

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan

Chief Executive Officer

DATE: April 10, 2024

SUBJECT: New Jersey Green Bank Subsidiary Approval

Request

The Members of the Board are asked to approve the formation of a subsidiary to be called the New Jersey Green Bank ("NJGB")¹ of the NJEDA and created pursuant to Section 16 of P.L. 1997, c. 150 (C. 34:1B-159) (the "Subsidiary Act"). In order to form the subsidiary, the Board is asked to approve actions contained in the attached resolution (the "Authorizing Resolution"), which shall approve the establishment of the NJGB as a subsidiary of the NJEDA with all of the powers of the NJEDA, except the power to incur indebtedness independently of the NJEDA.

Also attached to this Board memorandum are the following documents that are approved via the Authorizing Resolution:

- 1. The NJGB Agreement and Certificate of Incorporation, which will be filed with the Secretary of State;
- 2. The NJGB By-Laws; and
- 3. A Memorandum of Understanding ("MOU") between the NJEDA and the NJGB pursuant to which the NJEDA will provide various services to the NJGB.

This Board memorandum is intended to provide background and rationale for approving the Authorizing Resolution and its accompanying documents.

Background

The State of New Jersey ("State"), under Governor Murphy's administration, has taken significant steps to accelerate its transition to a clean energy economy and meet the ongoing challenges of climate change. These include setting several clean energy targets, including 100% clean energy by 2035, 11 gigawatts ("GW") of offshore wind power by 2040, and being one of only a handful of states with an energy storage target (2 GW by 2030). Additionally, the State has made

¹ The NJEDA received approval in January 2024 from the New Jersey Department of Banking and Insurance to name the subsidiary the "New Jersey Green Bank."

² Murphy Executive Order #315

³ Murphy Executive Order #307

⁴ P.L. 2018, c.17 (a3723) (njleg.gov)

commitments to accelerate building decarbonization for commercial and residential properties,⁵ as well as to incentivize the adoption of zero-emission vehicles.⁶ New Jersey has also ensured that prioritizing people in environmental justice communities ("EJCs") (e.g., low-income, minority, and/or with limited English proficiency) who endure a disproportionate share of environmental and public health stressors and have limited access to environmental and public health benefits ("Environmental Justice") is a core consideration in guiding an equitable energy transition.⁷

The NJGB will be a financial organization designed to further build on this progress by making clean energy and climate change investments and providing financial assistance ("Climate Products") that advance the State's efforts to facilitate an equitable energy transition. Specifically, the NJGB plans to make equity investments, provide credit enhancements, and offer loans and/or other financial vehicles to attract private capital to enable the State to reach its climate goals while providing measurable benefits to EJCs.

The NJGB has received prior State legislative and executive support. In Governor Murphy's 2019 Energy Master Plan, an included goal as part of the Governor's efforts to expand the State's clean energy innovation economy during his time in office was the establishment of a New Jersey Green Bank. On February 15, 2023, Governor Murphy signed an executive order directing the NJEDA to coordinate and implement programs supporting building electrification through the implementation of a New Jersey Green Bank. Supplemental appropriations thereafter approved for the 2023 Fiscal Year on June 30, 2023 appropriated forty million dollars (\$40,000,000) to the NJEDA as seed capital for this initiative. This seed capital will be transferred from the NJEDA to the NJGB as part of the Authorizing Resolution. Except for this transfer of funds, no NJEDA funds will be linked to the NJGB after the subsidiary is approved.

Beyond the State seed allocation, the NJEDA has been actively pursuing other funding opportunities made available at the federal level, including the Environmental Protection Agency's ("EPA") Greenhouse Gas Reduction Fund ("GGRF") competitions, to bolster the NJGB's planned capital base. The EPA has designed the GGRF competitions to accelerate progress towards the climate goals of the United States, including reducing greenhouse gas ("GHG") emissions 50-52 percent below 2005 levels by 2030. Through the end of 2021, New Jersey had reduced GHG emissions approximately 27 percent below 2005 levels. Progressions 2005 levels.

