January 7, 2009

Mr. Jayson Antonoff
City of Seattle
Office of Sustainability
PO Box 94729
Seattle, WA 98124-4729

Dear Mr. Antonoff:
On behalf of NAIOP I would like to thank you for the opportunity to comment on the work of the New Buildings Subcommittee of the Green Building Task Force.

Generally NAIOP favors approaches that are incentive based. Further, options that allow for flexibility and innovation by the developer are preferred to prescriptive frameworks that tend to lead to economic inefficiency. Finally, NAIOP urges the City to rely on meaningful cost benefit analysis of all alternatives that includes an evaluation of the impacts to both the private and public sector.

Initially, the policy options the New Buildings Subcommittee was asked to consider were: Green Investment Fund, Green Building Feebate, Green Building Density Bonus, Green Priority Permitting System, Green Building Code, and Energy Code. Subsequent meetings of the Subcommittee yielded the concepts of Beyond Individual Buildings, Continuous Monitoring of Performance, Increasing Energy Rates, and an Innovation Review Board. Each option is discussed below.

Green Investment Fund
As described by the task force, GIF is a financing model that seeks to offer competitive grants for innovative green building developments. While generally an option that we support, there are some concerns. First, we question the source of ongoing funding. If the City does implement this program it is imperative that it is sustainable and not subject to changing City priorities regarding funding. Further, depending on how the grant monies will be raised, it is possible this could become an additional tax on the development community.

The subcommittee discussed this option in several formats. One of those formats was similar to the current practice in Portland of administering loans (not grants) to underwrite the green improvements of a project. If the loan rate is competitive it could be a valuable tool. However, as Portland has demonstrated, if the program has an uncompetitive rate, its use will be extremely limited.

We expect the legislature to address financing issues in the 2009 legislative session. Depending on the legislation passed, we encourage the City to explore financing options regarding energy efficiency and renewable energy. We support strategies that allow financing mechanisms to recognize and account for future energy savings. For example, energy savings could be estimated for a period of years, and utility or other financing could be made available through low

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or no-interest loan programs. Other funding strategies include eliminating connection/capital facility charges, and utility rate reduction/modification.

Green Building Feebate

The Green Building Feebate seeks to incentivize a shift in the market to green building practices by charging a fee and then offering a waiver of that fee if the building meets green building standards or a reward if performance standards are exceeded. This policy provides a meaningful incentive for high performance building. However, this program has the potential of just becoming a tax on new development if not neutrally implemented. The goals associated with waiver and reward must be attainable.

Density Bonus

While height and density bonuses offer the development community much needed flexibility the city has identified other municipal priorities that use density as an incentive. Affordable housing utilizes height and density bonuses and the City Council has recently passed a measure to expand this program throughout the city. The City would need to clarify whether these incentives could be accumulated. If so, the incentive could be a valuable tool in promoting green building. (It is also important to note that density bonuses without the corresponding height bonus are less valuable.)

The subcommittee discussed penalties if the developer fails to build to the energy efficiency standard. In the unlikely event that a developer would not meet the standard, it is essential that the scope of this penalty be limited to the physical building components and not building operations. Many buildings are developed by one entity and then sold to another and may be managed by yet another. As data has proven, it is the operation of the building in which most energy savings can be achieved; however, the initial builder may not be the correct party on which to assess penalties for operational issues. Further, the potential for penalties creates a disincentive for individuals to buy, lease, or manage new construction. If there are no similar requirements for existing building stock, then the result will be a disincentive for the new product (which is likely to be designed for better energy efficiency.)

Priority Green Permitting

Priority Green Permitting grants the City the ability to expedite qualified projects. We support this policy option as one that encourages higher performance building without punishing projects that cannot obtain the same level of efficiencies. During the subcommittee's discussion some raised concerns about the possibility that over time too many projects will be green enough to qualify for this incentive and the advantage will be lost. We feel that this fear should not deter implementation of this solid proposal. This incentive can act as an accelerant that will encourage faster changes in the building industry.

