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ATLANTIC CHAPTER

Joint Legislative Public Hearing
2021-22 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 tragic consequence of the COVID-19 pandemic has forever changed New York State. The thousands of lives lost and all the lost time in collective isolation have torn the fabric of our communities, our families and our economy in a great unraveling of social interconnection. And when the time comes for all that has been unraveled to be sewn back together again, we will need strong leadership to remake the tapestry of New York more vibrant and resilient. In contemplation of an historic \$14 billion budget deficit in the current fiscal year and a \$16 billion deficit in the coming fiscal year, it is reassuring that the governor and legislature are approaching this economic crisis with priorities of equity and innovation, not austerity. Maintaining historic funding levels for key environmental programs, even in times of hardship, reflects an understanding that while so much hinges on the prospects of a \$15 billion federal aid package to offset our financial woes - if we do not protect clean air and water, we are only deepening the public health and economic crisis.

The progressive political dynamic of the past two years in Albany has demonstrated that state government can act to solve some of our greatest challenges, even as the outgoing president has eroded the moral foundation of America's leadership on climate change and civil rights. The Sierra Club finds a lot to be optimistic about in the 2021-22 Executive Budget, despite our grave financial situation, 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 2021-22 state budget process:

Support Department of Environmental Conservation Funding and Staffing

With the addition of staffing COVID response centers and accommodating a surge in state park attendance across the state, our state environmental agencies have been asked to do more with less in this time of pandemic response. In the past two 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, and chlorpyrifos, paint

stewardship laws, and more. It's clear that DEC will require more staffing and funding. Over the past nine years of New York's economic recovery from the last recession, the DEC has shouldered disproportionate cuts to staffing and funding when compared with other agencies that saw mere reductions to their rate of growth. We have 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. Governor Cuomo and the legislature deserve credit for stemming the losses that began in 2008 but there is little left to cut from this bare-bones agency that is increasingly asked to do more. We understand the current fiscal hardship facing the State, but we urge the legislature to consider the vital importance of preserving state environmental staffing lines if federal aid fails to materialize.

Continue Funding the Environmental Protection Fund at \$300 Million

For the fifth year in a row the Executive Budget proposal maintains historic \$300 million Environmental Protection Fund (EPF) funding levels. This is especially extraordinary in consideration of the current fiscal crisis. 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 initiatives the EPF funds are proven economic generators and job creators. 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 farm land is preserved and is affordable to new generations of farmers. Equally encouraging are promises to continue funding the EPF at the \$300 million mark in future budget cycles. The Sierra Club thanks the governor for yet again proposing a fully funded EPF in 2021 and urges the legislature to approve the \$300 million allocation.

Continue Funding New York's Water Infrastructure Improvement Act

The Sierra Club thanks the legislature for their leadership in passing New York State's Water Infrastructure Improvement Act (WIIA) in 2017 and we enthusiastically support the continuation of the \$2.5 billion spending program over five years of which we will see a fifth-year installment of \$500 million this year. This essential program repairs failing sewage and drinking water infrastructure, upgrades and replaces septic systems, remediates and replaces contaminated drinking water, funds source water protection through land acquisition projects, 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 now be able 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.

Generate Climate Transition Revenue Through a Polluter Penalty

The Climate Leadership and Community Protection Act has provided the enforceable structure by which the state has to achieve a 100% renewable energy grid by 2040 and carbon neutrality by 2050. But New York is struggling, especially now with COVID debt, to finance the transition from fossil fuels to wind, solar and energy storage. The Sierra Club asks the legislature to engage with the Climate and Community Investment Act (CCIA) (S.3616/A.9856) (2020), legislation that would create an index of carbon emissions and co-pollutants, place a price per ton of carbon, and set up financial mechanisms to make polluters pay for the costs of contaminating our environment. Those funds would then be invested back into communities in the form of renewable energy development, electrified public transportation, worker retraining programs and building efficiency jobs. The allocation of these funds would be dispersed with a mandate to prioritize equity, racial justice and fair labor practices. This is an enormous undertaking, but one that the legislature should deeply examine in the context of much need revenue and equitable transition in this difficult time.

Remove Fossil Fuel Subsidies in the Budget

The afore mentioned historic climate goals passed by the legislature a year and half ago were crucially necessary to stave off the worst of increasingly severe storms, floods, droughts, agricultural blights and public health disasters. In the context of the COVID-19 crisis, these ambitious goals of a decarbonized society by 2050 have been made all the more challenging. For one, in order to achieve our renewable energy targets, New York is going to have to help fund the transition from fossil fuels to wind, solar, and geothermal power. With a looming \$14 billion-dollar deficit as a result of the pandemic, it appears that the state may have to do a lot of belt tightening if federal aid is not forthcoming. While the Sierra Club advocates for continued funding of renewable energy projects, despite shortfalls, as a means to put more New Yorkers back to work and jumpstart economic growth, it seems wholly inappropriate for the state to continue to prop up fossil fuels in the form of existing subsidies, indirect incentives, and preferential rules.