NJEDA staff anticipates that the lead applications it supported in October 2023 for the GGRF's National Clean Investment Fund ("NCIF") and Clean Communities Investment Accelerator ("CCIA") competitions will result in at least \$100 million in potential subaward grants for the

⁵ Murphy Executive Order #316

⁶ EV Act of 2019, P.L. 2019, c. 362

⁷ NJDEP| Environmental Justice | Environmental Justice Law, https://dep.nj.gov/ej/

⁸ Murphy 2019 Energy Master Plan, https://nj.gov/emp/docs/pdf/2020_NJBPU_EMP.pdf

⁹ Murphy Executive Order 316 (please note that the NJGB is referred to as the "New Jersey Green Fund")

¹⁰ P.L.2023, c.66 (nileg.gov)

National Clean Investment Fund Notice of Funding Opportunity, https://www.grants.gov/search-results-detail/349234

^{12 &}lt;u>State GHG</u> <u>Emissions and Removals | US EPA, https://www.epa.gov/ghgemissions/state-ghg-emissions-and-removals</u>

NJGB. If the applications are successful and the NJGB Board approves corresponding subaward agreements, staff expects to receive and deploy these funds starting in July 2024. The NJEDA was listed as a subawardee in the lead NCIF applications for Coalition for Green Capital ("CGC") and Ecority, two organizations that each applied for more than \$10 billion from the NCIF competition. In those applications, the NJGB was allocated \$202 million from CGC and \$350 million from Ecority and is positioned to receive those funds as permanent capital prorata to the funds awarded by EPA to these organizations. Importantly, the NJGB may need to return any funds received as a subawardee through the NCIF competition if such funds are not deployed in a timely manner.

In addition to the GGRF competitions, NJEDA staff is working with the U.S. Department of Energy Loan Programs Office ("LPO") and was recently determined to be an eligible State Energy Financing Institution ("SEFI") that can unlock low-cost capital available through the federal Title 17 Clean Energy Financing Program. NJEDA staff have explored how the NJGB could be similarly determined to be a SEFI on its own, which the LPO has indicated to NJEDA staff is possible once the NJGB is formed.

NJEDA staff has also been engaged in discussions with sister agencies, including the New Jersey Board of Public Utilities, to identify NJGB investment or financial assistance opportunities in community solar projects that could accelerate the State's progress toward achieving its climate goals and advance environmental justice in the State. Additionally, NJEDA staff has been in discussions with private entities and renewable energy developers on mechanisms that would support renewable energy projects in the State.

To help further identify entities within New Jersey that are interested in financial support from the NJGB and the type of financing being sought for these opportunities, the NJEDA released a Request for Expressions of Interest ("RFEI") in December 2023 and is actively gathering responses until a formal application for NJGB financial support is released. While the RFEI is accepting responses for all types of climate-related financial support, it specifically highlighted three priority categories:

- 1. Clean Energy Generation and Storage
- 2. Building Decarbonization and Resiliency
- 3. Zero-Emission Transportation

These categories correspond to both the existing climate goals developed by the State¹⁴ as well as the priority project categories emphasized by the EPA in the GGRF applications.¹⁵ Notably, considerable capital will need to be invested in the State to meet its established targets.

NJEDA staff estimates the following market sizes corresponding to the State's climate goals:

Target/Year Investment Needed

¹³ <u>State Energy Financing Institution (SEFI) Toolkit | Department of Energy, https://www.energy.gov/lpo/state-energy-financing-institution-sefi-toolkit</u>

¹⁴ Murphy 2019 Energy Master Plan, https://nj.gov/emp/docs/pdf/2020_NJBPU_EMP.pdf

¹⁵ Greenhouse Gas Reduction Fund Implementation Framework, https://www.epa.gov/system/files/documents/2023-04/GGRF%20Implementation%20Framework_730am.pdf

2 million light duty zero-emission vehicles by 2035 \$100 billion¹⁶
100% clean energy by 2035 \$85 billion¹⁷
11 GW of offshore wind power by 2040 \$38 billion¹⁸

These estimated market sizes indicate a significant need for the NJGB to raise capital and deploy it in a manner that mobilizes private capital.

There is precedence for the NJEDA establishing a subsidiary, namely the Schools Construction Corporation, in 2003 pursuant to the Subsidiary Act. The Subsidiary Act enables the NJEDA to form a subsidiary to effectuate any of its authorized purposes. The Subsidiary Act provides that the subsidiary specifically shall have all the powers vested in the NJEDA which the NJEDA determines to delegate to the subsidiary, except that the subsidiary shall not have the power to contract indebtedness independently of the NJEDA.

