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July 1975

### Federal Environmental Requirements

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#### Recommended Citation

Fred P. Bosselman, *Federal Environmental Requirements*, 10 Real Prop. Prob. & Tr. J. 663 (1975).  
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## FEDERAL ENVIRONMENTAL REQUIREMENTS\*

BY FRED P. BOSSELMAN†

Chicago, Illinois

Our Section Chairman, Luther J. Avery, has suggested [see page 602 herein] that one of the guarantees of our liberty is that the government is so confused they do not know how properly to take our liberties away from us. If you were not already convinced of that, hopefully, by the end of this program, you will be convinced that our freedoms are still, at least partially, intact.

Ten years ago the average real property lawyer had very little contact with the federal government, other than in connection with the federal income tax laws. There were very few federal laws affecting the average real property transaction or the use of real property. Suddenly, and in a very dramatic fashion, this has all changed. Some of the most significant changes have occurred in the area of environmental law in general, and federal environmental law in particular. Our subject will be the effect of these new federal laws on the use of real property.

Ten years ago we could have covered this subject matter very comfortably in a short period of time; today, the subject has grown so greatly that it is impossible in the time allotted to present adequately a comprehensive survey, even by being very brief, of the variety of federal programs that are involved. Hence, our discussion will be limited to a brief sample of the various federal programs.

For example, we shall not touch on the Clean Air Act, potentially the most powerful federal regulatory device on the books, one that is hanging like a sword, or some would say an axe, over all our heads as Congress and the federal agencies discuss how it is to be implemented. The HUD flood plain regulation and related planning programs that are now going into effect are likewise not discussed here, nor the Corps of Engineers newly expanded Dredge and Fill interim final regulations, published in the July 25 Federal Register.

All of our panelists are members of the Section's Environmental Law Committee, and they have all had an involvement with these various programs. Their presentations follow. What they have covered is only a small sampling of the wide variety of federal environmental laws that affect real property. Today the real property Bar is in the same position as the commercial bar was at the end of the New Deal. We have been hit with a tremendous barrage of regulatory programs from all sides, and we have not yet sorted them out. The New Deal programs and agencies are still in existence, and I suspect that these environmental programs will likewise not go away.

It behooves us as lawyers specializing in this area to try to bring more

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\*These remarks set the stage for the program at the annual meeting of the Section of Real Property, Probate and Trust Law in Montreal on August 11, 1975. See table of contents for papers based in part upon a transcript of the proceedings.

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order to this field. The outcome of the New Deal agencies was the Administrative Procedures Act, which was of major concern to the Bar in the '40s. We now must consider some equivalent major undertaking by the Bar to try to organize the procedures under which users of land must comply with these wide varieties of federal statutes, whether it is an overall federal environmental administrative procedures act or some other approach.