



January 28, 2022

Joint Legislative Public Hearing
2022-23 Executive Budget Proposal
Environmental Conservation
VIA Video Conference
Legislative Office Building
181 State Street, Albany, NY 12247

Dear Honorable Senators and Assembly Members,

Thank you for your consideration of the Sierra Club Atlantic Chapter's budget testimony. We are a volunteer led environmental organization of 50,000 members statewide, dedicated to protecting New York's air, water and remaining wild places.

The SFY 2022-23 budget negotiations are happening concurrently with New York State's public comment period on the scoping plan for the draft regulations that will implement the Climate Leadership and Community Protection Act (CLCPA). As you know, this landmark legislation that the Senate and Assembly passed in 2019 commits the state to a zero emissions grid by 2040 and near carbon neutrality by 2050. The release of the Draft Scoping Plan, available at <https://climate.ny.gov>, initiated a 120-day public comment period beginning January 1, 2022. With an intensifying climate crisis permeating almost every aspect of our lives, there is a tension between waiting for the final rules and regulations to be implemented in 2024 and knowing that there are actions the legislature and governor must take immediately if we are to avoid the worst aspects of this catastrophe. This budget season must not be viewed independently of the CLCPA process, but as an integral part of its implementation, both financially and legislatively.

The executive budget proposal introduces major new legislation, as recommended by the Climate Action Council, to electrify our building sector, facilitate ecological resiliency, decarbonize the transportation sector and remove barriers to renewable energy development. While there are billions of dollars dedicated to certain aspects of environmental protection in this budget, there is no comprehensive acknowledgement of the tens of billions of dollars that it will take annually to implement the CLCPA or the revenue source that will enable New York to transition to a zero emissions economy that is grounded in social equity. The Sierra Club urges the legislature to judiciously act upon this interim responsibility and make sure that before the final CLCPA regulations are in place

there are no statutory or financial hurdles to facilitating the biggest societal transition since the industrial revolution to solve the climate crisis.

The Sierra Club finds a lot to be optimistic about in the 2022-23 Executive Budget and has great confidence that the Senate and Assembly can build upon the responsibilities of COVID recovery with commitments to methodically reduce greenhouse gas emissions, build equity and resiliency into our communities, and clean up our environment. Here are some ways the legislature can support New York's environment through the 2022-23 state budget process:

Adequately fund and staff the Department of Environmental Conservation (DEC) and the Office of Renewable Energy Siting (ORES)

Almost nothing is more central to the successful implementation of our climate goals than the dedicated staff within our environmental agencies charged with the crafting of regulation, monitoring of our natural resources and the enforcement of rules. And with converging global crises, our state environmental agencies have been asked to do more with less in this time of pandemic response and climate emergency. In the past three years alone the Department of Environmental Conservation (DEC) has been tasked by the legislature to take on many new responsibilities: administering the Climate Leadership and Community Protection Act, establishing the Office of Renewable Energy Siting, administering the new plastic bag ban, the polystyrene ban, the glyphosate ban on state lands, the trichloroethylene ban, the mandate to recycle food waste and organics, new drilling waste regulations, the phase out of PFAS, 1,4 dioxane, coal tar, neonicotinoids and chlorpyrifos, clean vehicle standards, paint stewardship laws - all on top of our baseline programs to protect air and water. It's clear that the DEC requires more staffing and funding.

New York has lost nearly a quarter of the DEC's workforce since the 1990s, which has meant fewer enforcement actions against polluters, increased spread of invasive species and less review of impending threats to our environment. There is little left to cut from this bare-bones agency.

The Sierra Club is encouraged that as one of her first acts as Governor, Kathy Hochul removed a decades long agency hiring freeze, opening the door to building back our environmental agencies. The 2022-23 Executive Budget proposal sets a fill level for 3099 full time equivalent staff at DEC. With an estimated current staffing level at 3005, we believe authorizing 94 new staff in the next fiscal year is a good start. In addition, Governor Hochul's budget proposes increases in staff numbers at State Parks (53), and Agriculture and Markets (31). These additional scientists, analysts, inspectors, environmental conservation officers and policy makers will begin to restore staffing levels so that these agencies can more effectively deploy programs and funding. We are hopeful that this is the start of a trend of increasing state agency personnel levels so that they become sufficient to meet the goals of implementing the CLCPA and other key environmental priorities. Ultimately, we would like

to see 3,300 FTEs at the Department of Environmental Conservation and 2,300 FTEs at the Office of Parks, Recreation and Historic Preservation to make sure the state keeps up with its mandates and protects our increasingly important open space.

