Westchester County Association
Driving Smart Growth

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COMMENTS OF THE WESTCHESTER COUNTY ASSOCIATION ON THE N.Y. STATE CLIMATE ACTION COUNCIL'S DRAFT SCOPING PLAN

About the Westchester County Association

The Westchester County Association ("WCA") is a membership organization representing hundreds of the most prominent businesses and nonprofits in Westchester County and the surrounding region. Our members collectively employ hundreds of thousands of workers. We are the region's professional roundtable. For over 70 years our mission has been to unite and mobilize leaders from business, nonprofit, government, and academia to promote issues and lead initiatives that strengthen our regional economy. Through collaboration, we improve the environment for business growth and advance the well-being of the community.

The WCA Supports the Goals of the 2019 Climate Act and the Work of the Climate Action Council

The Climate Action Council's Draft Scoping Plan represents what will be a prodigious undertaking if New York is to meet the goals set forth in the 2019 Climate Leadership and Community Protection Act ("Climate Act"). The WCA supports those goals. However, there are substantial challenges ahead, considering in particular the necessity of rebuilding the state's energy complex and its attendant reliability concerns.

Presumably, the Council is aware of the reliability and consumer cost concerns of electrifying the energy complex and decarbonizing supply in the near term. It taxes credulity to believe that fuels such as natural gas can be abandoned completely in favor of wind, solar, and hydro given the need for baseload power and the current state of technology. Other interest groups have highlighted these points and they need not be repeated here.[1]

Notwithstanding those feasibility concerns, with the Climate Act now law and with the ultimate goals decades away, a closed-minded indictment of the Council's work is simultaneously too late, too

[1] With its non-compliance fees tied to building emissions limits, New York City's Local Law 97 essentially adopted a carbon price on end users. At the state level, a carbon price and/or carbon trading mechanism would be more efficiently placed further up the chain onto producers and not on building owners.

soon, and a misunderstanding of its task. The Council was handed codified emissions goals and told to provide a roadmap to achieve compliance.

Accordingly, the WCA herein provides brief comments in the following areas – Buildings and Land Use. As the Council recognizes, if New York is to decarbonize, getting there will be expensive for business and residents. The State needs to quickly scale up programs and incentives that offer substantial financial and technical assistance for building retrofits and new building construction. This needs to be a heightened state budget priority.

The WCA opposes any phase out of fossil fuels absent such financial and technical assistance. Moreover, local zoning and land use restrictions will present a serious impediment to altering the status quo. The State must pass laws which override local discretionary decision-making and clearly encourage smart growth options such as transit-oriented development, multi-family residential development, and small-scale renewables such as solar, wind, battery storage and geothermal.

Any Transition to Building Electrification and Net-Zero Building Construction Must be Linked to Technical and Financial Incentives and Flexible Financing Programs for Clean Energy Construction and Building Retrofits

By passing a law without a fulsome understanding of its economic impact, New York has made a policy decision to decarbonize notwithstanding that impact. Moreover, the up-front costs are largely internal while the benefits diffuse. Those costs should not be balanced on the backs of the private sector. As with the benefits, those costs should be spread widely and borne by the State. The real estate community in particular will be unfairly burdened under the Draft Scoping Plan.

The Draft Plan concludes that at 32 percent, buildings are the single largest contributor to statewide emissions. Particularly with respect to energy reliability concerns, the pace of decarbonization will depend as much on the speed at which the built environment can physically transition from fossil fuels as on the timeline for developing new sources of supply.

In the Buildings sector, the Council's draft recommendations comprise a combination of benchmarking, efficiency, a prohibition on the use of fossil fuels in new building construction and a fossil fuel phase-out for existing buildings. According to numerous major project developers operating in Westchester, there isn't yet a robust market for net zero building construction or conversion outside of the small residential market. They are agreed, however, that it will be very expensive.

New York City's Local Law 97 ("LL97") – a model for many of the Council's draft recommendations – provides some useful lessons. Local Law 97 sets carbon caps for buildings greater than 25,000 square feet starting in 2024 with penalties for non-compliance. Building owners and managers are actively studying the costs of conversion.

The following information illustrates the retrofitting costs for four typical commercial office buildings in New York City. This information was tabulated by a project developer asked to perform a compliance study for LL97. All these examples use air source heat pump technology for temperature and water. Much of the cost range is due to differences in vintage, size, height, and existing rigging.

