

June 30, 2022

Via Electronic Submission

Doreen M. Harris

President and CEO, New York State Energy Research and Department Authority

Basil Seggos, Commissioner, New York State Department of Environment Conservation

Climate Action Council

% Draft Scoping Plan Comments, NYSERDA

17 Columbia Circle

Albany, NY 12203-6399

Re: Comments of NY Renews to the Climate Action Council Draft Scoping Plan

Dear President Harris, Commissioner Seggos and members of the Climate Action Council,

Please see below the comments of NY Renews on the Climate Action Councils Draft Scoping Plan, dated January 1, 2022. Thank you.

Regards,

Avrielle Miller

Policy Coordinator, NY Renews

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President and CEO, New York State Energy Research and Department Authority
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Re: Comments of NY Renews to the Climate Action Council Draft Scoping Plan

Dear President Harris, Commissioner Seggos and members of the Climate Action Council:

NY Renews, a multi-sector coalition of 320+ organizations, founded following the People's Climate March, brings together organizations from across New York State to build sustained action for climate, jobs and justice. The NY Renews coalition championed the Climate and Community Protection Act (CCPA) to mandate a transition to a just and renewable economy in New York State, which ultimately became the Climate Leadership and Community Protection Act (CLCPA). The CLCPA is the law, and it is the people's law. The Climate Action Council's (CAC) current scoping plan is the blueprint for our state's climate future as real-time impacts of climate change continue to persist in New York. Establishing limits for New York's gross greenhouse gas (GHG) emissions from 2030–2050 is critical to setting a strong foundation and meeting reduction standards within the CLCPA. The scoping plan's guidelines are set to create state legislation and regulation to meet climate goals and set up beneficial outcomes for low-moderate income communities (LMIs) and disadvantaged communities (DACs) who feel the negative impacts of climate change the most.¹² Impact disparities have only been exacerbated by the ongoing COVID-19 pandemic, amplifying extant economic distress throughout the state and equity.

In these final comments, NY Renews urges the CAC to include the amended changes into the final scoping plan to fully realize CLCPA mandates. Specifically, these final comments request: (1) that the CAC incorporates new sections into the final scoping plan, and (2) make the specific amendments to

¹ For the purposes of the CLCPA, "disadvantaged communities" means communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate- income households, including but not limited to the following criteria: (1) areas burdened by cumulative environmental pollution and other hazards that can lead to negative public health effects, (2) areas with concentrations of people that are of low income, high unemployment, high rent burden, low levels of home ownership, low levels of educational attainment, or members of groups that have historically experienced discrimination on the basis of race or ethnicity, and (3) areas vulnerable to the impacts of climate change such as flooding, storm surges, and urban heat island effects. *See CLCPA Section 2 amending ECL Section 75-0111.*

² For the purposes of the CLCPA, "low-to-moderate-income households" are homes with annual incomes at or below 60% of state median income by county or metro area where census block groups reside. *Falls under the DAC criteria umbrella.*

existing chapters to meet reduction standards that fully realize the recommendations of the Climate Justice Working Group (CJWG).

I. Necessary Inclusions

Top Lines

We are urging the Climate Action Council to make the following inclusions in the final scoping plan in a “**Top Lines**” section to ensure that the scoping plan is legally enforceable against industries and includes timelines for the reduction of emissions by sector. Provisions for environmental justice and emission reduction mean nothing if they cannot be **enforced** or if there aren't rules in place for what happens when our climate justice laws are broken. The current scoping plan is too reliant on voluntary actions and projections; this can not be the case with the GHG targets set forth in the CLCPA for both public and private actions.

It is imperative that the final scoping plan specify the **level of mandated reductions in greenhouse gas emissions and co-pollutants** that each industry sector must achieve by 2050 as set forth in the CLCPA, as well as for the timelines set forth and specific agencies responsible for enforcing the CLCPA targets for each sector. There must be clarity in specific GHG emissions targets for certain sectors as well as for the targets that are inadequate to the overall CLCPA mandates. The plan must include goals for industry that set forth legally enforceable action, not just voluntary action by industry actors. For the final scoping plan, there must be detailed recommendations for each sector economy with interim benchmarks specifying the reduction required therein.

Along with this specificity, there must be explicit and intentional definition on **false solutions** within this new section. We are in a critical decade; we can no longer rely on hypothetical technologies and false fixes like hydrogen, “renewable” natural gas (RNG), biogas, waste-to-energy “solutions,” and carbon capture and storage (CCS). This section must include distinction of how they operate and the consequences of their uses. These distinctions must be made so that the final scoping plan does not include these solutions and sets restrictions on what is not permissible when such technologies are used and the consequences of their overuse. It is vital that we rapidly and equitably reduce New York's emissions, including co-pollutants, the noxious by-products of burning fossil fuels that cause asthma and health problems at disproportionate rates in environmental justice communities. This cannot be achieved via false solutions or industry-supported techno-fixes, such as commercially unavailable alternative fuels—undemonstrated in New York—that have non-zero greenhouse gas emissions and significant conventional air pollution impacts. This renders them incompatible with the CLCPA's zero emissions mandate. Instead, invest in proven equitable solutions, like renewables and electrification, that will have a major impact on emissions of both greenhouse gasses and co-pollutants. We have the existing technology to make a significant difference.

Mandates made in each sector must be **legally enforceable against businesses and individuals and specify targets** for individual businesses when feasible. The scoping plan's industry section offers the opportunity to detail the regulatory mechanisms for every other chapter of the scoping plan by

sector—mechanisms that include legislation. The current scoping plan does set specific regulatory measures, but not in a uniformed way. This can be seen with Public Service Commission (PSC) standard practices, for example. The final scoping plan must insist that the PSC end the practice of trading compliance with the CLCPA for other rate proceeding issues, for example, by excluding policy issues that impact on the CLCPA from the confidential negotiations³.

