



February 27, 2008

Senator Dave Wanzenried  
Chairman  
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Senator Wanzenried:

The Montana Building Industry Association (MBIA) is a nonprofit trade association representing over 2100 small Montana businesses. On an annual basis, MBIA members build between 75 – 85% of all new homes in Montana. The Montana Association of REALTORS® (MAR) has nearly 4,700 members and is the business advocate for Montana real estate professionals, representing practitioners active in all phases of real estate brokerage, management, development and appraisal.

MBIA is wholly committed to improving the energy efficiency and environmental friendliness of homes built across Montana. We are in the final stages of developing our "Montana Green Building Guidelines" that will allow new homes throughout Montana to be certified at different levels of environmental friendliness.

Our Green Build Guidelines has been in development for over 7 years and has been crafted in partnership with over 40 different public and private groups, including the Environmental Protection Agency, The Department of Energy, Energy Star, and the National Association of Home Builders. Recently the American National Standard Institute (ANSI) has certified our program. Additionally we are recognized by the International Codes Council, the body that develops and reviews building codes used throughout the world.

MBIA's Green Building guidelines are a voluntary standard in which builders can choose to be trained. The guidelines, which cover 6 different aspects of green building, will successfully bring a level of green to a large swath of Montana residents currently priced out of the more expensive green build programs.

It is important to note that our Green Building program is entirely voluntary, which promotes environmental conservation while ensuring that workforce housing does not get lost in the efforts to conserve.

Though our program is voluntary, it is by no means ineffective. Our standards are affiliated with the National Home Builders Association (NAHB) Green Building Program and each home will be certified utilizing approved verification methods and protocol adopted by the NAHB Research Center.

We expect to enroll between 200 – 300 Montana construction companies in our Green Build program by the end of 2008. Two hundred companies is roughly equivalent to 30% of all residential construction companies doing business in the state of Montana.

We estimate that over 10% of new homes built in Montana during 2007 incorporated green building components; however these homes are receiving no recognition. Based on national trends and strong interest from homebuilders in Montana, we believe that 25% of new homes will be “green built” by 2020.

Many Montanans are already living in houses that are partially green. We don’t need mandates to expand that base; we need incentives, education, and promotion of green benefits.

It has come to the attention of MBIA and MAR that the Governor’s Montana Climate Change Advisory Committee has made several recommendations that relate to the construction of new homes. As previously mentioned, continued gains in the energy efficiency of new homes is a top priority for our associations, though we are just as concerned with the ever increasing cost of workforce housing. And while we understand the desire to reduce carbon emission from within our state, we have significant concerns regarding the cost effectiveness of several of the proposed recommendations.

While the climate change recommendations are forward looking, it is important not to sacrifice the immediate future of Montana’s working families by pricing them out of the housing market.

We believe the best way to reduce Montana’s carbon footprint is through consumer education, builder incentives, and easy to use voluntary guidelines.

To be clear, green building is a top priority for our associations. However, protecting affordable workforce housing is a higher priority. Therefore, we are opposed to any new mandates that increase the cost of building a new home, cost that will be passed on to new homebuyers.

Accordingly, MBIA and MAR would like to articulate significant concerns with 3 of the recommendations areas developed by the Climate Change Advisory Council:

- **RCII – 4 Building Energy Codes**

- **RCII – 5 “Beyond Code” Building Design Incentives and Mandatory Programs**
- **TLU – 5 Growth and Development Bundle**

#### **RCII–4 Building Energy Codes:**

- **Undertaking a comprehensive review of existing building codes in Montana to determine where increased energy efficiency can be achieved.**

Currently, Montana is in the process of adopting the 2006 International Residential Code and the International Energy Conservation Code, which has been analyzed and deliberated for 5 years and will not be complete for several months. Furthermore, the process has already begun on the specifics of the 2009 edition of both codes.

The process for analyzing and reviewing Montana’s building codes is a continuous and thorough process which includes analysis and input from experts located well beyond the borders of Montana. After the code is debated and developed by international experts it begins the Montana adoption process, which includes reevaluation and critique by local builders, building code officials, and state regulators.

We are opposed to this “policy design” because Montana’s building codes are reviewed through a stringent and methodical process that ensures quality and functionality. Increasing the review requirements of Montana’s building codes ensures nothing but a longer timeline between adoptions of new standards.

- **Increasing standards such that the minimum performance of new and substantially renovated buildings, both commercial and residential, is at least 15% higher by 2010 than that required by today’s building codes (International Energy Conservation Codes [IECC] 2003, though IECC 2006 codes are under consideration), and 30% higher by 2020.**

Currently, the International Codes Council weighs the energy cost savings of any particular component of the code with the cost in implementation. Additionally, rating the energy efficiency of building codes is not a simple numerical process.

We are dedicated to preserving affordable housing, and immediate substantial increases that require significant increases in energy efficiency without regard for cost will result less affordable workforce housing. We are opposed to this “policy design.”

- **Encouraging and working toward achieving the goal of “carbon-neutral” status for new buildings. Reductions in GHG emissions related to building**

**energy use can be achieved through a combination of increased energy efficiency, switching to low- and no-carbon fuels (including solar energy) for previously fossil-fueled end-uses, purchases of “green power” from off-site providers, and/or installing on-site power generation fueled by renewable energy sources.**

We are supportive of consumer education and market based incentives as methods for promoting green building.

However, we are dedicated to preserving the affordability of workforce housing, and we oppose mandated implementation of “carbon neutral” programs that make homes less affordable for Montana’s working families.