	Building A	Building B	Building C	Building D
Building Gross Area	630,000	688,000	1,963,000	2,200,000
Building Height	505	505	587	674
Number of Floors (above grade)	40	40	48	51
Direct Work Cost per GSF (not including GC and overhead)	$67.80	$67.24	$29.44	$16.85

The straight average comes out to $45.33 per GSF even before factoring in contractor mark-ups and contingencies which costs could easily run an additional $20 per GSF. With this simplified calculation, a typical commercial building would cost tens of millions of dollars to retrofit and would not be supported by any reasonable payback period on the lifecycle of the building. Multiplying any ballpark number by the volume of building stock in the State provides a sense of the total price tag of converting existing building stock.[2] In New York City alone, the number of buildings covered under LL97 is around 50,000 and early indications are that the costs are so prohibitive that the vast majority of these buildings will simply opt to pay the fee rather than convert to electric. Without assistance, a conversion mandate will expose buildings financial peril by forcing them to shoulder a grossly oversized and unfair cost burden.

Moreover, extrapolating this data to the residential market, the damage will be particularly severe for cooperatives and condominiums and other buildings housing working class families. One report estimates costs greater than $9,000 per household for multi-family buildings just to upgrade the boilers.[3]

In Westchester, while few if any buildings have yet to explore retrofits, new building construction is mostly electric due to the existing Con Edison natural gas moratorium. According to numerous developers in the Hudson Valley, increased costs for new residential construction carry premiums greater than 10 percent project-wide over traditional, fossil fuel-based construction.

Although there are some publicly sponsored financing mechanisms, these programs are not sufficiently scaled will need to be expanded exponentially. In addition to the revolving loan fund concept discussed in the Draft Plan, New York will need tax mechanisms like New York City's Property Assessed Clean Energy (PACE) Program on a statewide level. The state will also need to prioritize massive spending in programs such as NYSERDA's Clean Heat and Flexible Technical Assistance Programs. The required public investment will dwarf anything currently available.

This year, budget legislation to phase out fossil fuel use in buildings that is consistent with the Draft Scoping Plan's abbreviated timeline was ultimately (wisely) unsuccessful. Putting aside energy supply and reliability concerns, the WCA does not support any such legislation absent coupling with

[2] According to the Climate Action Council's Energy Efficiency and Housing Advisory Panel, there are 250,000 multi-family buildings and 370,000 commercial and institutional buildings in New York State.

[3] *Seeing Green: Co-ops, Condos Face High Costs,* Crain's New York Business (May 23, 2022).

major funding mechanisms and technical assistance programs tied to the increased costs of construction or conversion.

The Impediments of Local Land Use and Zoning Need to be Overcome at the State Level

The WCA supports zoning by right and streamlined SEQRA review for projects consistent with the Climate Action Council's smart growth development recommendations. The WCA further supports a reasonable right of appeal from local land use decisions which neutralizes the presumption of validity where smart growth developments are denied.

The Draft Plan identifies the need to address local land use restrictions and clean energy siting as one of its goals primarily through public outreach and education. Recent experience with local land use and zoning decisions in the housing context foreshadows the need for a cohesive statewide approach and a stronger, more proactive legislative hand. This will take a combination of mandates and incentives. Moreover, just as with the dedicated ORES to streamline and expedite the siting of renewable energy supply, New York needs SEQRA workarounds and statewide zoning requirements to create more environmentally favorable projects such as transit-oriented development ("TOD"), multi-family development, and community and small scale solar, wind, battery storage and geothermal projects. Existing building roofs, big box stores, and parking lots and garages, for example, are all fair game for solar panel retrofits.

The plight of TOD and accessory dwelling units ("ADUs") in the most recent state budget is insightful. As a means of addressing New York's housing crisis, the Governor's executive budget proposed streamlined, as-of-right TOD and ADU zoning legislation. The bills were swiftly criticized by many quarters as an assault of local land use control and they were pulled without much meaningful engagement. Another model that New York State should consider adopting is the federal Telecommunications Act of 1996 (the "TCA"), which does not preempt local zoning authority by its terms. Rather, it prohibits discrimination among wireless providers and prevents a municipality from completely banning wireless facilities within its borders. A similar New York State statute would require municipalities to accommodate appropriately sited alternative energy facilities and provide for expedited appeals of denials which are based on community opposition as opposed to substantial evidence in the written record.

Left to themselves, local governments lack the urgency and proper incentives to address climate change through zoning and land use that encourages smart development. Even well-meaning communities can face overwhelming financial and political pressure that prevents them from adopting climate-friendly zoning policies. Because the climate benefits tend to be more geographically diffused than the perceived burden, the current land-use system with its numerous approval stages gives the loudest voice to its fiercest opponents. It is too easy for a small number of community activists to gum up a project and the state will need to step in firmly to overcome local opposition. Local governments are not suited to solve what needs to be a coordinated, statewide effort. If we are committed to these policies then we will need well-crafted state intervention to push past local inertia.

In the climate-change arena, education campaigns, technical siting assistance and incentives, while welcome, will ultimately fall short unless laws are passed which strengthen the state's hand on zoning, land-use, and smart growth development.

Respectfully submitted,   Date: June 1, 2022

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