It must be made **absolutely clear** that every agency of the state is legally required to act on and enforce obligations on climate and equity screening requirements under sections 7(1), 7(2), and 7(3) of the CLCPA. There must be clarity on **agency obligations** to abide by the provisions in regard to achieving the goals into law.⁴ Enforcing and implementing key provisions within the CLCPA will require guidance and expert knowledge from state agencies and key players on the proper means and implementation of provisions and procedures based on the final scoping plan. These decisions must not increase our emissions or the burdens on frontline communities. It is counter to the spirit and letter of the CLCPA to wait for the scoping plan to be completed to act pursuant to Section 7. Finally, a process must be established to **ensure the achievement of the CLCPA investment mandates**. This must include involvement from the Climate Justice Working Group and other state entities to provide guidance to state agencies subject to the investment mandate, such as on how to modify budgets and contracts. Without this leadership and provision, it is unlikely that investment mandates will be implemented accordingly.

NY Renews endorses the comments of Citizen Action of New York Sections I and II and the comments of Earthjustice on Economy-Wide Mechanism and Gas Transition comments.

Indigenous Sovereignty

NY Renews stands as an ally to Indigenous nations in New York and nationally. Indigenous nations are sovereign entities with political, cultural, and religious agency over their ancestral homes. Just as it is imperative that DAC and LMI communities are consulted in important policy decisions, land practices, and funding mechanisms, it is equally as important that Indigenous communities are consulted and given decision making power at the Climate Action Council. NY Renews strongly urges the CAC to integrate an **“Indigenous Sovereignty”** section in the final scoping plan. This inclusion must use the integration of appropriate state-to-nation channels to ensure collaboration from Indigenous communities on the scoping plan in a manner that respects the timeline for the unique decision-making processes within the nations; this must include state- and federally recognized tribes and unrecognized tribes. The final scoping plan cannot disregard the voices and knowledge of Indigenous nations. As it stands, the plan disregards their governing power and ecological intelligence. There cannot be a policy or directive that meets the overwhelming response to climate change without Indigenous nations at the table exercising their

³ PSC recently initiated a proceeding in regard to CLCPA implementation. 22-00570, 22-M-0149: In the Matter of Assessing Implementation of and Compliance with the Requirements and Targets of the Climate Leadership and Community Protection Act (March 14, 2022). We ask that this proceeding incorporates annual benchmarks for the electric and gas sector along the lines we have outlined, improvements to the PSC’s procedures, including limits on confidential negotiations.

⁴ Climate Leadership and Community Protection Act § 7(1) requires all state agencies to “assess and implement strategies to reduce their greenhouse gas emissions.” Section 7(2), the “climate screen,” requires all state agencies and other entities to consider whether the permitting actions, contracts and other decisions the agency makes will “interfere” with the state’s attainment of its GHG emissions goals and to identify alternative GHG mitigation measures, if a decision is deemed to interfere with the emissions targets. Finally, Section 7(3), the “equity screen,” provides that permits, contracts and other decisions cannot “disproportionately burden” disadvantaged communities; *see also Environmental Conservation Law (“ECL”) Section 7-0117*.

substantive rights and knowledge, including their collective rights of self-determination and land stewardship. As we continue on in the just climate transition, the sovereign status of Indigenous Peoples must be upheld in the climate transition as distinct from other stakeholders.

The CAC must make a concerted effort to include Indigenous groups and organizations who hold relevant and informative literature that must be incorporated into the final scoping plan; the plan must include the voices of those that have been historically suppressed. Further, there must be more explicit language in the final scoping plan to indicate the harm that nuclear plants pose to nations and the disservice of nuclear bailouts to actual clean alternative energy generation.⁵ Any efforts made towards grid enhancement, efficiency, and interconnectivity must ensure that Indigenous nations are not facing the threat of displacement or of signing away their sovereign immunity. Solutions expressed in the scoping plan must look to support Indigenous-led climate solutions and improve the environment—not degrade the land or pollute resources.⁶ Zero-waste strategies posed in the final scoping plan must aim to end the practice of landfills and end our dependence on toxic plastic and incineration elimination. This is a problem that impacts First Nations—particularly those living on fenceline communities—due to poor waste management practices. Finally, the impacts of large-scale renewable-energy development on Indigenous cultural resources must be considered. As the state looks to increase the number of wind turbines, solar panels, battery storage units, and other ancillary infrastructure statewide, it must recognize that doing so necessarily means increasing the number of acres of developed land. By permitting development on hitherto undeveloped, or barely developed land, the state will also be permitting land disturbances. To avoid neglectance and harm, the best way to do this is to require consultation—with both nations still living on their ancestral homelands and with those that have been displaced—early in pre-application processes and throughout permitting. The Office of Renewable Energy Siting should hire a Native nations liaison to facilitate consultation, provide a single point of contact for nations, developers, regulators, and others, and help guide and mediate conversation, especially if applications or permitting plans become controversial. Additionally, NYS should enact the Unmarked Burial Site Protection Act to regulate the discovery of burial grounds, human remains, and funerary objects to help end the desecration of Indigenous ceremonial sites throughout NYS. Addressing climate change necessitates the centering of Indigenous sovereignty, worldviews, and programs.

NY Renewables endorses the comments of Citizen Action of New York Section II(6).

II. Changes to Existing Sectors

To meet the vision of the CLCPA and a just New York, adjustments to the existing sections of the scoping plan should incorporate the following:

Buildings

⁵ March 20, 2019, “Nuclear Reactors are Not Green,” available at <https://aila.ngo/wp-content/uploads/2019/03/NukeRedPaper3-25-19.pdf> (last visited May 24, 2022).

⁶ March 13, 2022, “The East Coast’s First Indigenous Kelp Farm Readies for Harvest” <https://www.sierraclub.org/sierra/east-coast-s-first-indigenous-kelp-farm-readies-for-harvest> (last visited May 24, 2022)

The existing buildings section must have a stronger hand in covering building electrification to offer a clear path to achieving energy affordability goals, while including explicit routes to achieve this. Fossil fuels must be phased out in order to prioritize energy affordability goals of 6 percent or less. The scoping plan must ensure that it aligns with strategies that prioritize investment in DACs and LMIs with the adoption of new codes and standards and proposed timelines that prioritize investments. This must support the implementation of **new zero-emissions standards for existing buildings** and massive **investments in scale up financial support** for energy efficient building updates and heat pump systems. Additionally, the plan must ensure **building decarbonization solutions** serve as a benefit to the grid and include retrofits to new buildings construction projects that can advance electricity and efficiency mandates, but also to existing buildings with proper permitting mechanisms down the line.⁷ Implementing this fund would support the CAC’s plan to issue zero-emissions standards to phase out fossil fuel combustion equipment.

