



Department of Urban Studies

January 19, 2023

To the New York Senate Standing Committee on Finance, Standing Committee on Energy and Telecommunications, and the Standing Committee on Environmental Conservation:

We write to express our concerns about how the State of New York is identifying disadvantaged communities for the purpose of implementing the Climate Leadership and Community Protection Act (CLCPA). The Scoping Plan emphasizes the disproportionate impacts of climate change and related environmental hazards—namely co-pollutants—on these communities and prioritizes investments in them, as the state seeks to achieve the green transition. New York’s draft disadvantaged communities criteria has significant problems, and we think the consultants ILLUME have had insufficient time to incorporate public comment into the final criteria, which the Climate Justice Working Group (CJWG) plans to vote on in February 2023. Overall, we contend that the current process for identifying disadvantaged communities contradicts the environmental justice amendment to New York’s environmental conservation law, by limiting two-way dialogue with vulnerable New Yorkers and by failing to consult with the Environmental Justice Advisory Group, which the state never appointed.

New York’s draft disadvantaged communities criteria has significant problems

In its draft form, the disadvantaged communities criteria has major problems on which we submitted public comment. We reiterated many of our concerns in a December 23, 2022 email to officials in the Department of Conservation and the New York State Energy Research and Development Authority: Adriana Espinoza, Christopher Coll, Alanah Keddell-Tuckey, and Sameer Ranade. We are specifically troubled by the failure to identify many Queens communities as disadvantaged, including census tracts in Hollis, Jamaica, South Richmond Hill, Brookville, Springfield Gardens, Rosedale and Glendale. Among other challenges, these communities have confronted lethal inland flooding, perpetual groundwater flooding, and a high prevalence of sewage back-ups. They live with major sources of pollution, including waste transfer stations, John F. Kennedy International Airport, and railyards. Moreover, many residents in these neighborhoods work in heat vulnerable jobs, like construction. At the same time, affluent communities, such as Hudson Yards, Williamsburg, and Greenpoint, have been wrongly designated as disadvantaged. We understand that communities may be miscategorized under the draft criteria across the State of New York. We focus on the five boroughs, where we have the lived experience to identify problems with the draft map.

During Fall 2021, the CJWG decided to supplement the draft map, by classifying all households making less than 60% of state median income (SMI) as disadvantaged, regardless of location. This is an important, but limited, solution to the draft map’s problems. It gives more people access to individual benefits, such as subsidies for electric appliances, but not to neighborhood upgrades accruing from geographic investments, like improved public transportation.

This intervention also fails to help many in the New York City metro region who make more than 60% of SMI (\$32,748 for a single person; \$62,988 for a family of four),¹ but still struggle financially because of our high cost of living. A metric based on area median income, rather than state median income, would correctly identify more economically vulnerable residents of the New York City metro region as disadvantaged. However, sociologists like Thomas M. Schapiro have established that disparities in wealth—not just income—explain racial inequality in the United States.² The SMI strategy also does nothing to address the fact that some of the most affluent places in New York City now qualify for funding earmarked for disadvantaged communities.

The current process for identifying disadvantaged communities contradicts the environmental justice amendment to New York’s environmental conservation law

We are concerned that the Climate Justice Working Group and their consultants, ILLUME, are not meaningfully considering public comment on the draft criteria and, at the same time, have created insufficient opportunity for two-way dialogue between state officials and the disadvantaged communities not represented on the CJWG. For instance, it is the CJWG's stated goal that the draft criteria reflect the "lived experiences" of New Yorkers, but the draft criteria do not reflect the lived experiences of Queens residents. Community advocates on the CJWG have been honest about their inability to ground truth the borough. During the July 20, 2021 meeting, Alex Dunn showed a draft map of Queens and asked the working group to ground truth it for accuracy. She asked, "Anyone from Queens want to speak up?" No one could evaluate the map (around 2:53pm).