There are many reasons why it is necessary and desirable to establish this subsidiary. Expeditious and effective deployment of the NJGB's seed capital and any GGRF allocations will require that the NJGB has sufficient operational flexibility, access to capital, and staff capacity and expertise, as well as the ability to focus entirely on climate and transition investments, mirroring other green banks, such as the New York Green Bank and the Connecticut Green Bank, that have had successful track records of attracting private capital for climate and clean energy projects. ^{19,20} For instance, since its inception, the Connecticut Green Bank and its private investment partners have deployed over \$2.26 billion in capital for climate projects, with approximately \$7 in private capital mobilization occurring for every \$1 of Connecticut Green Bank's financial support. In addition to these state green banks in Connecticut and New York, a list of some of the other existing green banks in the U.S. can be found in Exhibit A. Given this history of successful green bank capital mobilization, establishing the NJGB as a subsidiary of the NJEDA represents an important opportunity to position the NJGB to play an impactful role in an equitable energy transition in the State.

Crucially, the subsidiary approach will help eliminate market barriers for private investment into projects to help New Jersey meet its climate goals by giving the NJGB the ability to:

• Attract private capital, including funds from public-private partnerships, in a similar manner to the following examples that have occurred at other Green Banks:

¹⁶ Based on industry average cost from <u>EValuateNJ – Atlas Public Policy (atlaspolicy.com)</u>, <u>https://atlaspolicy.com/evaluatenj/</u>

¹⁷ Based on industry average cost from Renewable Power Generation Costs in 2022 (irena.org), https://www.irena.org/Publications/2023/Aug/Renewable-Power-Generation-Costs-in-2022

¹⁸ Based on industry average cost from <u>Project Sunroof - Data Explorer | New Jersey</u>, https://sunroof.withgoogle.com/data-explorer/place/ChIJn0AAnpX7wIkRjW0_-Ad70iw/

About Us - CT Green Bank | Accelerating Green Energy Adoption in CT, https://www.ctgreenbank.com/about-us/

²⁰ About NY Green Bank, https://greenbank.ny.gov/About/About

- Bank of America's \$314 commitment to NY Green Bank through a trust for low-cost debt, all funds of which have been repaid by NY Green Bank²¹
- o CT Green Bank's partnership with the residential solar developer PosiGen, which resulted in 4,400 solar PV projects (67% of which occurred in low- and moderate-income communities) and represented around \$116 million in capital deployed²²
- Efficiently mobilize private sector capital for financial support mechanisms through an organizational structure akin to other Green Banks and aligned with private sector practices
- Pursue customized and de novo financing structures tailored to transaction specificity to induce private capital participation
- Facilitate the development of climate and clean energy capital markets in the State through forms of financial support, such as warehousing and securitization, that address underdeveloped capital markets for these investments
- Have a self-sufficient entity focused on achieving market scale in a way that complements existing NJEDA clean energy grant/incentive programs

Additionally, the subsidiary approach will allow the NJGB to have the operational flexibility to invest its own capital in an expeditious and market-responsive manner by giving it the ability to:

- Have execution aligned with industry standards
- Have NJGB-centric procedures unique to climate-related investment needs
- Have an exclusive focus on Climate Products that helps recruit green finance expertise to the organization
- Create industry-tailored products and customize investment deal structures, as appropriate
- Have a staff with industry-specific expertise in climate investing, lending, portfolio optimization, capital markets, credit, risk management, and business development
- Ring-fence NJEDA exposure, if any, to NJGB investments
- Build an independent balance sheet with any funds awarded to the State through the GGRF's NCIF and CCIA competitions and grow that balance sheet with retained earnings from the NJGB's investments

NJGB Details

Organizational Structure of the NJGB

Given the NJGB's need to deploy its seed capital and additionally any awarded federal funds, which may have provisions for returning grant subawards if not deployed in a timely manner, to meet the State's climate objectives, hiring a staff with the requisite experience to focus exclusively on the ability to execute climate transactions is a priority. A planned organizational chart for the NJGB can be found in Exhibit B. Among other staffing needs that the NJGB may have, it is