The Sierra Club also urges the legislature and Governor Hochul to include funding for at least 40 FTEs (Currently at 11) for the recently-created Office of Renewable Energy Siting. This office will play a critical role in the coming years to ensure we meet the renewable energy targets of the Climate Leadership & Community Protection Act and also deliver meaningful investments into our communities. As currently proposed projects shift from Article 10 to ORES and as new projects are proposed, it is critical that ORES has sufficient and experienced staff to process applications in a timely manner, while ensuring the deep consultation across state agencies, and with stakeholders, that is necessary to ensure responsible and successful renewable energy development. Consultation with Native Nations is an important piece of this process to ensure that we meet the justice and equity goals of the CLCPA and to avoid land use conflicts that could cause harm to Native Nations and stymie renewable energy development. Ensuring at least two dedicated full time staff with experience working with the State Historic Preservation Office and Native Nations in New York is critical to the success of this office.

Growing the Environmental Protection Fund to \$500 Million a year

For the first time ever, the Executive Budget proposal increases the Environmental Protection Fund (EPF) to \$400 million (from an historic \$300m). The EPF is NY's primary funding source for critical programs like open space acquisition, farmland and habitat protection, drinking water infrastructure and waste reduction. The projects supported by the EPF are proven economic generators and job creators, with every \$1 invested in land and water conservation generating \$7 for the state in terms of ecological services, agricultural products and recreation related revenue. Increased funding to the EPF at a time of budget deficit can help revitalize tourism and make entire regions more attractive to businesses, secure clean water resources for wineries and breweries, and ensure that farmland is preserved and is affordable to new generations of farmers. Equally encouraging are indications that the fund will gradually grow to the \$500 million mark in future budget cycles to meet the growing demand of environmental programs. The Sierra Club thanks the governor for proposing a \$400 million EPF in 2022 and urges the legislature to work to find ways to grow the fund.

Continue Funding New York's Water Infrastructure Improvement Act

The Sierra Club continues to appreciate the proceeds of New York State's Water Infrastructure Improvement Act (WIIA) which since 2017, has contributed over \$2.5 billion to much needed public water systems and programs. The 2022-23 Executive Budget proposes another annual installment of \$500 million this year. But in consideration of two converging

emergencies - the desperate need to “fix our pipes” and combat the wide spread PFAS contamination crisis - NY really requires twice the funding to fight this battle on multiple fronts. The Sierra Club joins a broad coalition of advocates asking for \$1 billion to fund the WIIA in 2022-23. This essential program repairs failing sewage and drinking water infrastructure, upgrades and replaces septic systems, funds source water protection through land acquisition projects, remediates and replaces contaminated drinking water, confronts harmful algal blooms in our waterways, addresses water pollution caused by agricultural run-off, replaces lead drinking water service lines, upgrades mapping technologies for water systems, and more.

Communities across NY will be able to continue to fix their most pressing water infrastructure needs and protect the quality of their drinking water. This significant investment will serve as a down-payment toward our state’s massive wastewater and drinking water infrastructure needs, which are estimated at approximately \$80 billion over the next twenty years. New York State will need to identify additional resources to increase funding to meet these vast water infrastructure needs in the years to come. The Sierra Club looks forward to working with the governor and the legislature to meet those goals.

Strengthen and Reform Wetland Protections in New York

This year’s 2022-23 Executive Budget proposal contains legislation (Part QQ of the TED) that will change how wetlands in New York are regulated and strengthen a failing state program that will be asked to do more to protect the state’s remaining natural infrastructure in the wake of climate change.