NY Renewables urges the CAC to direct the Public Service Commission (PSC) to amend policies to ensure that state “safe and reliable” services do not supersede the provisions laid out in the CLCPA and support the adoption of Energy Code regulations to end on-site GHG emissions. We support the creation of an energy efficiency and electrification readiness fund to address pre-existing building conditions in scaling up financial support for upgrade and energy code provisions. New rate designs would provide additional protections for consumers and communities to guard against energy rate increases, predatory business practices, mistreatment by landlords, and gentrification and neighborhood displacement. There must be assurance that those qualified under this actually receive the benefits to which they are entitled. And finally, decarbonizing must be centered with equity in the final scoping plan with strategies for interconnection and communication between programs around public assistance and benefit to ensure there are energy and electrification provisions and upgrades for DAC and LMI households.

NY Renewables endorses the comments of Earthjustice on Buildings and the comments of Citizen Action of New York Section III.

Transportation

Transportation in New York must be electrified. This is non-negotiable in successfully adopting “electrification-first” policies for the state. This section must hasten the phase out of fossil fuel burning combustion vehicles and explicitly seek to maximize zero-emission vehicle (ZEV) adoption for truck and busses (medium-and-heavy-duty electric vehicles or MHDVs), non-road equipment, and 100-percent light-duty vehicles (LDV) that include sales mandates for passenger cars.⁸ There must be strong principle policies that boost ZEV adoption with increased specificity and aggressive timelines to guide state

⁷ NY Renewables supports S6843C (“All electric building act”) and S7176 (“Advanced Building Codes, Appliance and Equipment Efficiency Standards Act) and calls for the CAC to support the two bills.

⁸ N.Y State Climate Action Council, *Draft Scoping Plan*, p.101 (T1-T2) (2021)

policymaking to ensure cars, buses, trucks and non road-sectors are electrified.⁹¹⁰ This must include retrofits to existing fleets to provide alternative, affordable solutions for electrification. In order to achieve **Scenario 3**, enabling strategies with public incentives to transform the market for energy, electrification and decarbonization is crucial.¹¹¹² Lack of available capital means uninsured growth and installation boosts especially to historically underserved areas, rate occurrence and opportunity to design with consideration to density.¹³ When considering the expansion of public fleet vehicle miles traveled (VMT) decrease and mobility access sit as a top concern. Raising awareness on EV technologies while minimizing the reliance on personal automobiles by enhancing access to public transit for all New Yorkers, including urban and rural communities, is critical. With the right policies, the State can actually begin to reverse some of the historical inequalities associated with transportation access.¹⁴

NY Renews urges the CAC to work with DPC/PSC, DOT, Indigenous nations and DAC representative groups, on the roles regarding the development of rate structures and design development that boosts EV fleet transition and adoption to prioritize electrification that have historically harmed low-income and disadvantaged communities to properly work on expansion strategies and considerations. Inter-agency planning must incorporate communities' input as a **front priority** to allot full plan transparency and comprehensive understanding of where access needs are to ensure transportation electrification is equitable in benefits to all New Yorkers.¹⁵ This includes incorporation of green zones, port electrification, and incentives/charging buildout. To further align with CLCPA priorities, additional policies that should be endorsed include warehouse ISR, equitable charging infrastructure and targeted investments to anticipate growth, identified “hot spots” requiring enhanced mitigation, alternative freight modes, identify facilities with high diesel emissions for targeted vehicle retirement and electrification investment with enhanced incentives for early retirement.¹⁶ Policies that we support in the final scoping plan will include; set target analysis of 6% LDV VMT reduction in 2030 and 2050, expanding public transit with community-based service enhancements,¹⁷ dedicated micro mobility and improved experience,¹⁸ land use changes that incorporated increased walkability and bikeability with safety considered, and access to amenities and transit,¹⁹ and avoidant spending strategies that prompted sprawl and put additional funding

⁹ Reflective of California’s Advanced Clean Cars II (“ACC2”) rule, there must be policies that highlight the principle that direct mission reduction strategies like sales mandates and emission standards for vehicles do almost all the heavy lifting to progressing towards achievement of CLCPA mandates; acting as a foundation strategy to decarbonize transportation sector, and include regulatory process to codify these rules as soon as possible. See *Earthjustice comments on the Transportation Advisory Panel’s Recommendations to the Climate Action Council p.6, May 10 2021*; also see *Transp. Advisory Panel, CAC, Meeting 13 (Apr. 9, 2021)*.

¹⁰ N.Y State Climate Action Council, *Draft Scoping Plan*, p.101 (T1, T2, T5) (2021)

¹¹ Scenario 3 aimed at accelerated transition away from combustion following adjustment recommendations from the Advisory Panel to include a very limited role for bioenergy and hydrogen combustion and accelerated electrification of buildings and transportation. This scenario includes a role for negative emissions technologies to reach carbon neutrality. See *N.Y State Climate Action Council, Draft Scoping Plan, p.70 (2021)*

¹² N.Y State Climate Action Council, *Draft Scoping Plan*, p.101 (T11) (2021)

¹³ NYSERDA, New York State Transportation Electrification Report, Report Number 21-06, p. 37 (2021)

¹⁴ *Id.*

¹⁵ N.Y State Climate Action Council, *Draft Scoping Plan*, p.101 (T2 & T8) (2021)

¹⁶ We urge for a similar model adoption of the bus rapid transit standard (BPR) like Curitiba Brazil model that offers heavily used low-cost transit systems to increase access and address low emission/energy efficiency issues in areas with insufficient density to support local trains or light rails; see also *Rabinovitch, A sustainable urban transportation system, Energy for Sustainable Development, Vol. 2 Issue 2. 1995 <https://www.sciencedirect.com/science/article/pii/S0973082608601192> (last accessed May 24,2022)*

¹⁷ N.Y State Climate Action Council, *Draft Scoping Plan*, p.101 (T3) (2021)

¹⁸ *Id.* (T4)

¹⁹ *Id.* (T6-T8)

towards mobility options.²⁰ Any federal funds towards these efforts must be reexamined with existing DOT policies so that this transition is supported. These approaches must be included to ensure an “electrification first” approach to reject “low-carbon fuel” reliance and avoid policies that excuse the prolonged use of fossil fuel infrastructure, combustion technology and other false solutions to reduce emissions and disproportionate impacts as emphasized by the Climate Justice Working Group.