- **Periodically and regularly (no less frequently than every 3 years) reviewing building codes, including energy efficiency requirements of building codes, to ensure that they stay up-to date. Include a review of standards related to air infiltration, building “tightness,” and related ventilation requirements.**

This policy design is currently being implemented in Montana.

- **Offering, and requiring as appropriate, education to equip building code officials, builders, designers, and others to effectively implement building energy code improvements. This might include, for example, developing a corps of licensed independent contractors who could inspect buildings for compliance with the new energy codes, especially in rural areas that currently may have minimal code inspection.**

We support continuing education for builders and developers; and a magnitude of training is currently available for building inspectors.

- **Statewide Building Permit Program: Institute a statewide building permit program to ensure consistency with regard to code application and enforcement among buildings built in both urban and rural areas.**

We are staunchly opposed to a statewide building permit. A centralized permit system would result in a loss of local control for over 50 different local governments. Additionally, it would mean cost increases and construction delays. A 1997 Montana Legislative Audit Report looked into the feasibility of developing and implementing a statewide building permit/inspection system and found significant cause to stay with our current system.

The current Montana system ensures a state standard, but is flexible enough to allow for local control and supervision of the building process. A statewide building permit

program would interfere with a local government's ability to provide local control, regulate and enforce zoning and planning ordinances, watch local growth patterns, and identify property for property tax purposes.

The 1997 Legislative Audit on the feasibility of a statewide building permit found that Montana's current system works better than a statewide permit system.

The Audit states:

*"Montana's current system of combined state and local-level regulation makes sense. It can provide an effective and efficient means of enforcing the state building code..."*

*"Given the large amount of work and the large physical area to be inspected, it is unrealistic for the Department of Commerce or local governments to administer the state building code program alone. A system which relied entirely on local-level enforcement would not be very efficient especially in the more rural counties which have a low number of inspection sites. On the other hand, placing all regulatory authority with the state would have its drawbacks. Local governments would have no oversight of construction occurring in their communities. In addition, local programs can be more efficient in areas with concentrated construction. The current system of combined state and local-level regulation makes sense. It can provide an effective and efficient means of enforcing the state building code.*

*Conclusion: Montana's current system of state and local government building code enforcement programs is a reasonable approach..."*

- **Additional Code Enforcement: Consider providing additional code enforcement to improve understanding of and compliance with more rigorous energy efficiency codes.**

The current building permit structure is fee based, meaning that the cost of a building permit is commensurate with the costs local governments incur while successfully administering building codes.

The mechanism for creating "additional code enforcement" already exists should local governments believe that more enforcement is needed.

- **Utility Assistance: Consider using utility resources to help implement building energy codes— for example, having utilities review building designs and monitor energy performance. Utilities might play a role in enforcement through the application of interconnection rules, tariffs, and connection charges that encourage the construction of buildings that use energy efficiently and at an appropriate level.**

We are steadfastly opposed to placing the enforcement of building codes, or the approval of building designs, into the hands of any utility. The notion that a utility

company is better equipped than a builder/customer to dictate design is astoundingly absurd.

### **RCII-5 “Beyond Code” Building Design Incentives and Mandatory Programs:**

- **Reduce per-unit-floor-area consumption of grid electricity and natural gas by 20% by 2020 in existing buildings and by 50% in new buildings by 2020. Up to 10% of the targeted reduction for new homes can come from use of off-site electricity generation from renewable energy. These requirements should be phased in over time and will have the following targets:**
  - **Improve 25% of existing residential units in Montana by the year 2020.**
  - **Improve 25% of existing commercial floor space in Montana by the year 2020.**

We are supportive of providing incentives for building above code specifications. However, we are opposed to any “above code” mandates, including L.E.E.D, and energy efficiency mandates, which will significantly add to the cost of construction and diminish the availability of affordable workforce housing.

MBIA’s Green Build Guidelines are a market based solution that promotes significant energy conservation. Based upon national trends, and interest among Montana builders, we anticipate that 15 – 20 % percent of new homes will be build to “above code” energy efficiency standards by 2020.

Montana currently lacks meaningful incentives for “green building.” The adoption of significant incentives, such as tax credits and fee reductions, will go a long way towards encouraging an increased level of “green building” in Montana.

### **TU-5 Growth and Development Bundle**

We are supportive of the local government planning and zoning process. We are also protective of affordable, workforce housing and property rights.

Section TU-5, covering a broad range of land use issues, contains several significant policy changes for the State of Montana, all of which will significantly increase the cost of new home construction.

The most significant public policy change highlighted in TU-5 is the use of impact fees to “provide significant cost savings to local governments that could be redirected toward the

city-county multimodal transportation funding.” It has always been the position of MBIA and MAR that impact fees should be charged by local governments to cover the cost of new capital facilities directly related to new development. Impact fees are not a politically handy method of revenue generation that allows existing tax dollars to be redirected. Several Montana communities have adopted impact fees ranging from \$5,000 – \$14,000, causing a significant setback in the stock of affordable workforce housing. New creative liberties with application of impact fees will cause an even larger shortage of affordable homes.

The tone and direction of TU-5 appears to signify a turn towards penalizing or denying traditional growth patterns in favor of so called “smart growth” formulas. This sentiment, while currently popular, promotes an extremely adversarial relationship with folks that wish to live in a more rural environment. A one size fits all land use policy will not work in Montana.

Once again, we are supportive of the goals outlined by the Climate Change Advisory Committee, however we believe the best approach to achieving these goals is to work through public education, provide builder incentives, and easy-to-use voluntary guidelines. We encourage your support in promoting our Green Build Guidelines, as this program will make significant headway in creating a greener Montana.

Sincerely,

Jeff Junkert  
President  
Montana Building Industry Association

Dan Wagner  
President  
Montana Association of REALTORS®