According to the NYS Division of Budget in their FY 2020 Tax Expenditure Report, total fossil fuel related tax exemptions were close to \$1,632,800,000. This is hundreds of millions of dollars the state is bleeding away to the benefit of those that endanger public health and thwart our climate goals. We encourage the legislature to address this issue by including S.272/A.225 in this year's budget. This legislation would require the state's annual Expenditure Report to include an enumeration and evaluation of all fossil fuel related tax expenditures, as well as a recommendation by the Governor regarding the continuation, modification or repeal of such expenditures. The Report would be made in consultation with the state's Energy Planning Board, whose members include representatives of New York State Energy Research and Development Authority, Public Service Commission, Empire State Development, the Departments of Environmental Conservation, Agriculture and Markets, Health, Labor, and Transportation as well as Legislative appointees and others.

The hope is that this legislation would shine a light on and potentially halt tax breaks, credits and refunds for the use of dirty fossil fuels, systematically ending how New York currently finances the degradation of our own air quality and the disruption of the global climate. Wiping the slate clean of entitlements that prop up those that continue to despoil the planet is a more than reasonable first step towards climate justice.

Strengthen and Reform Wetland Protections in New York

Last year's 2020-21 Executive Budget contained a proposal to change how wetlands in New York are regulated, and to strengthen a failing program in the wake of regressive federal action. (part TT of the 2020 TED) It is our understanding that negotiations on the reforms were productive and nearing agreement before the weight of the emerging pandemic eliminated secondary budget considerations in March of 2020. We ask that the legislature resume those negotiations and finalize a plan with the administration to protect our most important and imperiled wetlands.

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 Trump Administration's rollback of Obama era clean water rules has only intensified the need to 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 20 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. Part of last year's proposal was to 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 will 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. For years, the Sierra Club has campaigned to pass the Clean Water Protection/ Flood Prevention Act (A3658/ S7366) (2020) 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 its own wetlands. The Sierra Club fully acknowledges that instituting such expanded authority now, over all classes of wetlands, would require dozens of new DEC staff, an apparent impossibility during the fiscal crisis. But it is our understanding that the reforms contemplated last year would significantly streamline wetlands regulation in a way that would prioritize the most important and vulnerable without needing significant new staffing resources.

The new reforms 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 class II wetlands that possess valuable characteristics like: 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 \$3 billion ‘Restore Mother Nature’ Bond Act, which we hope will be strategically restored to the ballot in the coming years, when the time is right. 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 Trump’s assault on the Clean Water Rule that may take years for the Biden administration to fully reverse. 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. Clean water and healthy ecosystems are a cornerstone of any thriving economy and we ask the legislature to restore this essential reform to wetlands regulation in the final FY 2021-22 budget.

Decarbonize the Empire State Plaza

In 2017, the New York State Energy Research & Development Authority (NYSERDA) awarded funding to Cogen Power Technologies to design a micro-grid fueled 100 percent by natural gas to heat and power a number of government buildings within the Empire State Plaza complex. The waste heat from the twin 7.9MW combustion gas turbines would replace an inefficient natural gas boiler and chiller system that currently heats and cools the Plaza at a facility in the Sheridan Hollow neighborhood of Albany. These new gas turbines were to also provide an alternative to the current conventional grid-reliant source of electricity. However, public opposition to the combined heat and power proposal grew out of concern about continued concentration of emissions in a densely populated residential area at a time when it is imperative for New York to decarbonize our energy systems. The FY 2020-21 budget included appropriation of \$88 million for the Empire State Plaza/Sheridan Avenue project, eliminated the proposal for a new fracked gas power plant in Sheridan Hollow, and instead required the funds to be used for 100% renewable energy projects, to the extent possible, to meet the heating and cooling needs of the Capitol complex. The NY Power Authority (NYPA) has begun work on a number of promising projects including energy conservation, replacing the polluting backup generator, transitioning to electric power for cooling and increasing the use of solar power for electric needs of the Empire State Plaza. The Sierra Club asks that the legislature continue to fully fund this vision to make New York’s Capitol an example of renewable energy autonomy, including efforts to employ building efficiency, geothermal and thermal load-share technology to heat and cool the Empire State Complex. As part of this request, and in support of local advocacy groups, we ask that the FY 2021-22 Budget fund a \$600,000 study that can move the project forward. In addition, we ask that additional funding be made available to advance further plans to give the Sheridan Hollow and Arbor Hill neighborhoods, communities that have borne a disproportionate share of pollution from the Capitol generators and incinerators for generations, the same opportunities to benefit from

renewable energy, building efficiency, and geothermal heating and cooling technology in accordance with the equity provision of the Climate and Community Protection Act.

Enact Energy and Environmental Safeguards to Mitigate Negative Effects of the Cannabis Industry

The Sierra Club understands why this moment in time is opportune for the legalization of production, distribution and sale of cannabis products in New York, as sales tax revenues from marijuana could mean hundreds of millions of dollars to replenish state coffers. We appreciate the focus in the budget placed upon creating equity in the marketplace, and addressing past injustices of marijuana related arrests and incarceration, especially in communities of color.