NY Renews endorses the comments of Earthjustice on Transportation and Citizen Action of New York Section III.

Power Generation and Electricity

The power generation and electricity sector of New York’s scoping plan needs a bolder hand and stronger commitments. By 2050, our state’s electricity needs will double, as we will be heating our homes and powering our vehicles with electric power. The scoping plan must have specific strategies to phase out existing fossil fuel plants, many of which are reaching the end of their lifespan. As already expressed in the current version of the scoping plan (p.155):

“...the fossil-fueled generation facility should assist in meeting the goals of the Climate Act. That is, its deployment should result in a greater integration of zero-emissions resources; a reduction in fossil fuel generation; a significant reduction of GHG and co-pollutant emissions; a benefit to an environmental justice community; and a benefit to the electric system that addresses the identified reliability need or risk.”

Any mention of fossil fuels **must only be expressed with the narrowest exceptions and as the absolute last resort** within the scoping plan. There is insufficient emphasis on electrification strategies that simultaneously engage public and stakeholder input to incorporate into the decision making process via equity consideration and analysis. **Having language that communicates these last resort exceptions is critical to ensure there are no misinterpretations.** To be consistent with the 2030 and 2040 electric sector goals, there must be a call for a moratorium on new fossil fuel and fossil fuel facilities.²¹ Current fossil fuel plants need to be retired and replaced to eliminate pollution impacts on communities, and the state must provide funding and support for both workers affected by this transition and the communities around these plants as we reach our goal of zero emissions by 2040.

There must be a critical look into any investments into new or ongoing projects that would take us off-track of our 2040 goals. As stated in the Climate Act, “statewide GHG emissions include all emissions of GHGs from anthropogenic sources within the State, as well as upstream GHGs produced outside of the State associated with either: (1) the generation of electricity imported into the State; or (2) the extraction and transmission of fossil fuels imported into the State. In the case of a fossil fuel-fired electric generating facility it has to include upstream GHG emissions associated with the production and transmission of the natural gas or other fossil fuel to be combusted at the facility.²² The final scoping plan must reject

²⁰ *Id.* (T8)

²¹ *Id.* See also Climate Justice Working Group, *CJWG Feedback Documented in Draft Scoping Plan for further Discussion* (2021)

²² Climate Leadership and Community Protection Act, 8429 § 6599 (2019)

expenditures on RNG and hydrogen and combustion. Instead, NYSERDA should support funding towards aggressive long-term clean storage solutions that are consistent with a zero energy grid.

The PSC, DEC, NYSERDA, and New York State Energy Planning Board need to work in coordination to create a timeline from now to 2030 with the assessed potential for GHG emission and co-pollution reduction.²³ The timeline must frontload momentum to ensure it remains consistent in reduction rates over the years. To make this effective, planning must include input from stakeholders, including utilities, labor organizations, consumer advocates, DACs, and Indigenous nations to ensure no voices are discounted. Priority action must focus on phasing out existing gas generation and closing down plants near disadvantaged communities and investments into transmission and distribution system upgrades to achieve more supported network reliability and resilience, energy storage into local transmission, and energy efficiency and renewable energy increases to meet the goals set within the CLCPA. The CAC must work around how to place funding opportunities for a full dedicated staff that works for Indigenous engagement, and a comprehensive public education and information push on the benefits and opportunities of clean energy in relevant state agencies, such as the Office of Renewable Energy Siting. At present, there isn't enough emphasis on energy democracy in the draft plan. The office staff should act as a monitoring body for the state and set year-by-year targets for permitting new wind, solar, and battery storage. State agencies should fully leverage tools like community workforce agreements, community benefit agreements, first-source hiring, and project labor agreements to increase access to construction and permanent jobs towards direct air capture members; work with the capacity of people and develop agreements in partnership with frontline communities, industry, and organized labor; and further emphasize green worker-owned cooperatives. It is crucial that the state address barriers to renewable energy siting.

NY Renewables endorses the comments of Earthjustice on the Electric sector and Citizen Action of New York Section III.

Industry

The industry section offers the opportunity to detail necessary regulatory mechanisms by sector. Industry is imperative to the discussion and action around emissions reductions. The industry standards set in the scoping plan must meet our mandated climate goals to lead to the just transition to a 100% renewable economy. **This is the core of the CLCPA**; we must require that the scoping plan identify measures to reduce GHGs co-pollutants in disadvantaged communities across the state to meet both our long term and interim goals. The final scoping plan **must** reaffirm that all agencies have existing obligations under Section 7 to ensure that GHG reductions start today and that agency decisions do not harm disadvantaged communities or undermine the state's ability to reach targets.²⁴ To meet these mandates, the CAC and DFS must look into deep decarbonizing strategies that look at demand-side changes such as process efficiency, materials recycling, materials substitution, waste reduction, and improved product longevity, as well as identify state procurement preferences for low carbon building materials that encourage less

²³ N.Y State Climate Action Council, *Draft Scoping Plan*, p.156 (2021)

²⁴ See CLCPA § 7; implicates all state agencies, offices, authorities, and divisions; Requires all decisions not to interfere with attainment of the GHG emission limits; Requires all decisions not to disproportionately burden DACs; Requires that GHG and co-pollutant reductions be prioritized in DACs

energy-intensive manufacturing.²⁵ Included must be GHG reporting, leverage of the in-state supply chain of green economy companies by engaging in business development decisions especially as it pertains to underserved communities, and low carbon procurement policies that commit to climate mitigation efforts, training and retraining, and workforce development.^{26,27} Further, there needs to be a call for a moratorium of “proof of work” around cryptocurrency mining, which is a very energy-intensive industry, until there is a full environment impact assessment completed. Energy-intensive industries must not proceed unregulated when it poses a threat to energy affordability, air quality, and public health. Until there is research and assessment around this industry, permitting must not be allowed if it poses a threat to the mandates of the CLCPA.²⁸

NY Renew's endorses the comments of Earthjustice on Energy Intensive and Trade-Exposed Industries and the comments of Citizen Action of New York Section I and II.

