isolated localities where the supply of affordable housing is below the level of demand, statewide New Mexico’s home ownership rate was 71% in 2005, compared to the national average of 69%. As more “no-growth” measures are adopted by local governments, the supply of housing will continue to be reduced while the demand continues to grow.

## **NMHBA Position:**

We believe:

Mandatory Inclusionary Zoning practices do not result in effective solutions for affordable housing. Economic incentives for developers are often never realized due to neighborhood opposition. We oppose the practice of governments setting mandatory percentages.

Supply and demand market forces drive housing prices. Some local governments are interfering with the open market as they continue, and others are increasing, their “no-growth” restrictions to further limit the supply of affordable homes. We do not support attempts by some governments to require new developments to correct past planning mistakes and provide economic relief that is only necessary because of governmental involvement in the market place.

The best approach is to address housing affordability through the use of a competitive market operating in a climate that encourages and accommodates housing options for all income levels and that provides broad funding supplements where market forces cannot supply housing without added incentives or subsidy.

Governments at all levels have significantly curtailed spending on various programs designed to assist low-income families in securing housing. Programs by the New Mexico Mortgage Finance Authority (MFA) have been successful in providing affordable housing across the state. Increased funding for MFA is one of the most effective methods to subsidize housing for low-income families, and is socially more equitable.



# Growth

## **Issue:**

Leaders in our state are confronting difficult decisions about how to accommodate the growth occurring in many communities around New Mexico. Our traditional land development patterns are being blamed for a great variety of problems, including deterioration of existing infrastructure and the high cost of government. Vocal advocates are promoting the idea that if government will simply restrict "urban sprawl," social problems will be resolved and everyone will have a better quality of life.

Growth occurs as a result of our population expansion, and often reflects our economic well being. In spite of the fact that new homes and businesses are indeed spreading from our core communities, New Mexico's population remains heavily concentrated around our urban areas. In fact, when compared to other states, New Mexico has one of the least sprawled populations in the entire country.

A common accusation is that "growth" does not pay for itself. This is inaccurate and misleading. Developers construct all necessary improvements within a new subdivision. When the subdivision is within a city boundary, the newly constructed streets are donated to the city as a routine part of the development process. The subdivision's electric, gas, and phone utilities after being installed by the developer are required to be donated to the local utility provider. In addition to the necessary improvements within the boundaries of the new subdivision, developers often provide improvements outside the actual subdivision. These are required by the city in order to support the new population. The buyer of a new home pays for all this. In addition to these requirements there are taxes. The price of a new home includes full gross receipts tax, usually totaling many thousands of dollars. This tax is divided between the state, the county, and the municipality. Property taxes also begin accruing on the full value of the new home, supporting area schools and various bond issues. When new sewer and water lines are installed, the water rates charged include costs for maintenance of pre-existing lines. Thus, the construction of new efficient infrastructure subsidizes the maintenance of existing infrastructure.

## **NMHBA Position:**

We believe:

Growth more than pays for itself. Utilizing innovative infrastructure mechanisms helps to keep the cost of new housing affordable for new homebuyers.

Growth is an inevitable outcome of population increase and economic development. New Mexico is growing in economic strength and growing in numbers of people. Our governments must be proactive in providing support for this growth. Our citizens expect to have a right to choose the manner in which they live, whether it is in traditional towns, rural areas, or new subdivisions. We must support that right to choose and encourage public policies that will fulfill the needs and desires of our growing population.



# Attainable Housing

## **Issue:**

The American dream of home ownership is dependant upon the availability of quality affordably priced housing. Economic development in our communities is likewise dependent upon an available stock of housing attainable by the workforce. As the service sector of our economy grows, the gap between median incomes and median house prices also grows. Throughout New Mexico single-family home prices have increased at a rapid pace. This is particularly significant because household incomes in New Mexico often lag behind national and regional comparisons. Competing demand for resources, high development costs and increasing fees and regulatory compliance requirements for new housing infrastructure and services exacerbate this situation.

State and local governments are under constant pressure to "do something" about the lack of affordable housing. However, price increases for housing are often due to an increasing variety of new governmental requirements and mandates. In the making of public policy, governmental entities create (sometime unknowingly) impediments to the availability of the affordable housing they desire.

## **NMHBA Position:**

We believe:

Single family home ownership should be within reach of all households willing to set home ownership as a priority and are willing to work to achieve that goal.

Homes in all price categories are and should be produced through private sector initiatives. State and local governments should encourage housing production sufficient to meet the needs of those seeking homeownership and the needs of the business community seeking economic development. Federal, State and local government should be mindful of putting up roadblocks that would hamper achievement of this goal.