NY Green Bank Announces Completion Of First Private Capital Raise And Largest By A Green Bank In The U.S. - NYSERDA, https://www.nyserda.ny.gov/About/Newsroom/2021-Announcements/2021-08-02-NY-Green-Bank-Private-Capital-Raise-Fund-Largest

²² Solar For All - CT Green Bank | Accelerating Green Energy Adoption in CT, https://www.ctgreenbank.com/strategy-impact/societal-impact/successful-legacy-programs/solar-for-all/

envisioned that the NJGB, once fully operationalized, will have its own dedicated staff who have expertise in the following areas:

- Financial services, including sales, marketing, and technology expertise
- Strategy, impact, and investor relations
- Business planning and administration
- Investment and portfolio management
- Capital markets
- Risk management

Until the NJGB is able to hire its own staff, NJEDA will loan employees through the NJGB/NJEDA MOU for the NJGB's day-to-day operations ("Loaned Staff"). During and after the period where these NJEDA employees are loaned to the NJGB, the NJGB will leverage the NJEDA for administrative and other services in areas such as accounting, public affairs and communications, HR, ethics, compliance, procurement, IT, corporate governance, and diversity, equity, and inclusion.

For legal services, the NJGB will have its own agreement with the New Jersey Division of Law within the Office of Attorney General ("OAG"), except at the outset of the NJGB's operations, when the NJGB will engage with the OAG through the NJEDA's agreement until the NJGB's own agreement is finalized. The retention of special counsel would go through the OAG, as is currently the practice within the NJEDA.

The NJGB will have a Chairperson of the Board, a Board of Directors, and a Chief Executive Officer, all of whom will provide oversight to the NJGB's activities.

The initial board for the Green Bank ("Initial Board") will consist of three (3) NJEDA employees (the "NJEDA-Affiliated Directors") with qualified backgrounds (e.g., financial administration, lending, financial services, investing, and portfolio management) who are named in the Agreement and Certificate of Incorporation attached to the Authorizing Resolution. Upon authorization of the formation of the NJGB, the Initial Board will be comprised solely of these NJEDA-Affiliated Directors, who will be: Tim Sullivan (Chief Executive Officer of the NJEDA), Kathleen Coviello (Chief Economic Transformation Officer of the NJEDA), and Ram Akella (Executive Vice President of Innovation Impact of the NJEDA). As needed (i.e., if an NJEDA-Affiliated Director leaves the NJEDA or does not wish to renew their term), the NJEDA Board will, based on NJEDA staff recommendations, decide which NJEDA employees should be appointed to the NJGB Board as NJEDA-Affiliated Directors to maintain the NJEDA majority which is required by the Subsidiary Act.

Within one (1) year from the incorporation of the NJGB, the Initial Board will be expanded to five (5) Directors with the addition of two (2) Directors (the "Public Directors") who are knowledgeable and experienced in the field of green energy investments and approved by the Initial Board ("NJEDA-Affiliated Directors and the Public Directors," collectively, the "Board"). Public Directors must be independent of the NJGB, meaning that they (1) do not have a material relationship with the NJGB; (2) are not part of the NJGB's executive team; and (3) are not involved with the day-to-day operations of the NJGB. Initially, nomination of the Public Directors shall be

made by NJEDA staff; once the NJGB is operational with its own staff, recommendations for such positions will be made by NJGB staff to the NJGB Board.

Each Director so appointed shall hold their office for terms of three years, except for the initial NJEDA-Affiliated Directors who shall serve staggered terms to avoid rotating members on the same timeframe, with one NJEDA-Affiliated Director serving one (1) year; one (1) NJEDA-Affiliated Director serving (3) years. Upon expiration of these initial terms, subsequent NJEDA-Affiliated Directors shall each serve a term of three (3) years. The terms of NJEDA-Affiliated or Public Directors may be extended at time of expiration for up to three (3) consecutive terms. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

Each Public Director may be removed from office by a majority vote of the NJGB Board, for cause, after a public hearing, and may be suspended by the NJGB Board pending the completion of such hearing. Because the NJEDA-Affiliated Directors are NJEDA at will employees, they remain subject to the same policies and procedures as any NJEDA at will employee and do not have any greater right due to their appointment to the NJGB Board.