Waste

The waste section of the scoping plan needs more consistency. New York's mismanagement of generated waste accounts for 12% of emissions with landfill accounting for the majority. There must be new approaches to incentives, legislation and increased management that consider impacts on DAC and LMI communities to reduce the disproportionate exposure to emissions and other safety risks including, but not limited to, truck traffic and CO₂ anthropogenic emissions.^{29,30} These emissions must be included under the CLCPA's expansive consideration of GHG emissions with full transparency around specifying the proportion of emissions omitted from the baseline. To remain consistent with the state climate goals and mandates within the CLCPA, the CAC and DEC must plan for composting strategies that incorporate food and yard waste diversion with legislation; advancing this goal must be a top priority. Extended Polluter Responsibility (EPR) can further assist with making these approaches a reality as a way to rethink and compost design and waste systems redesign with local scale diversion practices for transformative outcomes. We support **EPR legislation** that is **properly drafted and implemented** to provide manufacturers with financial incentives to reduce the amount of packaging and other materials that's generated in the first place.³¹ There must also be continued monitoring and inclusion of anthropogenic CO₂ emission in the baseline estimate to provide greater transparency towards the calculation of waste emissions

In the final scoping plan, NY Renew's supports **anti-waste policies** that 1) aim to control fugitive emissions from landfills, sewage plants, and other methane sources with better enforcement around repeat offenders; 2) support bans on waste incineration, including bans on organic waste incineration, the development of new incinerators, and from food waste disposal where possible; 3) incentivize reuse, and create and increase composting and organic recycling strategies strategies to lessen anthropogenic

²⁵ Rissman et al., *Technologies and policies to decarbonize global industry: Review and assessment of mitigation drivers through 2070 (section 5)*, [Applied Energy](#) Vol.266 (May 2021)

²⁶ NY Renew's Policy Committee Energy-Intensive and Trade-Exposed Industries Panel Recommendations (2021)

²⁷ N.Y State Climate Action Council, *Draft Scoping Plan*, p.41 (2021)

²⁸ A.7389-C (Kelles)/S.6486-D (Parker), § 6486-D (2021)

²⁹ Food Donation and Food Scrap Recycling Act, 22 § 27-2203 (2021)

³⁰ NYSERDA, *Benefit-Cost Analysis of Potential Food Waste Diversion Legislation*, Rep. 17-06 (2017)

³¹ EarthJustice comments, 6 NYCRR Part 496, cite 11 § 75-0101(13); *see also NY Renew's Policy Committee Waste Advisory Panel Recommendations (2021)*

emissions; 4) identify and revise EPR waste reduction strategies that support domestic recycling facilities and markets for recovered resources (including advanced and effective domestic recycling via convenient recycling collection programs throughout the state) and assure that false solutions such as chemical recycling are rejected; 5) prioritize human health and environment by ensuring that there is no market creation for biogas; and 6) strategize around green, equitable jobs and workforce development and provide sustained funding for environmental justice with local and regional solutions that reduce and divert recyclables and organics.

NY Renews endorses the comments of Earthjustice on Waste.

Agriculture and Forestry

As it stands, the Agriculture and Forestry Section contains copious references and ill-suited recommendations that work against the mandates of the CLCPA and counsel of the Climate Justice Working Group (e.g. including establishing carbon markets and building the market for bioenergy and biofuel). This section does not go far enough to address systemic racism or provide public investments in land access and resources for communities historically underserved and under-represented—such as BIPOC communities, communities that are women owned- and led-, and folks who are LGBTQIA+, low income, veterans, beginning farmers, or undocumented farmworkers employed in NYS. Given the legacy of discrimination that have prevented farmers of color from gaining equal resources to support ownership of agricultural operations, it is essential that farmers and ranchers of color benefit from the resources provided through cooperative research farms (CRF) and other programs. There must be efforts to increase **public investment** in land access and resources for historically underserved and underrepresented communities. It is imperative that these issues are addressed in the final scoping plan.

We urge that the final scoping plan include protections for forests while blocking the state forest industry from delaying or refusing immediate and long-term actions to reduce fossil fuel emissions. There must be restoration and **preservation efforts** to gain the maximum climate benefits from forests, rather than managing forest to produce forest crops. In the final scoping plan, AF6 **can not** be referenced as an applicable strategy, as it relies on dangerous and ineffective offsetting of fossil fuel emissions through forest carbon sequestration.³² The final scoping plan should also amend recommendations related to private forest landowner tax schemes to ensure that the benefits for private forest landowners who manage for carbon sequestration or conserve their forests in natural conditions are *at least* equal to benefits for private forest landowners who manage for wood products. As it pertains to livestock, there must be regulatory options that are consistent with the CLCPA and authorized under the Environment Conservation Law (ECL) towards reducing methane emissions. Additionally, there needs to be a more focused effort on transformative strategies for reducing manure methane outside of cover and flare and digesters, including strategies to reduce manure generation and reducing wet storage. This must include more **transformative strategies** for reducing enteric methane emissions from livestock, such as feed additives and reductions in livestock antibiotic use, as well as strategies to reduce herd size with the aim to reduce emissions (manure and enteric). Systems that integrate livestock with crops, pasturing livestock or applying appropriate levels of composted manure to well drained crop fields. Manure from *pasture* based systems generate less than 2% as much methane as anaerobic liquid manure systems, helps build

³² N.Y State Climate Action Council, *Draft Scoping Plan*, p.197 (2021)

healthy soils which sequester carbon and enriches soil.³³ Methane reduction from manure will lead to better management practices that in turn reduce emissions.

In the final scoping plan, we need to see additional strategies that incorporate soil health programs that actually contribute to climate benefits and, as similar to how it's mandated under the CLCPA towards clean energy and energy efficiency programs, **40% of funds** accrued must be provided to benefit DACs. There need to be goals and targets at state scale for the adoption of climate-friendly practices and climate-smart systems such as organic practices and a plan to track progress and increase accountability. Additionally, there must be revision of the concentrated animal feeding operation (CAFO) general permit to develop phased-in tiered fertilizer fee to incentivize enhanced fertilizer management. Forestry strategies in the context of carbon accounting must avoid false solutions like bioenergy from forest carbon stocks with assured strategies listed under the climate-focused bioeconomy, founded on accurate accounting of the climate impact of harvesting.³⁴ AF20 must be **removed** as a strategy, as it allows for the expansion of the use of biomass feedstocks and bioenergy products. And finally, there needs to be a more distinct look into food distribution and current transport systems to address persistent issues around the long-distance transportation and availability of healthy produce that collectively contributes to the health and well-being of NY residents. Development of strategies that look to support local crop harvest and community are essential to our low-carbon future.

