

December 18, 2023

The Honorable Serena McIlwain, Secretary
Maryland Department of Environment
1800 Washington Blvd
Baltimore, MD 21230
Via email: serena.mcilwain@maryland.gov

The Honorable Paul G. Pinsky, Director
Maryland Energy Administration
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Via email: paul.pinsky@maryland.gov

Dear Secretary McIlwain and Director Pinsky;

This letter contains comments on the Building Energy Transition Implementation Task Force draft report dated November 10, 2023, and is a follow-up to comments submitted dated November 20, 2023. ([copy linked here](#)) These comments are jointly submitted by the five Task Force members listed at the conclusion of the letter appointed to the Task Force seats assigned to commercial, industrial, and multifamily property management, affordable housing development and the Maryland Green Building Council.

The real estate representatives appreciate that the co-chairs and staff took time to meet and discuss the concerns expressed in our letter of November 20, 2023, and the decision of the co-chairs to provide additional time to comment. We have attached a redline including a limited number of changes intended to improve the text of the report by providing policy makers and the public with a higher level of visibility over information we believe will be important for decision makers to consider and recommendations related to financing and incentives that will be essential to accelerating the rate of building conversions.

Although we are proposing changes to the text of the task force report, we want to be clear that these changes do not represent the level of change necessary for the real estate representatives to endorse the full Task Force report. There are numerous recommendations and statements in the draft Task Force report that clearly have the support of a majority of Task Force members and staff but raise concerns for the real estate representatives. We believe these differences of opinion are extremely wide and that reaching consensus will not be possible in the time available before the report must be presented to the General Assembly and Governor. If this Task Force is to issue future reports, we believe the format of the report should be altered to better support the presentation of different points of view on issues where there is partial consensus or no consensus.

Our concerns with the Task Force's recommendations and statements include:

- **New Carbon and Fuel Taxes** – First Task Force recommendation proposes two new taxes; 1) an economy wide carbon tax, and 2) a carbon tax on fossil fuels. These recommendations were simply added to the text between drafts of the final report. The carbon tax proposals were not the subject of a consultant or staff briefing on rate structures, revenue potential, other policy considerations or an explanation of how the taxes would interact with each other, existing and other proposed rules. The referenced carbon tax in the Climate Pathways Report did not include modeling to understand its impacts either on an economy-wide basis or at the consumer level. The negative implications of poorly designed carbon taxes on economic growth, the competitiveness of the state and the potential for regressive financial impacts on households and businesses are immense.
- **Provide Medicaid Funding for Building Improvements** - The use of Medicaid funds to renovate low- and moderate-income housing is a novel proposal that was not explained in sufficient detail to understand its feasibility or potential.
- **Definition of Building Energy Transition** – This section redefines the building energy transition in ways that shift responsibility for mitigating the direct emissions of in state and out of state utility power generation to the building sector. This approach runs contrary to the historical, more equitable division of responsibility where the building sector has been responsible for the direct emissions of buildings and the utilities are responsible for the direct emissions of power generating facilities. The language does not give enough weight to policy approaches working in parallel to BEPS managed through the Renewable Portfolio

Standard, the Regional Green House Gas Initiative, and EmPower that will reduce grid level emissions and energy use.

- **Ending Investment in Fossil Fuel Equipment and Infrastructure** – A move away from fossil fuels must be managed and structured in a way that is technically feasible and cost-effective for building owners and occupants, utility companies and their customers. The timing and extent of the transition will depend on actions that are unlikely to happen on a predetermined timetable. The Public Service Commission docketed a case on the future of gas infrastructure that is underway and other related work continues within the EmPower program. These are the appropriate venues for decisions and recommendations about future investments in fossil fuel equipment and infrastructure.

Areas where we recommend changes:

- **Financing Building Energy Transitions** – The statement that half of BEPS covered electrification projects can be cost-effective and financeable today has not been documented and is inconsistent with commercial loan underwriting standards. We recommend it be removed from the draft.