We were hopeful that the public comments submitted by Queens advocates and researchers would help ILLUME ground truth Queens, but we remain concerned about the extent to which ILLUME will incorporate that public comment in their final criteria. We are encouraged that the "proximity to airports" indicator will be included in that formula. However, we are worried that other indicators are either absent from the draft criteria (e.g. waste transfer stations) or not accurately applied to our communities (e.g., inland flooding that has had deadly consequences in Southeast Queens). Indeed, ILLUME has not been given enough time to thoughtfully incorporate public comment. As recently as December 2022, the CJWG planned to vote on the final criteria in February 2023. Although the CJWG received all public comment by August 5, 2022, the New York State Energy Research and Development Authority only executed a contract with the consultants ILLUME to begin considering those comments on October 28, 2022. Particularly with the holiday season, this schedule is too compressed to allow for thoughtful revisions and, ideally, sufficient two-way dialogue with vulnerable New Yorkers who are living with environmental hazards.

By limiting opportunities for environmental justice communities to meaningfully participate, the current process of producing New York’s criteria for disadvantaged communities contradicts the Climate Leadership and Community Protection Act (CLCPA) and the environmental justice amendment to the state’s environmental conservation law, both of which the governor signed in 2019. The environmental justice amendment directs government agencies to allow “all people, regardless of race, color, religion, national origin or income, the opportunity to have their views heard and considered, including

¹ NYSERDA, EmPower New York Eligibility Guidelines, <https://www.nyserda.ny.gov/All-Programs/empower-new-york/eligibility-guidelines>.

² See Thomas M. Schapiro, *Toxic Inequality: How America’s Wealth Gap Destroys Mobility, Deepens the Racial Divide, and Threatens Our Future* (New York: Basic Books, 2017) and *The Hidden Cost of Being African American: How Wealth Perpetuates Inequality* (Oxford: Oxford University Press, 2004).

opportunities for two-way dialogue” (§ 48-0101 (4)). While members of the Climate Justice Working Group have had ample opportunities for two-way dialogue with state officials and ILLUME about the disadvantaged communities criteria, other environmental justice advocates have not.

This is especially disturbing because the CLCPA also directs the Climate Justice Working Group to consult with the state’s Environmental Justice Advisory Group, in addition to state agencies, to “establish criteria to identify disadvantaged communities” (§ 75-0111 (1)(b)). Before it was revamped, the Climate Justice Working Group’s own website stated, “The Working Group will consult with the Environmental Justice Advisory Group and ensure that while we move the state toward a carbon neutral economy, all New Yorkers will reap the economic and environmental benefits of our nation-leading transition.” (The new website now says the CJWG “plans” this consultation). The 2019 environmental justice amendment established the 17-member Environmental Justice Advisory Group, which would have included community-based advocates appointed by the governor as well as state senate and state assembly leadership (§ 48-0105). The advisory group’s participation would have increased the diversity of perspectives guiding the criteria’s production and therefore made them more just. As you know, the CJWG has not consulted with this body—although the CLCPA directs them to do so—because state leaders never appointed members to the permanent Environmental Justice Advisory Group.

The CLCPA’s drafters intended for more environmental justice leaders and allies to provide input on the disadvantaged communities criteria. Therefore, the Environmental Justice Advisory Group’s absence makes two-way dialogue about the final criteria with community-based advocates, including those in Queens, even more urgent.

Thank you, again, for your commitment to advancing climate justice in the State of New York. We are happy to answer any of your questions and to discuss our feedback at greater length with you.

Sincerely,

Natalie Bump Vena, J.D., Ph.D.
Assistant Professor, Department of Urban Studies
Queens College-CUNY

Mary Arnold
Civics United for Railroad Environmental Solutions

Gloria Boyce-Charles
Community-Based Advocate and Longtime Resident of Southeast Queens

Rebecca Bratspies, J.D.
Professor of Law
CUNY School of Law

Melissa Checker, Ph.D.
Professor, Department of Urban Studies
Queens College-CUNY

Aracelia Cook
President, 149th St. South Ozone Park Civic Association

Tarry Hum, Ph.D.
Professor and Chair, Department of Urban Studies
Queens College-CUNY

Do Lee, Ph.D.
Assistant Professor, Department of Urban Studies
Queens College-CUNY

Andrea McArdle, J.D., Ph.D.
Professor of Law
CUNY School of Law

Andrea Scarborough
Community Activist and Longtime Resident of Southeast Queens