For the past two decades, New York has been entangled in the federal legal debate over what constitutes a wetland and who has the authority to protect them. The Supreme Court’s January 2022 decision to yet again weigh in on the ‘Waters of the United States’ in an appeal of Sackett’s v. United States has only intensified the need for New York to clarify how we as a state regulate freshwater wetlands, one of our most valuable and misunderstood resources. New Yorkers rely on swamps, fens, bogs, and wet meadows to filter pollutants from our waterways, recharge our aquifers, and absorb catastrophic floods. Yet there often appears to be little public awareness that we are filling, dredging and draining wetlands at an alarming rate – at least until we find our neighborhoods underwater or our public water supplies contaminated.

Currently, for a wetland to be subject to regulation under NY state law, it must be delineated on existing freshwater wetlands maps prepared by DEC after lengthy public comment. But most of these maps have not been updated in over 25 years, making them woefully incomplete, and the amendment process can be time consuming and overly burdensome in administrative costs. There are hundreds of thousands of acres of wetlands in high development areas of New York that are not on official maps but desperately require

protection. The governor's budget bill will remove the jurisdictional barriers that these maps have created, and allow DEC to immediately protect and regulate wetlands if they meet the basic scientific definition of these critical habitat areas – featuring hydrophilic plants and hydric soils. Commissioner Seggos estimated that if this reform was enshrined in law it would be the equivalent of adding 1 million acres of wetland under the state's protection. That number just represents wetlands that are 12.4 acres and larger that were never officially mapped by the state. The proposed reforms will also allow DEC to identify and protect smaller wetlands of unusual importance that were once encumbered by the state's regressive mapping protocol and never officially recognized.

Last year, legislation similar to this proposal (S.5116-C) passed the Senate. For years, the Assembly has passed the Clean Water Protection/ Flood Prevention Act (A3658/ S7366) (2020) ambitious legislation that would both remove mapping barriers to wetlands protection and bring DEC jurisdiction over all wetlands from 12.4 acres down to 1 acre. Currently, New York is the only state in the Northeast not to assume regulatory authority over all its wetlands acreage. The Sierra Club fully acknowledges that instituting such expanded authority now, over all classes of wetlands, including drainage ditches and man made depressions, would require dozens of new DEC staff, an apparent impossibility due to current budgetary constraints. In this context it is important to note that New York State's freshwater wetlands program is not a prohibition on the draining, dredging, and filling in New York State's wetlands. It's a permitting program that attempts to balance the state's development needs with the imperative to protect our most vital natural infrastructure. A program that would require a permit for every wetland down to one acre, regardless of classification, would most likely still see the same permitted destruction of lower quality wetlands - only at greater agency cost. Creating a triage system (In Part QQ) that considers every wetland - but prioritizes the most important and imperiled - will have the same protective impact without the added bureaucracy.

The reforms contemplated in the executive budget would significantly streamline wetlands regulation in a way that would prioritize the most important and vulnerable without needing significant new staffing resources. The new rules would preserve DEC's authority over wetlands 12.4 acres and larger but expand the Department's authority over smaller wetlands of 'unusual importance' that: are class I wetlands, or are wetlands that possess valuable characteristics such as being effective for community flood water control, within an urban area, possessing rare plant or animal species, or important to maintaining clean drinking water.

This proposal to repeal regressive burdens on wetlands regulation dovetails nicely with the goals of the now **\$4 billion 'Clean Water, Clean Air, Green Jobs Environmental Bond Act'**, which will go before the voters in the fall of 2022. The goal of the bond act - to restore habitat, protect drinking water and prevent catastrophic flooding - combined with wetlands

regulatory reforms, are a powerful antidote to federal assaults on the Clean Water Rule that may take years for the Biden administration to fully reverse if the conservative Supreme Court doesn't reverse them back. If we are going to spend billions on restoring degraded wetlands without doing all we can to prevent existing wetlands from becoming degraded, then we will not be getting a very good return on our investment. Healthy ecosystems are a cornerstone of any thriving economy and we ask the legislature to augment the \$4 billion bond act and enact effective wetlands regulations in the final FY 2022-23 budget.

