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VIA U.S. MAIL AND E-MAIL

December 5, 2008

Sue Coakley  
Northeast Energy Efficiency Partnerships, Inc.  
5 Militia Drive  
Lexington, MA 02421

Dear Ms. Coakley:

I am contacting you on behalf of the approximately 53,000 members of the New Jersey Association of REALTORS® (NJAR®) to share our comments regarding Northeast Energy Efficiency Partnerships (NEEP) Draft Report, *An Energy Efficiency Strategy for New Jersey: Achieving the 2020 Master Plan Goals*, which recommends methods of implementing the recently adopted New Jersey Energy Master Plan (EMP.)

By way of background, NJAR® is the leading advocate for private property rights and the real estate industry in New Jersey. As an association, NJAR® monitors issues which may affect the cost and ability to buy, sell and market properties in New Jersey.

Among the goals of the EMP is a statewide building code which will result in **newly constructed** units being at least 30 percent more energy efficient. On page 58 of the EMP, there is a quote which states, "It is generally simpler to incorporate energy efficiency into a building at the time of construction than it is to retrofit an existing building." It is important to keep this in mind, as well as to realize that at no point in the EMP are time-of-sale requirements for energy efficiency disclosures or mandatory upgrades discussed.

With regards to NEEP's draft report, NJAR® believes that there are several areas worthy of further consideration to help achieve the EMP's goal of reducing energy consumption by 20 percent. However, NJAR® is also concerned with several of the proposals in the draft report, which would have a negative impact on property owners and the real estate industry in New Jersey.

NJAR® believes that two methods referenced in NEEP's draft report that should be utilized to achieve the EMP's goal of a 20 percent reduction in energy consumption by 2020 are educating the public about the cost-saving benefits of energy reduction and the use of incentives. NJAR® believes that informing the public about the cost savings associated with a reduction in energy usage is one of the areas that the New Jersey Board of Public Utilities (BPU) and other state agencies should look at to achieve the goals of the EMP. The other area is a streamlined process to allow projects to receive incentives

on an expedited basis, which will encourage more parties to apply for the incentive programs available in New Jersey if they are not subject to the long application processes and wait times currently associated with such programs.

Having said that, there are several areas of great concern to NJAR<sup>®</sup> with NEEP's draft report. The first area that NJAR<sup>®</sup> is concerned with is requiring time-of-sale energy rating disclosures on residential unit sales, which would be posted in Multiple Listing Service (MLS) databases. Requiring a mandatory energy rating disclosure will make it far more difficult for those attempting to sell older homes in New Jersey, and as such, NJAR<sup>®</sup> believes that if energy rating disclosures are enacted, older homes should be exempt. Furthermore, NJAR<sup>®</sup> does not believe that such ratings should be required to be posted in MLS databases. In addition, not all homes being sold in New Jersey are listed in MLS databases. For example, homes being sold by owner, would not be listed in an MLS database.

NJAR<sup>®</sup> also believes that there are several questions which should be answered with regards to time-of-sale energy rating disclosures. The first is who would be charged with performing the energy audits that would be used for energy ratings and are there enough companies in New Jersey to conduct these audits? The second question is who would actually be responsible for paying for the energy audit at a time-of-sale, the buyer or the seller? Lastly, because many more energy audits would have to be completed were a time-of-sale disclosure requirement enacted, would a new licensing category be required by the State of New Jersey for those who conduct energy audits and who would be responsible for the costs associated with these audits?

Another major area of concern in NEEP's draft report for NJAR<sup>®</sup> is requiring mandatory time-of-sale upgrades to bring a home up to minimum energy efficiency standards for the year that a home is being sold. This recommendation is extremely troublesome for NJAR<sup>®</sup>. Such a requirement would not only delay real estate transactions, but would also increase transaction costs because of the amount of money needed to upgrade a home before a sale can be finalized. NJAR<sup>®</sup> also questions whether implementing energy audits and mandatory upgrades would be appropriate at a time when New Jersey's economy may be starting to recover, as these new requirements may jeopardize the strength of New Jersey's housing market and conversely, the economy as a whole.

With regards to the energy savings associated with time-of-sale disclosure and upgrade policies, NJAR<sup>®</sup> notices that the cumulative electrical and non-electrical energy savings listed in the charts on pages 129 and 130 of NEEP's draft report are minimal. The EMP calls for a reduction in electricity usage by 17,000 Gigawatt hours (GWh) per year in New Jersey by 2020. According to NEEP's draft report, over 30,000 GWh is anticipated. When considering the fact that an amount of electrical energy savings is anticipated well in excess of the EMP's goal, one must ask whether those buying and selling existing homes in New Jersey should be burdened with excessive disclosures and upgrade requirements at the time-of-sale when only minimal energy savings are anticipated and enough energy is being conserved through other means to meet the goals of the EMP.

An additional concern with mandatory time-of-sale energy upgrades has to do with the fact that New Jersey has one of the oldest housing stocks in the nation. According to the 2000 U.S. Census, 63 percent of the homes in New Jersey were constructed prior to 1970, with 47 percent being constructed before 1960. It would be extremely expensive and difficult to require upgrades at a time-of-sale, making it more difficult to sell these homes. In addition, it may take longer to recover the cost to retrofit these homes in energy savings than it would for homes constructed after 1970, which only made up 36 percent of New Jersey's housing stock according to the 2000 census. Therefore, NJAR<sup>®</sup> would recommend that older homes be exempt from a time-of-sale retrofit requirement were one to be enacted. In addition, those homes deemed as historic properties should also be exempt from this requirement.

