July 29, 2022

Secretary of the Board
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RE: PROPOSED UPDATES TO NEW JERSEY'S CLEAN ENERGY PROGRAM: NEW CONSTRUCTION PROGRAM

Docket No. QO22050327

Dear Acting Secretary Diaz,

Thank you for this opportunity to comment on the Proposed Updates to the NJCEP New Construction Program as released for comment on July 12, 2022 and subsequently reviewed during the Stakeholder Meeting of July 22, 2022.

MaGrann Associates is a New Jersey based engineering and sustainability consulting company actively engaged in the Residential New Construction Program since its inception by New Jersey's utilities in 1987. We are a RESNET Accredited Provider and Energy Rating Company under the Home Energy Rating System (HERS), as well as raters and providers for ENERGY STAR, LEED, NGBS, ZERH, EGC and PHiUS. With a focus on multifamily and affordable housing, we deliver thousands of high performance new construction units each year under these and other certifications in New Jersey, and from Boston to Washington DC.

Overall, we would like to applaud TRC and the Clean Energy Program for the innovative and comprehensive approach to this program update. We offer the following comments for your consideration as you finalize the program design:

1. We strongly support the addition of ZERH and Passive House tiers and associated incentives for multifamily, correcting a somewhat perplexing omission in the program structure to date.
2. As noted in the stakeholder meeting, a release is pending from DOE of a ZERH standard specific to multifamily, which will need to be taken into account in establishing incentive levels. In general, we believe incentive levels should reflect a combination of the incremental cost and projected energy performance associated with meeting a specific certification standard. ZERH and Passive House

incentives should be positioned accordingly within the range of available certification programs in the High Performance tier.

3. We strongly support the proposal to accept certification of "Proxy" programs, although without more information it is unclear to us how exactly this will increase participation efficiencies (i.e. reduced paperwork or QA coordination). In particular we encourage inclusion of Passive House certification, as this is the foundation for achieving true zero net energy performance. In neighboring states, Passive House adoption in the affordable market has been accelerated through the LIHTC QAP system, proving its feasibility. We need to do everything we can to motivate this level of performance in New Jersey's affordable development.
4. However, while we are actively engaged in supporting LEED qualification in our projects, we suggest a nuanced approach to its inclusion in the proxy list. Only those LEED certifications relevant to the housing sector should be considered for inclusion (LEED for Homes and Multifamily Mid Rise vs. LEED NC, for example). We suggest *continuing to require ENERGY STAR certification as a mandatory minimum* for incentive qualification within the High Performance tier. Note that LEED explicitly does not reference changing standards, so certain projects may qualify for certification without meeting energy performance levels that represent an improvement over code. ENERGY STAR, on the other hand, more consistently stays ahead of code by increasing their requirements in response to code updates.
5. We were pleased to hear on the Stakeholder call that the issue of parity between the program pathways will be addressed. This is the opportunity to correct the anomaly of higher total incentives that have been available for "doing less" under P4P than under RNC, which has historically required ENERGY STAR compliance. While energy and carbon reduction may be the primary goals of the Clean Energy Program, we must pursue these objectives while also valuing the health, resilience and other non-energy benefits of a holistic, building science based approach to building performance – especially when specifications are built in for the life of the structure in new construction. Higher incentives for achieving higher levels of proxy program certification would be one way of ensuring this outcome and correcting the historic P4P/RNC imbalance.
6. Further clarifying our position regarding the incentive structure:
    a. We support the position articulated in the stakeholder meeting that the achievable incentives should increase at each tier. It should never be possible to bundle incentives and bonuses at a lower tier in such a way that the total exceeds the incentive at a higher tier.
    b. Higher levels of effort and whole building performance should be rewarded at a higher incentive *rate* (i.e. $/sq.ft) within the High Performance tier. As noted above, all proxy certifications are not equal and applying one rate across the entire tier will not motivate higher performance.
    c. We understand that an advantage of the proposed incentive structure based on $/sq.ft is that it provides the simplest way of addressing points a) and b) above, while also providing a basis for easy projection and comparison of incentive eligibility for any given project. However, the absence of an EUI (energy use intensity) component will inherently reward

larger, higher absolute energy use single family homes, and disadvantage smaller affordable units in multifamily. To retain the desired simplicity in multifamily, this could potentially be addressed by a combination of total building $/sq.ft. *plus* $/unit. For single family, the correction could be facilitated by a *diminishing sliding scale based on size*.