Green the Grid and Electrify Everything

Total household electrification is our future, not only to meet our greenhouse gas emissions reduction goals, but to achieve a standard of living that is healthier, more cost effective and efficient. Renewable energy driven technology will soon heat and cool all our homes, dry our clothes, cook our food, charge our vehicles and power our lives. Commercial buildings and industries will also transition away from fossil fuel powered machines and processes as we look to lead the nation in climate solutions through this transformative innovation. But while our climate laws are binding, our building codes and appliance efficiency standards still have to be modernized if we are to keep pace with our goals.

To this end, the Sierra Club is grateful that there are proposals before the legislature and within the Governor's 2022-23 budget proposal that will:

- Decarbonize and modernize the building sector: 'Building Codes, Appliance and Equipment Efficiency Standards' (Part EEE of the TED) **S.7176 /A.8143**
- Abolish the Natural gas '100 ft. Rule' and help transition the building sector away from fossil fuels (Part CCC of the TED)(Gas Transition and Affordable Energy Act) (to be introduced)
- Ban new gas hookups in all new construction by 2024 in **S.6843-A /A.8431** and by 2027 in Part EEE of the TED
- Establish Fossil-Free Heating Tax Credit (**S.3864/A.7493**) and a sales tax exemption (**S.642-A/A.8147**) to provide credits for geothermal heating units and also bill exemptions from sales taxes for the units.

This package of legislation to decarbonize New York's building sector will fill in the gaps not covered by the CLCPA and was recommended by the Climate Action Council as crucial bills to meet our climate goals. Residential and commercial buildings account for approximately 60% of total energy use and greenhouse gas emissions in New York State. Phasing out fossil fuels in favor of geothermal and air source heat pumps and induction stoves is a cost-effective tool in reducing greenhouse gas emissions. Electrification is a critically important step in attacking the climate crisis head on. In order to meet New York's legally mandated greenhouse gas emissions targets, 2 million homes need to transition to heat pumps in the next 10 years and the legislature must put a stop to new, in-home, fossil fuel

infrastructure that hampers that goal. The Sierra Club urges the Senate and Assembly to pass these important building initiatives in the most aggressive timeframes possible.

Support for Zero Waste and Extended Producer Responsibility

(Part SS and Part RR of the TED) As Americans we are drowning in our own packaging waste. Of the quarter of a billion tons of municipal solid waste generated every year in this country, nearly a third of it is just packaging and paper products. Only about 35% of this waste is recycled, leaving the rest to go to incinerators, landfills and uncaptured litter. Currently, manufacturers are not responsible for recovering or recycling their products and have little incentive to reduce the packaging of those products. Instead, municipalities bear the brunt of handling the collection, transportation, sorting, and processing of waste — materials which they had no control or influence over in the first place. Many municipalities struggle with the burden of recycling, and will continue to struggle following China's recent and significant restrictions on the recyclables it will accept. As a result of increased recycling costs, municipalities are faced with the decision to either increase taxes or significantly limit what materials they can accept. Meanwhile, manufacturers continue to exacerbate the global waste crisis because there is no mandate to reduce the amount of packaging they use nor is there any incentive to transition to materials that are easier to recycle.

To prevent more paper waste from ending up in landfills, the recycling market must shift the "end-of-life" responsibility of materials from municipalities to the producers of that waste, by creating an extended producer responsibility (EPR) program for paper products and packaging materials. Under an EPR program, producers will finance the recycling of their products, be rewarded for creating easily recyclable products, and use higher percentages of post-consumer recycled material.

The Sierra Club Atlantic Chapter is encouraged to see the inclusion of an EPR program for packaging waste in the Executive budget (Parts RR and SS of the TED) and encourages the Assembly and Senate to include their versions of a program in their own budget bills. We believe that the most successful program will:

- Fix and expand statewide recycling by holding producers responsible and ensuring that our municipal recycling centers have financing mechanisms in place to build self sustaining programs (including appropriately set fees and eco-modulation of waste products, i.e. penalizing the use of materials that are toxic or difficult to recycle, and rewarding the use of those which are better for the environment.
- Implement strong waste and plastic reduction requirements that support eliminating packaging and promote reuse/refill options.
- Set clear targets, goals, and standards for recyclability, post-consumer content, reuse/refill in the legislation. This should not be left to be determined through regulation or left up to the Producer Responsibility Organization.