NY Renewables endorses the comments Northeast Organic Farming Association of New York and the comments of EarthJustice on Agriculture and Forestry.

Land Use and Local Government

In New York, there are more than 28 million acres of natural and working land. Land use directly affects the state's carbon emissions, sequestration, and storage. Leadership and decisions of local governments play a key role in determining how successful we are in achieving the goals of the CLCPA. The final scoping plan must address local governance structures and appointments to the Regional Economic Development Councils (REDCs), which need to be reformed to diversify these bodies to adequately represent the DACs that will be affected by their decisions. There needs to be a focus on transit oriented development (TOD)/equitable transit oriented development (E-TOD), and smart growth strategies focus on increasing commercial and residential density as well as introducing transit options like rail and bus in areas that can accommodate additional growth, like suburbs. However, growth can be problematic for DACs in denser areas including gentrification; there must be more explicit language on the consequences from traditional "smart growth" approaches.

We urge the CAC to look further into technical assistance, streamlined funding and ensure that local zoning codes align with climate and equity mandates. Within the scoping plan there must be an expressed distinction with TOD/E-TOD to include preparing communities for a just transition, rather than simply striving for development and growth, while also addressing other needs. This should include refined TOD

³³ Dry, aerobically managed, manure systems which produce only 7% as much methane as anaerobic liquid manure and can provide compost as a co-benefit. See Lehner, Rosenberg "Farming for Our Future: The Science, Law, and Policy of Climate-Neutral Agriculture," *Environmental Law Institute* (2021).

³⁴ *Id.* p198

strategy to ensure GHG reduction impacts, placing the most emphasis on vehicle miles traveled (VMT) reductions. While the strategies in the current plan lay out policies to further support local land use plans, efforts must be in collaboration with local-community based organizations. We support strategies where mitigation is balanced with other priorities to address the need for pollution prevention, green infrastructure, open spaces, and other environmental improvements aimed at reducing co-pollutants in disadvantaged communities. The current plan misses a key opportunity to promote sustainable and resilient industrial development in compliance with the CLCPA's commitment to a just transition.

The final scoping plan must recognize and acknowledge the differences in needs between rural, suburban, and urban areas.^{35, 36} Smart-growth and TOD solutions need to be contextual; localities have the insider knowledge to provide the best pathways forward. Higher density urban areas may not have the infrastructure to enact TODs in communities with historic disinvestments. This should be the responsibility of the state but there also needs to be equal importance given to partnering with local community-based organizations to uplift the needs and requirements of local communities. DACs, Indigenous nations, and other vulnerable groups need to be engaged in the planning and implementation of projects in their communities via a process that prioritizes community-centered visions.

NY Renews endorses the comments of EarthJustice on Land Use and Local Governments.

Just Transition

For a just transition to clean energy in NY, it is **vital** that the scoping plan include key provisions that prioritize justice for our workers and communities as we reach a carbon-free economy. The Just Transition Principles³⁷ provide a framework for a transition that is collaborative, community-centered (particularly in reference to disadvantaged communities), and that seeks to uplift equity while emphasizing the need to create high-quality, family-sustaining jobs across all sectors of the new, green economy. Currently, this section lacks strong language on supporting labor standards. Instead of stating that “labor standards should be further evaluated and enhanced,” the final scoping plan must lay out policies requiring prevailing wage and benefits, project labor agreements, and benchmarks for local hire on any projects that use State funds or take place on State property, as well as encourage community benefits agreements.³⁸ Through **investments** in new green energy, public transportation infrastructure, deep retrofits on public and private buildings, solar installation, expanded broadband, and investments in resilience and adaptation, New York can create millions of union jobs with family-sustaining wages geared towards the communities that need them most.

³⁵ Environmental Protection Agency, “Smart Growth and Transportation”

<https://www.epa.gov/smartgrowth/smart-growth-and-transportation> (last accessed May 24, 2022)

³⁶ Smart growth approaches to development can help achieve thriving rural communities through support the rural landscape by creating an economic climate that enhances the viability of working lands and conserves natural lands; 2) help existing places thrive by taking care of assets and investments such as downtowns, Main Streets, existing infrastructure, and places that the community values; and 3) create great new places by building vibrant, enduring neighborhoods and communities that people, especially young people, don't want to leave. See *Environmental Protection Agency Putting Smart Rural Growth to Work in Rural Communities*, https://www.epa.gov/sites/default/files/2014-01/documents/10-180_smart_growth_rural_com.pdf (last accessed May 24, 2022)

³⁷ N.Y State Climate Action Council, *Draft Scoping Plan*, p.42 (2021)

³⁸ *Id.* 44

The final scoping plan should advance Buy NY and Best Value Procurement policies, leveraging the State's purchasing and contracting power to incentivize job creation along the clean energy, clean transportation, and low-carbon supply chains and prioritize companies and contractors that support just transition principles including local hire, high-roads jobs, and job access for traditionally excluded populations. This would also intentionally allow for a **greater proportion of resources** to build out the state's green energy economy as laid out in the CLCPA. Furthermore, the chapter fails to adequately lay out a plan to directly support displaced workers, instead focusing on (re)training opportunities—continuing education, Registered Apprenticeship programs, certifications, and licensing in trades. While these are all essential, they are in no way the complete picture of direct support.