But in the reading and rereading of the budget proposal, (Revenue Part H) we have remaining concerns that little attention is being paid to the environmental impacts that cannabis growing facilities can have on our energy grid, our water, and our environment. The enacting legislation should include language specifically mandating the Office of Cannabis Management regulate the significant resource inputs associated with marijuana production facilities, especially ones that are indoors. A small 24-hour cannabis grow house production facility (ten grow lights) can consume the same amount of electricity as ten average American homes. A single marijuana joint from such a facility has the same embedded energy it takes to drive a Toyota Prius 22 miles, or run ten 10 watt light bulbs for 76 hours.¹ Other states, like Oregon, California and Colorado have experienced major power outages after legalizing marijuana because of huge electrical loads and blown transformers in areas that did not anticipate the energy consumption from indoor cannabis facilities. New York should be better prepared and design an industry that fits with our climate goals and environmental values.

Any enacting legislation to legalize cannabis should issue conditions upon any adult-use cultivator license that set energy efficiency standards; renewable energy procurement requirements; limits to CO2 inputs, pesticides, and chemical fertilizers; water conservation standards and plans to reduce the significant amount of plastic that presents waste challenges from production to post consumption.

Enact a Moratorium on New Gas Fired Power Plants In New York

Thanks to the vision of the legislature and Governor Cuomo, the Climate Leadership and Community Protection Act (CLCPA) has provided the enforceable structure by which the state must achieve a 70% renewable energy grid by 2030, a zero-carbon grid by 2040, and complete sector wide carbon neutrality by 2050. But as the Climate Action Council (CAC) and its supporting committees deliberate over the scoping plan for the eventual climate regulations, the Department of Environmental Conservation (DEC) and the New York State Board on Electric Generation Siting and the Environment (Siting Board) are continuing to process permits for major new fossil fuel power plants. The Sierra Club opposes the permitting of these facilities as we believe any new fossil fuel generation cannot comply with the schedule and goals of the CLCPA, and engaging dozens of agency officials in the review of what inevitably must be denied is a waste of the State's resources, staffing and focus. Currently, NYS agencies are reviewing proposals to build major new gas fired generation facilities in Brooklyn, Queens, and Newburgh.

Section 7(2) of the CLCPA requires the DEC to evaluate whether any major project is "inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits" established in the statute. To the extent an inconsistency or interference is found to occur, DEC must "provide a detailed statement of justification as to why such limits/criteria may not be met, and identify *alternatives* or greenhouse gas mitigation measures to be required where such project is located." But in the context of building new large gas fired power plants over 25 MW, the state does not need an extensive review of the facilities to conclude what should be an obvious denial of permits. The DEC and the PSC have indicated that the new climate statute does

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https://www.researchgate.net/publication/342364745_Energy_Use_by_the_Indoor_Cannabis_Industry_Inconvenient_Truths_for_Producers_Consumers_and_Policymakers

not remove their obligation to follow every laborious step of a permitting review – regardless of how incompatible the project may be with our climate goals. In some cases, these reviews could take years and waste hundreds of thousands of dollars in agency resources.

The legislature should enact a moratorium on the permitting, licensing, siting and construction of all new gas power plants until the Climate Action Council finalizes its climate regulations in 2024 to ensure that we do not undermine the final rules. This action will alleviate the wasting of agency resources and staff time on permitting when limited state funds must be spent on planning, siting and constructing renewable energy, efficiency and storage projects. A moratorium will also send a helpful and much needed signal to developers that they should be proposing energy projects that are actually CLCPA compliant. Companies would have the certainty that they're not going to get new gas plants approved and owners of the strategic interconnection and generation locations downstate would likely then propose renewables, storage, a combination of the two, or transmission interconnection for those sites, instead of wasting years of time and millions of dollars trying to persuade the state that we still need more gas.

A moratorium on new gas power plants could take a number of forms. The legislature could directly proscribe DEC from issuing an air permit for a new or modified gas-fired electric generating unit on grounds that it does not comply with CLCPA. The legislature also could require DEC to update its greenhouse gas intensity standards for new gas plants to ensure that new fossil fuel generation is not compliant with state permitting requirements. Ultimately, this kind of action from the legislature would not be something new. In 2011, the legislature and governor enacted a number of energy reforms that included emissions standards for power plants, designed to prohibit the construction of future coal facilities. More recently, the governor issued an executive order and DEC promulgated regulations that effectively ended all coal-fired generation of electricity in the State by 2020. New York has 19 years to achieve a carbon neutral grid and we will not meet that ambitious goal if we continue to build new gas plants. The legislature must act to ensure our agencies have the authority they need to reject regressive proposals and focus on a just and equitable transition to a renewable and resilient New York.

Again, the Sierra Club commends Governor Cuomo and the legislature for their leadership and commitment to combatting the climate crisis through the budget process. We know there will be greater challenges on the horizon as New York seeks to “reimagine, rebuild and renew”, but we remain committed to working together to rebuild New York’s environmental agencies, make our state more resilient and strengthen our long-term environmental legacy.

Thank you,



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