To support the NJGB Board and staff, the draft NJGB By-Laws establish an Investment and Credit Advisory Committee ("ICAC"). The role of the ICAC will be to evaluate and make recommendations on whether the NJGB Board should approve investment or credit assistance proposals submitted as part of the NJGB's formal application, intake, or other process. The ICAC will be comprised of a group of senior professionals who have relevant expertise, which would include expertise in at least one of the following areas: project finance, clean energy or environmental infrastructure, investment banking, commercial lending, tax-exempt or tax-advantaged financing or municipal banking, or climate policy. The ICAC will have five (5) members, including one (1) to two (2) NJGB Board members.

The draft NJGB By-Laws also establish an Environmental Justice Advisory Committee ("EJAC") to support its efforts to advance an equitable energy transition in New Jersey that benefits the State's EJCs. The EJAC will be comprised of five (5) individuals with expertise in environmental justice and related advocacy, including one (1) to two (2) NJGB Board members. The EJAC will meet periodically to make recommendations and provide feedback on how the NJGB can best advance environmental justice through its investments and financial assistance, including by providing input on how to meet environmental justice requirements of NJGB funding sources.

To assist in the evaluation of particular technologies that are included in investment proposals and financial assistance applications, the draft NJGB By-Laws further contemplate a Technical Advisory Committee ("TAC"). The TAC would be comprised of five (5) individuals, including one (1) to two (2) NJGB Board members, with expertise in various climate and clean energy technologies.

The staff of the NJGB will nominate any candidates for the ICAC, EJAC, and TAC to the NJGB Board for approval by a majority vote, except at the outset of the NJGB's operations, when nomination of ICAC and EJAC candidates will be made by NJEDA Loaned Staff.

Additionally, as required by Executive Order 122 (McGreevey 2004), the NJGB will have its own Audit Committee.²³ The Audit Committee will consist of two (2) NJEDA-Affiliated Director and one (1) New Jersey Department of the Treasury employee designated by the New Jersey Department of the Treasury, provided that one less NJEDA-Affiliated Director will be on the Audit Committee if two Directors comprise a quorum of the Board. The Audit Committee's responsibilities will include assisting the NJGB Board in fulfilling its oversight responsibilities for:

- The independent audit process;
- The financial reporting process;
- The maintenance of effective controls; and
- Compliance with operating policies and ethics requirements.

To better enable the Audit Committee to fulfill its responsibilities, NJGB staff, as well as any NJEDA staff assisting the NJGB as part of the MOU, will periodically report to the Audit Committee on both external and internal audits, auditors' reports and corrective action plans, whistleblower complaints and investigations, ethics complaints and/or claims of non-compliance, pending and threatened litigation, and other items relating to compliance.

Investment Criteria

NJEDA staff proposes that the NJGB establish and adopt its own clearly defined investment policy and related investment criteria that will be used to evaluate potential financial transactions on a portfolio-wide basis. Currently contemplated criteria include:

- 1. The portfolio will have expected financial returns such that revenues of the NJGB will exceed operating costs and expected portfolio losses;
- 2. The portfolio will be expected to contribute to financial market transformation for climaterelated investments and financial assistance, which may include (i) reaching New Jersey residents in EJCs with investments and financial assistance; (ii) increasing private sector participation in climate-related transactions; (iii) creating scale in investments and financial assistance; and (iv) increasing market awareness and confidence in particular clean energy technologies;
- 3. The portfolio will have the potential for energy savings and/or clean energy generation that will contribute to GHG emissions reductions and/or increased resiliency related to extreme weather events in support of New Jersey's climate goals; and
- 4. The portfolio will provide measurable benefits to EJCs (as determined on a portfolio-wide basis), in line with existing State Environmental Justice legislation and guidance from the NJGB's EJAC.

Eligibility

NJEDA staff proposes that the NJGB establish Climate Products. Such Climate Products include investments in and financial assistance of projects, sites, assets, portfolios, and businesses that are

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²³ McGreevey Executive Order #122

related to the State's energy transition and climate goals, including, but not limited to, the commercialization, manufacturing of products and services, and implementation of technologies that support clean energy generation and distributed energy resources, grid modernization, energy efficiency and zero-carbon building development, resiliency from extreme weather events, and transport system electrification. Examples would include solar power, onshore and offshore wind, heat pumps and geothermal, and electric battery storage. Excluded from eligible Climate Products would be conventional landfill operations, natural gas projects, and combustion-based waste-to-energy projects.