The Climate Action Council should work to establish the Worker and Community Assurance Fund. Such a fund would provide direct support to workers in fossil fuel-dependent industries and to communities who rely on fossil-fuel dependent industries, including pension support and wage replacement for displaced workers matching their current salaries as well as expanded funding for lost tax base to local governments and school districts. Where fossil fuel plants are decommissioned, the state should also ensure the use of a Workforce Assessment Plan to inform impacted workers on job creation and losses. This would also permit impacted workers the opportunity to contribute to the transition process and to accommodate workers' career and retirement plans into transition planning. The section should also expand its focus beyond the power generation sector, exploring the impacts and opportunities in all other sectors. For instance, according to the state's research, transportation is the only sector to face net displacement, while the buildings sector is expected to be responsible for over half of all sub-sector employment growth. Finally, the chapter should incorporate language around including not only **displaced workers and disadvantaged communities** in the reshaping of a green economy workforce, but also groups who have been traditionally excluded from the green workforce, such as women, BIPOC communities and the formerly incarcerated. To remedy these issues, the Climate Action Council should lay out specific strategies the State will take to ensure these just transition principles are met, something the draft Scoping Plan lacks in its current iteration and that are key aspects of a successful energy transition.

NY Renews endorses the comments of ALIGN, the comments of EarthJustice on the Just Transition and the comments of Citizen Action of New York Section II(5).

Public Health

More than 4 in 10 Americans live in communities impacted by toxic levels of air pollution, facing increased risk of a wide range of poor health outcomes and ozone particle pollution.³⁹ The adverse impacts of pollution from the transportation and electricity generation sectors are clear, but other sectors recognized in the scoping plan also contribute to direct and vector-borne health impacts and threats to local community health, health equity and major climate change-related health risks. Due to decades of land use decisions and systemic racism, GHG impacts to lung health continue to disproportionately affect and overburden lower income communities and communities of color. Negative mental health impacts are

³⁹ American Lung Association, *Zeroing in on Healthy Air*, p. 4 State of the Air 2021, April 2021. <https://www.lung.org/getmedia/13248145-06f0-4e35-b79b-6dfacfd29a71/zeroing-in-on-healthy-air-report-2022.pdf> (Last Accessed May 24, 2022)

happening in **real time** as we live with the reality of climate change, including cognitive emotional impairment and major depression symptoms and general anxiety.⁴⁰ The current outline of the public health chapter contradicts the notion that we must shift away from carbon-based fuels to improve public health by posing so-called “green” hydrogen and unproven carbon capture technologies as solutions. In order to improve the physical health and life expectancy of New Yorkers, these false solutions must be rejected from the final scoping plan. In particular, this must be consistent through the transportation and building sectors of the plan.

We must see a coordinated effort with the CAC, the DOH, and local health departments to outline public health guidelines to track or measure improvements in health outcomes, such as hospitalization rates due to environmental burdens, that will occur over the next 20-30 years. Public health around electrification and energy efficiency programs, and the health impacts of air pollutant exposure in power generation, transportation, buildings, and the built environment must also be tracked to better integrate co-benefit policies moving forward. Reflective of what was already expressed in the past sections, there needs to be **priority strategies** (including around mitigation) that will accelerate the equitable deployment of energy-efficiency and building electrification technologies as well as steps laid out in these energy-efficiency programs to allow the state to take action to address inefficient or polluted home environments. Additionally, as mandated under the CLCPA and with the passage of Assembly Bill A10001B, the DEC has the responsibility to conduct air monitoring and mitigation in frontline communities, and consult the Climate Justice Working Group in the development of the first study analyzing the impact of the urban heat island effect on disadvantaged communities, a climate justice public health priority.⁴¹ As New York continues to get hotter and heat mortality continues, we need to see public health recommendations taken seriously to establish long-lasting structural interventions, which its successful outcome will be determined by how seriously these priorities are taken by the CAC and coordinating council.

Presently, public health implications are mentioned most often within the power generation/electricity, transportation and buildings sectors of the scoping plan, but do not adequately address DAC and LMI communities. According to the American Lung Association:

“The shift to zero-emission transportation and non-combustion electricity generation could yield major health benefits throughout the nation in the coming decades. Cumulatively, the national benefits of transitioning away from combustion in the transportation sector toward 100 percent zero-emission sales and a non-combustion electricity generation sector could generate over \$1.2 trillion in health benefits across the United States between 2020 and 2050. These benefits include approximately 110,000 lives saved, over 2.7 million asthma attacks avoided (among those aged 6-18 years), 13.4 million lost work days and a wider range of other negative health impacts avoided due to cleaner air.^{1,2} In addition to these health benefits, this analysis found that over \$1.7 trillion in global climate benefits could be achieved with a reduction of over 24 billion metric tons of GHGs by mid-century.”⁴² See graph below

⁴⁰ Schwartz et al., Climate change anxiety and mental health: Environmental activism as buffer, Springer Current Psychology, January 2022; see also Bapista et al., Landscape Assessment of the US Environmental Justice Movement: Transformative Strategies for Climate Justice, Vol. 00 No. 00, Environmental Justice, 2022

⁴¹ In accordance with [S83431/A10001B](#), the DEC must consult the Climate Justice Working Group to develop New York state’s first study on the impacts of the urban heat island effect on disadvantaged communities.

⁴² American Lung Association, *Zeroing in on Healthy Air* p.8, State of the Air 2021, April 2021. <https://www.lung.org/getmedia/13248145-06f0-4e35-b79b-6dfacfd29a71/zeroing-in-on-healthy-air-report-2022.pdf> (Last Accessed May 24, 2022)

National Scale Benefits to Health and Climate (Cumulative: 2020-2050)

Public Health Benefits 2020-2050			Value of Benefits 2020-2050	
Premature Deaths Avoided	Asthma Attacks Avoided	Lost Work Days Avoided	Public Health Benefits	Climate Benefits
110,000	2.78 M	13.4 M	\$1.2 T	\$1.7 T