- Clearly define what constitutes recycling, so that the program doesn't include incineration, chemical recycling or other false solutions, and does not interfere with current beverage container laws.
- Increase accountability and transparency for the Producer Responsibility Organization (PRO), such as an Inspector General to assist with oversight and enforcement funded through PRO registration fees, in addition to an advisory board.
- Elimination of toxic chemicals in packaging.
- Commercial packaging should not be part of the PRO financing structure, but commercial entities should be responsible for meeting packaging standards and post-consumer content goals.

EPR programs for paper and packaging are common throughout the world, and have shown great success in Canada and Europe. In Europe, where EPR has been established for decades, some countries have reached packaging and paper products recycling rates as high as 80%, compared to a maximum of 50% in parts of the United States. The programs have increased recycling rates and reduced methane emissions by limiting the waste that goes into landfills. Through the creation of such a program in the budget, New York can reduce some of the worst environmental contaminants from our landfills without an additional burden on taxpayers, and continue to lead the nation in plastic and waste pollution reduction.

Ban Energy-Hungry Proof of Work Cryptocurrency Mining Operations

When the State of New York enacted the Climate Leadership and Community Protection Act (CLCPA), the vision of an emissions-free grid by 2040 and a carbon neutral society by 2050 did not factor in the obstacles created by fossil fueled cryptocurrency operations. Cryptocurrency, which can come in many forms such as Bitcoin, Litecoin, Ethereum, Ripple, Stellar, etc, is a digital asset designed to serve as an alternative currency where individual coin ownership records are stored in a computerized database using strong cryptography to secure transaction records, control the creation of additional coins, and verify the transfer of coin ownership. While this technology is making some wealthy investors richer, the process is incredibly energy intensive and could derail NY's climate goals if not properly regulated. Several major corporations have been looking to exploit loopholes in New York's regulatory structure by targeting retiring, retired, or peaking power plants for data centers, bitcoin mining, and the like. While the Public Service Commission (PSC) regulates grid-tied power plants, energy-consumptive Bitcoin mining facilities can absorb a generating plant's entire electrical output – off-grid and 'behind the meter' – evading PSC oversight. In the case of the recently converted coal plant in Greenidge, NY, the new gas turbines now run 24 hours a day, 7 days a week – with an output sufficient to power 93,000 homes – just to produce 5 Bitcoins a day. This under-regulated activity, with no discernable public benefit, has an enormous carbon footprint, and with proposals now spreading to other sites across NY we fear it could significantly undermine the emissions reduction goals

of the CLCPA. In fact, if the gap in regulation for behind-the-meter cryptocurrency operations is not closed by the legislature, this kind of digital partnership could be an integral part of every power plant operating in NY – which could profoundly impact environmental justice communities, their air quality and the affordability of electricity.

For the environmental and economic health of NY, the Sierra Club urges the legislature to pass A.7389 /S.6486 - even as an article VII bill in the Budget- legislation that will establish a moratorium on the operation of cryptocurrency mining operations in NY attached to fossil fuel facilities until a full generic environmental impact statement has determined whether such operations can be mitigated to comply with the CLCPA. Passing this bill is imperative, this session. By this time next year there could be hundreds of unregulated datacenters, paired with dirty fossil fuel facilities in NY claiming vested rights for their cryptocurrency operations if the legislature fails to act.

Many of the budget issues cited in our testimony have a direct connection to the implementation of the Climate Leadership and Community Protection Act and should be carefully considered in tandem with the advice of the Climate Action Council and the emerging rulemaking process. The Sierra Club encourages the legislature to engage in the scoping process, but that act should not dissuade lawmakers from passing obviously needed and meaningful legislation that will have New York operating at full speed when the final regulations are adopted in 2022. We commend Governor Hochul and the legislature for their leadership and commitment to combating the climate crisis through the budget process. We know there will be greater challenges on the horizon as New York seeks to build back from the impacts of the pandemic, but we remain resolutely committed to working together to rebuild New York's environmental agencies, make our state more resilient to climate change and strengthen our long-term environmental legacy.

Thank you,

A handwritten signature in black ink that reads "Roger Downs". The signature is written in a cursive, flowing style.

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