Additionally, NJEDA staff proposes that NJGB Climate Products be subject to the following limitations:

- Climate Products must be new rather than providing refinancing
- Climate Products must lead to reduced GHG emissions and/or criteria pollutants in the State; or support New Jersey's current climate goals

Additional criteria may be imposed based on recommendations made by the NJGB's EJAC and ICAC, as well as any other established NJGB Board or advisory committee.

Reporting

NJGB will provide the NJEDA Board with quarterly updates on its activities, including any actions approved by the NJGB Board. Within one hundred and twenty (120) days of the end of each fiscal year, the NJGB will submit an annual report for the preceding year to the NJEDA Board. Included in the annual report will be a comprehensive financial report that includes the NJGB's audited financial statements. This annual report will be available to the public on the NJEDA's website.

Diversity, Equity, and Inclusion

Staff's intent is that the NJGB prioritize advancing Environmental Justice in the State through its investments and financial assistance. As outlined in the currently contemplated investment and assistance criteria above, the NJGB would, on a portfolio-wide basis, provide measurable benefits to the State's EJCs, in line with existing State Environmental Justice legislation and guidance from the NJGB's EJAC.

As part of its ongoing operations and through the attached MOU, the NJGB will leverage the expertise and initiatives of the NJEDA's existing diversity, equity, and inclusion staff.

Request

The Members of the Board are asked to approve the formation of a subsidiary to be called the New Jersey Green Bank of the NJEDA and created pursuant to the Subsidiary Act. In order to form the subsidiary, the Board is asked to approve all of the actions in the attached Authorizing Resolution, which shall approve the establishment of the NJGB as a subsidiary of the NJEDA with all of the powers of the NJEDA, except the power to incur indebtedness independently of the NJEDA.

Also attached to this Board memorandum are the following documents that are approved via the Authorizing Resolution:

- 1. The NJGB Agreement and Certificate of Incorporation, which will be filed with the Secretary of State;
- 2. The NJGB By-Laws; and
- 3. An MOU between the NJEDA and the NJGB pursuant to which the NJEDA will provide various services to the NJGB.

This Board memorandum is intended to provide background and rationale for approving the Authorizing Resolution and its accompanying documents.

Tim Sullivan, CEO

Prepared by: Ryan Klaus

Attachments:

Attachment 1 – New Jersey Green Bank Authorizing Resolution

Attachment 2 – New Jersey Green Bank Agreement and Certificate of Incorporation

Attachment 3 – New Jersey Green Bank By-Laws

Attachment 4 – NJGB-NJEDA Memorandum of Understanding

Exhibit A – Other U.S. Green Banks

Exhibit B – NJGB Illustrative Organizational Chart

Exhibit A: Other U.S. Green Banks

The following is a list of some of the other green bank entities that have been formed or are currently under development in states and cities throughout the United States with offerings focused on mobilizing private capital for climate-related projects:

- California Infrastructure and Economic Development Bank
- Clean Energy Fund of Texas
- Climate Access Fund (Maryland)
- Colorado Clean Energy Fund
- Columbus Region Green Fund (Ohio)
- Connecticut Green Bank
- DC Green Bank
- Energize Delaware
- Efficiency Maine
- GO Green Energy Fund (Ohio)
- Hawaii Green Infrastructure Authority
- Illinois Climate Bank
- <u>Inclusive Prosperity Capital</u> (Connecticut, Regional Focus)
- Maryland Clean Energy Center
- Massachusetts Clean Energy Center
- Massachusetts Community Climate Bank
- Michigan Saves
- Minnesota Climate Innovation Finance Authority
- Missouri Green Banc
- Montgomery County Green Bank (Maryland)
- New Mexico Climate Investment Center
- Nevada Clean Energy Fund
- New York City Energy Efficiency Corporation (Regional Focus)
- New York Green Bank
- North Carolina Clean Energy Fund
- Philadelphia Green Capital Corporation
- Rhode Island Infrastructure Bank
- Solar and Energy Loan Fund (Florida, Regional Focus)

Exhibit B: NJGB Illustrative Organizational Chart (subject to change)