The **power generation/electricity** section rightly recognizes that hydrogen combustion emits nitrogen oxides (NO_x), a precursor to ozone, particulate matter, and nitrogen dioxide (NO₂) at levels that may be higher than those from natural gas combustion because of hydrogen’s high combustion temperature. RNG combustion also results in pollutant emissions similar to fossil gas combustion. The final scoping plan must hold firm to the commitment for zero emissions in the electric sector by 2040 and account for cumulative impact of pollutants on DACs. The health risks associated with combustion emissions and combustion of waste products are not associated with renewable power generation and will substantially decrease with large-scale reduction in combustion for power generation. To prioritize public health, the state must prioritize renewable energy. The **transportation** sector produces 175.9 million metric tons of emissions with DAC, LMI communities, and Indigenous nations continuing to take the hit of environmental degradation and poor air health quality. While the transportation section does acknowledge the urgency to electrify and improve convenience of public transportation, the final version must take into account the scope of infrastructure expansion, access, and impacts not only to public health but the increase of vital services and public safety, such as decrease to injury. The **building** section already acknowledges the need for zero emission standards and scale up investments and protections, but it still needs to lay out steps that would permit the state to take effective action to address inefficient or polluted home environments. In addition to amplifying existing home intervention programs or creating new intervention programs that prioritize energy efficiency upgrades to decrease home energy costs, the state must also outline a plan to bring clean air into homes, particular those of DAC and low-moderate income residents. These areas are the most impacted by cardiovascular disease and type 2 diabetes exacerbated by polluted air and lack of green space.⁴³ There must be additional parameters that include identifying code violations associated with increased risks of flooding, and designating minimum land-use plans to ensure green space in disadvantaged communities, particularly as these offer physical and mental health benefits. Green spaces can also decrease the effects of Urban Heat Islands and extreme heat. This in turn can decrease the health impacts of extreme heat and the need for additional energy capacity on hot days, as well as improve mental health and social cohesion. As it pertains to the other sectors of the scoping plan, public health must also be strongly centered in each sector. For instance:

The **land use and local government** section must emphasize that while there is not proper CCS technology, forests play a critical role in preventing emissions, as forests sequester and store much more carbon than any other land use in New York (1,911 MMT estimated).⁴⁴ There must be explicit land use strategies to reduce GHG emissions and co-pollutants as well as concerted efforts to avoid burdening DACs. These efforts should simultaneously prioritize conservation areas and regrowth of high

⁴³ Yeager et al. *Green environments and cardiovascular health*. National Library of Medicine, Trends Cardiovasc Med (PMC7995555). (Mar. 2021)

⁴⁴ N.Y State Climate Action Council, *Draft Scoping Plan*, p.267 (2021)

climate-risk and ecologically sensitive areas. This can be done through ongoing analysis via smart-growth and TOD solutions and practice methodologies that show health improvements and projections from changed land use strategies. Additionally, the final plan should include the further tracking of funding efforts that build and maintain nature-based infrastructure and natural areas.⁴⁵

The **industry** section must include crucial information on the harmful impacts of combusting hydrogen and its contribution to additional pollutants in the rise of nitrous oxide emissions. Current technologies that attempt to control emissions are far from being ready; Careful monitoring and health considerations must be a priority in this section, especially since current technologies that attempt to control emissions are far from being ready. Further with crypto-mining currently unregulated, it poses to be a public health and environmental threat that will only further the use of fossil fuels

The **waste** section of the scoping plan must call for the development of sophisticated programs that transfer excess edible foods to local food banks and other programs designed to feed the hungry. In the public and private sectors, the plan must promote well-paying, safe, and green jobs in waste management, with a specific focus on the employment of members of marginalized communities in efforts to construct sustainable facilities. Marginalized workers should also be prioritized in other roles (management, administration, composting, transportation, sorting, etc.). This also must include a specific focus on how these measures positively contribute to waste reduction, as well as ratify and implement the tracking of polluter responsibility to continue positive momentum and account for negative health impacts.

Within the **agriculture and forestry** section, the CAC must incorporate research that confirms the contribution of greenery, gardens, trees, parks, forests, and wildlife to the enhancement of public health and mental wellbeing in addition to air quality. Blood tests have confirmed that the industrialization of agriculture in New York State has imposed a toxic burden on all residents through the heavy use of pesticides, herbicides (such as glyphosate and atrazine), and synthetic fertilizers on millions of acres. Effects of the former are compounded by the rising level of GHG emissions, including NO₂, methane, and ammonia (due to the expansion of an increasingly smaller number- under 250- of ever-larger CAFOs). While direct causality is difficult to establish, the rise in chronic diseases and respiratory ailments correlates with the shift in agricultural practices to ever greater dependence on toxic materials that are minimally regulated by state and federal agencies.⁴⁶ Soil erosion and chemical run-off contaminate the water of rivers and lakes, resulting in algal blooms that reduce recreational enjoyment of these natural resources. The public is also burdened by the excessive costs of clean-up after the increasingly inundative rains brought on by climate change that wash away degraded soils. A central aspect to food and public health is the availability of fresh nutrient-dense food. The plan needs to directly address food system resilience and the current food distribution system in more length and depth that does not rely on the cost of long-distance transportation and truly support the ethical and diverse practitioners of NYS local farms and communities. During the pandemic, food systems fed local communities when global supply could not and were more resilient and nimble in responding to a crisis. There must be support for the values-based purchasing standards of the Good Food Purchasing Program already endorsed in NYC and Buffalo that incentivize institutional purchasing from local, organic and BIPOC

⁴⁵ Climate Justice Working Group, *CJWG Feedback Documented in Draft Scoping Plan for further Discussion (2021)*

⁴⁶ Kirkhorn, Schenker. *Human Health Effects of Agriculture: Physical Diseases and Illnesses*. National Ag Safety Database, ASH-NET (2021)

farms.

The principles of a **just transition** are deeply intertwined with public health. A sectoral and economic transformation is key to alleviating the impacts that we collectively face with climate change. There are significant disparities in health outcomes for certain groups by age, race, ethnicity, and socioeconomic status. Adopting and enforcing a just transition will decrease our inability to respond to negative climate impacts, such as threats to infrastructure like salt water intrusion and better worker protections and safety standards. The just transition looks to ensure established green workforce benefits and reduce risk to harm or injury with overall improved health equity.

NY Renews endorses the comments of EarthJustice on Public Health.

III. Conclusion

The 320+ members of NY Renews strongly urge the CAC to revise the New York Scoping Plan to include the vital standards and amendments above in order to fully align with the mandates of the CLCPA, making them enforceable, transparent, and equitable. In these final comments, NY Renews requests that CAC staff should:

- Include process and enforceability into the final scoping plan
- Incorporate the suggestions presented in each sector, as well as the included sectors to properly consider environmental justice concerns and health priorities
- Ensure that these suggestions are implemented via the methods suggested in order to meet out ambitious state climate mandates and meet the urgent needs of New Yorkers and save lives

Sincerely,

Avrielle Miller

Policy Coordinator, NY Renews, on behalf of the NY Renews Coalition