d. Note that some proxy certifications take extended periods of time to process after project completion, especially when third party review is involved. Consider phased incentive payments, particularly for multifamily. Phased payments could be developed with the final payment serving as a true-up based on the final outcome, so that any earlier payment is not subject to penalty or return in the event that the final level of certification is less than anticipated (a perceived risk that will deter some from participating at all).

e. We are unclear as to the value of having a Simplified Pathway tier relative to the potential for market confusion or "cannibalization" of the High Performance tier. This approach is certainly a welcome addition when applied to existing building retrofit, but we will wait for further details before commenting further on its application to new construction.

f. Finally, we think it is not enough that incentives increase from tier to tier (Bundled to Streamlined to High Performance). It is essential that the incentives at the higher tiers be *significantly* higher than at each step below. While there is merit to providing an incentive for doing something rather than nothing, it will never be as impactful over the life of the building as the program spending more on enticing participation at the higher, comprehensive levels. When presented by a minimal delta between the two, it should be assumed that developers who are not already "bought in" will favor the path of least effort, and some who may appear to be bought in today will be at risk of regressing. Any incentive multiplier for LMI/Affordable construction should be weighted towards the higher performance tiers and proxy pathways where it will have the greatest beneficial impact on tenant utility costs.

7. We concur with the comments of Mike Winka on the stakeholder call, recommending that the highest available incentives be provided for projects that project true zero net energy performance through a combination of very high performance envelope and systems together with on-site or community solar to meet the balance of demand (Zero Energy Ready Home certification should not be confused with actual zero energy performance). This maximized incentive could be achieved through an additional zero energy incentive, or packaging with separate PV incentives and/or Advanced Measure Bonuses. A "Projected Zero Energy" incentive could be split with or augmented by a "Verified Zero Energy" incentive measured and paid out over a period of 1-5 years. We suggest this approach because we know from experience that true zero energy, particularly in multifamily, is a difficult absolute threshold which may or may not be fully achieved as designed due to any number of technology or occupancy factors, or may be able to be fine-tuned over time.

8. We encourage Advanced Measure Bonuses be adapted and made available for multifamily as soon as possible if not at the same time as single family, and given our focus and experience in this sector we would be happy to provide further input to their development. Examples include:

a. The need for developer incentives around EV chargers for tenants and condo buyers in multifamily buildings, and innovative thinking around accessibility to both chargers *and vehicles* in affordable multifamily. These amenities become prohibitively expensive to add after construction, and every multifamily building that gets completed without this infrastructure will likely be a lost opportunity without a significantly higher incentive investment later.

b. A comprehensive approach to "smart-connected" deployment in LMI multifamily that addresses resident and O&M education on installed devices, and takes into account broader equity issues such as affordable broadband internet access.

c. Expanding multifamily access to and participation in community solar, particularly for LMI properties.

We assume the Advanced Measure Bonuses will be designed to compensate for any inherent imbalance between potential electric and gas savings on a project level basis. Note that potential impacts on post occupancy operating cost can be substantially mitigated by ensuring that Advanced Measure Bonuses and other measure specific incentives designed to encourage *building* electrification are aimed exclusively at (or skewed toward) the high performance tier, where the methodology is both comprehensive and fuel agnostic.

9. We are strongly *not* in favor of incentives paid directly to the rater or consultant. These incentives distort market pricing by forcing the rater to discount and devalue services, which is avoided entirely when all incentives are paid directly to the developer. Furthermore, rater paid incentives can introduce a significant additional financial burden *and* a conflict of interest when paid to the rater only after certification of the project. Of all the parties involved, raters are the least able to afford to carry costs when they are forced to wait for payment until the end of the process (see also 5.d. above). This is especially compounded for multifamily projects. And a payment to the verifying party (the rater) that is contingent on the builder passing certification sets up an unacceptable misalignment of risk/reward at best, and an ethical conflict at worst. We strongly recommend against this approach without careful consideration and safeguards.

Thank you for this opportunity to provide comments during this program design update process. We encourage TRC in its role as program administrator to engage on an ongoing basis with the builder and rater community and to provide further opportunities for input in a less formal structure as well. On behalf of the entire MaGrann team, we look forward to continuing to support our many clients and projects under the program. As always, we would welcome the opportunity to further discuss these comments and contribute to the program's evolution.

Sincerely,

Ben Adams

Ben Adams
Vice President Program Development