Green Building Code

Requiring that all new construction meet a comprehensive green building code including high performance energy standards as a mandatory measure and not an incentivized program raises several concerns. First, environmental policy history is littered with failed command and control strategies that have been replaced with more successful performance and market based alternatives. As of yet neither government nor the courts have indicated that greenhouse gases require the same level of control as toxic materials for which command and control strategies are

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implemented to protect the general public. Therefore, it seems that this may not be the best approach at this time.

Second, meaningful cost/benefit analysis is imperative. Without it there is no check on the cost efficiency of a measure. Without cost efficiency, the City could unintentionally create a disincentive to development within its boundaries, thereby contributing to a competitive disadvantage within the region.

Third, as much of this technology has not yet been developed we question whether it is reasonable to assume that a City can acquire and evaluate information about new technologies that would aid in the achievement of its energy reduction goals. It is an expensive proposition that would contribute to the expansion of costs in both the public and private sector. Dictating set technologies, rather than setting performance standards, can stifle innovation.

On a similar note, the subcommittee raised the question of whether to use third party ratings or whether an “in-house” standard should be used. This query involves questions of expertise and costs. While the City has highly qualified individuals to administer the energy code, the “greening” of codes requires leading edge experts who are qualified not only to assess the new technology but also to conduct meaningful cost/benefit analysis. Secondly, the cost to acquire and then administer such an untested leading edge standard would result in greater costs to the City, and ultimately the development industry. If this is the path the city wishes to proceed down, then the mandatory requirements should be phased to reduce the economic / administrative burden on the City and the development industry.

However, it is more appropriate for a green building code to be adopted at the State level prior to local implementation. This would allow for some uniformity and would not create unintentional barriers to entry in jurisdictions that choose to adopt such codes early.

Energy Code
As noted above, at this point in time the City may have “maxed out” the cost effective achievable reductions in its energy code. While more prescriptive standards are an option for the City, when those standards reach the point of economic inefficiency, it is possible that a disincentive is created. If compliance with a stricter energy code were incentivized, the City could capitalize on the innovations of the private sector instead of calling out prescriptions based on existing knowledge. Further, in the absence of meaningful cost/benefit analysis it is difficult to lend merit to the City’s evaluations of what measures work best in a given building.

Other Policy Alternatives
The New Buildings Subcommittee discussed four options that were not part of the original work plan. One concept we feel warrants further exploration is the Innovation Review Board. Such programs and districts would provide opportunities for efficient and consolidated programs for energy use and sustainable development. If any of the mandatory measures are adopted, then an Innovation Review Board with the requisite authority to administer the program should be created. We must ensure that we support the private sector in finding solutions that will lead to greater energy efficiencies instead of hamstringing them with “accepted” pathways.

We have concerns with the three additional policy options. Beyond Individual Buildings and programs for special districts and neighborhoods seems to create more bureaucracy and taxes with little additional benefit. Continuous Monitoring is problematic for a number of reasons. We

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are unclear about the purpose of the monitoring. Monitoring for monitoring sake just increases the costs without supporting the overall goals. In short, on its own it lacks the requisite nexus to the energy reduction issue. Additionally, at what point would the monitoring requirement come into play? In the absence of a uniform citywide requirement an uneven playing field is created with respect to building leases and contracts. The encumbrance could be a factor that tips the scales toward existing (and possibly less efficient) building stock. Similarly, artificially raising energy rates creates a perverse incentive which assumes that the variable rate strategy already implemented by Seattle City Light is not successful. Further, it assumes that the rate that is artificially set will not cause a disincentive to the siting of new businesses. While the Northwest enjoys reasonable energy costs, the removal of this market advantage could affect the competitiveness of the City.

While we support the ongoing goal of energy reduction, we must balance that goal with the economic vitality of the City. While reducing industry's impact on the environment is vitally important, there must be some recognition of the actual costs associated with doing so. In order to create a healthy community, there is a need for meaningful cost benefit analysis and recognition of the reality of how the industry actually operates. If you would like more information or have further questions please feel free to contact the undersigned, at 206.683.1722

Sincerely,

Kari-lynn Frank
Local Government Affairs Director

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