NJAR<sup>®</sup> believes that the logistics of requiring energy efficiency upgrades at a time-of-sale raises questions as to how such a requirement would work, including which party (the buyer or the seller) would be responsible for the mandatory upgrade, can closing on a property proceed if the upgrades are not completed and if so, how long does the buyer have until the upgrades must be completed?

Another concern with mandatory upgrades is the economic feasibility on homes deemed affordable by the New Jersey Council on Affordable Housing (COAH). If a home designated as affordable were sold and a requirement was in place that the home must be upgraded to minimum energy efficiency standards, those upgrades may increase the home value, and as a consequence, may lead to questions as to whether that home could be considered affordable. In addition, regardless of the incentives to offset upgrade costs, those purchasing affordable housing may still not be able to afford those costs. NJAR<sup>®</sup> is also concerned that at no point in the draft report is New Jersey's affordable housing requirement mentioned.

NJAR<sup>®</sup> also opposes extending time-of-sale disclosure or upgrade requirements to commercial property sales. Doing so would only add to New Jersey's reputation of having an unfriendly business climate. In addition, NJAR<sup>®</sup> is against permitting individual municipalities to adopt their own ordinances requiring time-of-sale disclosures or upgrades. Lastly, NJAR<sup>®</sup> also questions whether municipalities should be allowed to mandate their own construction energy efficiency standards in excess of state standards, as the potential for 566 different sets of standards would be extremely troublesome and perplexing for those building new homes in New Jersey.

NJAR<sup>®</sup> would also like to comment on the proposals in NEEP's draft report concerning energy efficiency standards for the construction of new units. The draft report recommends updating the Construction Code in New Jersey to require newly constructed homes to be 30 percent more energy efficient by 2011 and 50 percent energy efficient by 2016. NJAR<sup>®</sup> believes that if this requirement were enacted, the cost to purchase newly constructed homes could be increased to the point that newly constructed homes may remain on the market for a longer period of time. Furthermore, requiring all newly constructed residential units to meet an energy efficiency standard would further

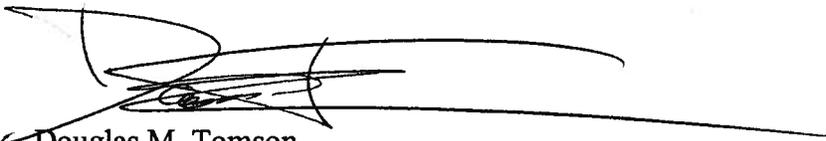
exacerbate New Jersey's affordable housing problem because of increased costs to construct new homes.

Instead of mandating newly constructed homes to be built to a higher standard of energy efficiency, NJAR<sup>®</sup> would recommend that those interested in purchasing a new home be given the option of purchasing a new home that meets energy efficiency standards but not be mandated to purchase one. Because it is easier to calculate energy efficiency savings and incorporate energy efficiency into newly constructed homes rather than in existing homes, those looking to buy a new home can more easily obtain information on cost and energy savings in a newly constructed unit and then determine on their own whether or not they wish to pursue those energy efficiency standards.

NJAR<sup>®</sup> also believes that expanding the use of incentives from the NJ ENERGY STAR program for new homes being built outside of smart growth areas, as recommended in NEEP's draft report, is a proposal that merits further consideration by the State of New Jersey. Those interested in purchasing a new home should be able to receive the same type of incentives to make that home more energy efficient regardless of what part of New Jersey the house is located in.

NJAR<sup>®</sup> looks forward to being part of the discussion of achieving energy efficiency in New Jersey while also promoting a vibrant real estate industry and recommends that further meetings take place with interested parties, such as NJAR<sup>®</sup>, prior to any recommendations being adopted. On behalf of NJAR<sup>®</sup>, I thank you for taking the time to view our comments on NEEP's draft report. Please feel free to contact me directly at (732) 494-4720 or [dtomson@njar.com](mailto:dtomson@njar.com) to discuss our comments.

Sincerely,



Douglas M. Tomson  
Director of Legislative Affairs

cc: Catherine Stanley, Northeast Energy Efficiency Partnerships, Inc.  
Jeanne Fox, President, New Jersey Board of Public Utilities  
Commissioner Frederick F. Butler, New Jersey Board of Public Utilities  
Commissioner Joseph L. Fiordaliso, New Jersey Board of Public Utilities  
Commissioner Nicholas Asselta, New Jersey Board of Public Utilities  
Commissioner Elizabeth Randall, New Jersey Board of Public Utilities  
The Honorable Jon S. Corzine, Governor, State of New Jersey  
The Honorable Richard J. Codey, President, New Jersey State Senate  
The Honorable Thomas Kean, Jr., Minority Leader, New Jersey State Senate  
The Honorable Joseph J. Roberts, Jr., Speaker, New Jersey General Assembly  
The Honorable Alex DeCroce, Minority Leader, New Jersey General Assembly