Government must be made to recognize that fees, assessments and regulatory requirements increase the cost of housing and thus make affordable housing less attainable. Governmental policy makers must be accountable and acknowledge the impact that such costs place on homebuyers. In particular, government should be sensitive to fees which must be paid before or during the construction process, as the cost of these fees escalate as the home owner must finance these costs with a long term mortgage.

Inclusionary zoning type initiatives do not result in a meaningful creation of affordable housing when viewed against the shifted costs. Without proper implementation and incentives it requires the middle- and high-income homebuyers to subsidize the low- to moderate-income homebuyer. Attainable housing is a community-wide issue and solutions are not solely the responsibility of the development community.

The cost burden of compliance with building codes, the availability of home inspectors, permit fees, and adoption of new codes should always be weighed against the cost of a home to be sure homes are attainable. For example, new code requirements intended to increase safety or quality of life are meaningless if they increase the cost of the new home to such a level that the new housing becomes unattainable for many.



# Workers' Compensation

## **Issue:**

The 1991 Special Session of the Legislature enacted extensive workers' compensation reform. New Mexico's system is widely regarded as a model for the nation, taking care of injured workers and getting them back on their jobs.

The 1991 reform created the Workers' Compensation Advisory Council, with representatives of business, labor and government, as the forum for ongoing debate of workers' compensation laws and operations.

## **NMHBA Position:**

We believe:

The public and private processes which deal with Workers' Compensation are constantly in a state of flux. We must keep ourselves informed about these processes and work to avoid deterioration in the efficiency and fairness of New Mexico's systems.

New Mexico Home Builders Association is committed to preserving New Mexico's outstanding workers' compensation system, and strives to support the Workers' Compensation Advisory Council processes.

NMHBA is a member and supports efforts of the Business and Labor Workers' Compensation Coalition.

Workers' Compensation should be maintained as the exclusive remedy for work-related injuries.



# Construction Industries Division And Commission

## **Issue:**

Construction Industries Division and the Construction Industries Commission are important because they set standards for our health and safety as they relate to the buildings in which we live and work. The work of the Commission must be accomplished professionally and effectively. Budgets must allow the Division staff to properly execute the job.

The mission of the Construction Industries Division and Commission are not well understood by legislators and the public. Fees collected for licensing, permits, and inspections are deposited into the state's General Fund and subsequent funding of Division activities is subject to annual political whims of the Legislature, often resulting in mis-matches between needs and available funding.

## **NMHBA Position:**

We believe:

Code adoption and code enforcement are extremely important for the public, as well as contractors in New Mexico. The Construction Industries Division (CID) must function as managers of inspection resources and as the “clearing house” for code interpretations to promote statewide consistency.

The public has a right to expect professional and adequate building code compliance services for the fees collected, but this is often not the case. CID must be properly staffed by appropriately trained people who are capable and willing to enforce the standards of health and safety set by the Construction Industries Commission. Funding must be adequate to facilitate this service.

Statewide uniformity in contractor licensing facilitate the free and efficient flow of construction services throughout New Mexico. These efficiencies must be recognized and maintained.



# Development Fees

## **Issue:**

The Development Fees Act became law in 1993. The Act regulates fees for off-site infrastructure expansion to new construction. The purpose of this landmark legislation is to assure that any impact fee on new construction is fair, predictable, uniform and site specific.

## **NMHBA Position:**

We believe:

Infrastructure funding through Development Fees dramatically raises the cost of a new home, and should be used only as a "last resort" method of providing vital off-site infrastructure. Other more equitable and cost-effective infrastructure funding mechanisms such as Public Improvement Districts, Public Infrastructure Financing, and Special Assessment Districts are preferable.

The Development Fees Act achieves its goals when government and developers make a conscientious effort to maintain the spirit and intent of this law. Implementation involves a strenuous planning process, funds can no longer go into the "general fund", and strict accountability is required. While this may be problematic to local government officials, we firmly believe local government owes nothing less to the homebuyers who paid these fees..

We support the Act's provision for a local governmental entity to exempt fees, including those for school construction, from development fee imposition. The value of the exemption should be made up from other funds in the entity's control, and not from developers.

Some governmental entities are not following the legal guidelines regulating monetary exactions as a condition of development. Excessive processing fees, inclusionary requirements, and water rights transfer application costs are being assessed in order to skirt the Development Fees Act. This is wrong and outside the intent of the Act.

Many New Mexico communities are experiencing growth related problems. Implementation of the Development Fees Act is only one of the tools available to help local officials and developers provide the off-site infrastructure necessary to service newly developed areas. Development fees must be site-specific, fair, uniform and predictable.