Most commercial real estate loans have a maximum term of 10-years. Conventional sources of financing whether bank, life insurance company or pension fund are unlikely to consider lending on an investment with a payback period that starts in 16-years like the example building from the MDE / PNNL analysis.

Other studies presented to the Task Force found longer payback periods than MDE / PNNL. The payback period in the Montgomery County multi-family and commercial building decarbonization case studies that was footnoted in the MDE / PNNL study averaged 32-years and ranged between 19 and 57 years. The Rewiring America presentation to the Task Force showed payback periods for multi-family electrification that ranged between 20 and 53 years with an average of 31. The average payback period reported for all housing types was 20-years longer than the typical lifespan of the equipment financed.

The rise in remote work and decline in office utilization following the COVID-19 pandemic has been well documented and is causing a freeze in the lending market for office buildings. Vacancy, lower effective rents, and interest rate increases have impacted all commercial real estate asset classes, reducing property values, limiting the amount of equity available for reinvestment and in many cases, reducing cash flows which significantly restricts the borrowing capacity of building owners.

Whether electrification projects can be financed will be determined by the strength of the building's rent roll and the ability of the net operating income to cover debt service with an adequate margin of safety. Electrification projects that increase debt loads and lower net operating income will be extremely difficult to finance with conventional commercial loans and put further downward pressure on building valuations.

- **Tax Incentives** – As discussed above, the Task Force report does not present policy makers with an accurate picture of the challenges building decarbonization projects will have qualifying for private financing. This causes the report to underestimate the amount of public money that will be necessary to fill funding gaps and accelerate the scale and pace of building conversions necessary to meet the 2031 targets.

MDE's current Building Energy Transition Plan and Roadmap which was approved and published as part of the Climate Commission's 2021 annual report contains a recommendation that the state develop commercial tax credits and direct subsidy payments sufficient to reduce the simple payback period to between 3 and 7 years. We recommend this language be added as essential to stack tax incentives and conventional commercial mortgage financing of decarbonization projects.

- **Fund Electrification Projects for Low- and Moderate-Income Residents** – This is a compassionate and, given the costs of compliance and depth of the 2031 targets, potentially a necessary step to take. Owners and occupants of low- and moderate-income rental housing that are required to comply with the Building Energy Performance Standards are facing the choice between untenable rent increases and non-compliance fees that would be difficult to impossible to absorb. However laudable this recommendation may be, the report should provide more clarity on its financial implications. Information presented to the Task Force suggests electrification of households earning 80% or less of the Area Median Income (AMI) would involve up to 622,000 housing units at an upfront cost of \$13 billion. Funding scenarios estimated the current, combined IRA tax credits, IRA rebates, DHCD and MEA funding to be \$1.1 billion over 10-years with 76% coming from federal sources.
- **Grow the Clean Energy Transition Hub** – Conceptually a central clearinghouse of information is an important component of accelerating improvements in building performance. The charges to the Hub include providing technical assistance to building owners, advice on legal requirements, BEPS compliance and building codes. This will be difficult to scale up even to the 9,000 buildings and their occupants that are covered by BEPS. Setting an expectation that the Hub will provide technical and legal direction to building owners, occupants, condominium associations and related contractors or consultants is extremely ambitious given the complexity of individual buildings and the potential penalties for non-compliance. We recommend the Hub support decarbonization strategies across a range of building typologies, similar to the work done by the Department of Energy’s Better Climate Challenge.
- **Policy Context** – We see the current policy context as much more complicated and fluid than indicated. The rate of change at every level of government from local to state and federal level is creating a fast changing, uncoordinated regulatory environment for buildings owners and occupants. We propose changes to describe the requirements of the Building Energy Performance Standard more accurately. Renewed efforts are necessary to coordinate regulatory initiatives across levels of government.
- **Additional Recommendations** – It should be clarified that these ideas were not adopted by the Task Force.

Respectfully submitted by:

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