# Contractors Right To Cure Construction Defects

## **Issue:**

Residential construction quality issues are at the heart of litigation problems in states surrounding New Mexico. Courts are sometimes interpreting contractors General Liability coverage to be liable for health related problems such as mold exposure. As a result of these developments General Liability Insurance coverage for contractors is becoming much more expensive, contains new exclusions for more restrictive coverage, and for some contractors, is now unavailable.

California, Colorado, Arizona, Texas, and Nevada are among the 28 states that have experienced such a litigious storm in regard to these issues that new laws have been enacted which advocate alternative dispute resolution for construction defects. While these new laws vary somewhat in their content, they all establish the contractors right to be notified and to offer a cure prior to the beginning of court action.

## **NMHBA Position:**

We believe:

Buildings are constructed by combining thousands of various components, often in complicated custom configurations, using materials which change in nature as they become “dried in” and take their place within the new structure. Under these conditions defects are bound to occur from time to time.

Every builder should give a reasonable warranty to buyers of their products, and homes should be built to conform to both applicable building codes and accepted industry standards.

When defects do occur, builders have a right to be notified of the defects, have a right to inspect the problem, and have a right to propose and undertake a process to resolve the defect.

This “right to cure,” and alternate dispute resolutions promoting these processes should be provided for in contracts between general contractors and subcontractors, and between contractors and their customers. We believe this is a good business practice and at the same time we believe these solutions should not take away the ultimate right for any party who believes they have been damaged as a result of a construction processes to have their “day in court.”



# Green Building

## **Issue:**

As people have become more aware of environmental issues, “Green Building” has become a popular concept with the public, builders and governments.

Green Building is a broad concept including (but not limited to):

- Resource Efficiency
- Energy Efficiency
- Water Conservation
- Indoor Environmental Quality
- Lot Design, Preparation, and Development
- Operation, Maintenance, and Homeowner Education
- Global Impact

The National Association of Home Builders has responded with a program to provide standardized construction and development guidelines across the nation to help builders and developers respond to their customers’ requests for green practices and features in home construction.

In addition, federal requirements on manufacturers like low flow shower heads and toilets, and increased energy efficiency in plumbing and mechanical components and appliances have resulted in dramatic increases in conservation of water and energy compared to those homes built before 1980.

Over 30 years ago New Mexico adopted the Residential Energy Conservation Code Guidelines to incorporate energy-saving concepts into residential construction. Many homebuilders are incorporating “green” elements into their homes to achieve the quality and performance their customers have requested. Some builders have gotten into the front of the issue and helped to lead the demand.

## **NMHBA Position:**

We believe:

The use of voluntary programs based on “NAHB’s Model Green Home Building Guidelines” as adopted by “*Build Green New Mexico*” should be encouraged. In New Mexico water conservation will always be important, regardless of drought conditions. Water conservation in our state is just as important as energy efficiency, and NAHB’s Guidelines is the only one that allows modifications so superior water conservation may be rewarded.

We support incentives to help offset additional costs of Green Building, provided the guidelines or standards are reasonable and achievable. These incentives should be broadly-based so as many homes as possible will be encouraged to attain at least the minimum “green” level. Incentives should also be available to upgrade existing homes, because older homes are usually far less energy efficient and less water conserving than those built today. Homes built under these guidelines or standards will be healthy, high performing and sustainable far into the future.



# Sustainable Building

## **Issue:**

There are a variety of definitions of “sustainability”. Through this Position Statement New Mexico Home Builders Association seeks to define the term as we believe it should be used.

Construction sustainability considers the environmental, health/safety, and cost effects of material use and operations from a life-cycle point of view including the impacts of products from raw material extraction and processing, shipping, installation, and product use to ultimate disposal balanced by the practical need for the structure which is being created.

## **NMHBA Position:**

Sustainability means a balance between meeting our needs in the present without compromising the potential of future generations meeting their needs, based on reasonable assumptions of future conditions.

New technology must have its environmental value weighed against the reasonable expectation for the ability of the homeowner to maintain the technology at an operational performance level. Education of the homeowner of the need to maintain their home will extend the home’s life cycle.

The cost of conservation and continuous cyclic use of materials, water, natural resources, energy, and recycling options are major considerations when designing and building sustainably.

Water use efficiency and discharge quality should be maximized to the extent it is economically feasible. Water sources that are appropriate to the end use should be sought out.

Care in assembly of the components of a home will ensure they perform optimally for their expected life cycle.



# Energy Efficiency

## **Issue:**

Energy efficiency is in the best interest of the state's economy and environment in the long-term, and energy-efficient design and construction of new homes are also important to consumers.

## **NMHBA Position:**

We believe:

NMHBA, National Association of Home Builders, and local homebuilder associations should encourage contractors to build/remodel homes that are energy-efficient.

Energy-efficiency guidelines and mandated requirements must be shown to have a payback of cost (at current energy rates) within 7 years.