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CLIMATE LEADERSHIP AND COMMUNITY PROTECTION ACT

Recommendations on Compliance with the Disadvantaged Community Investment Mandate

To: Governor Andrew Cuomo
From: The NY Renews Coalition
Date: February [], 2020.

NY Renews is a coalition of over 190 grassroots, state, and national organizations. NY Renews aims to make New York State the nation's leader in tackling the climate crisis while protecting workers and lifting up communities. Consistent and expeditious implementation of the Climate Leadership and Community Protection Act ("CLCPA" or the "Act") is New York's best opportunity to lead the fight against the climate crisis. With this letter, we outline our recommendations on how to implement the CLCPA's "investment of funds" mandate, which requires direct investment into disadvantaged communities, (referred to herein as the disadvantaged communities investment mandate, or "DCIM").¹

The CLCPA was designed to reduce the State's greenhouse gas emissions in a way that also relieves long-standing burdens on disadvantaged communities. This includes but is not limited to communities that are home to multiple polluting facilities, have suffered from economic disinvestment, and/or are most vulnerable to the climate crisis.

Accordingly, the DCIM requires *all* state agencies, authorities and entities to invest or direct their resources in a manner so that disadvantaged communities "receive forty percent of the overall benefits of spending on clean energy and energy efficiency programs, projects or investments in the areas of housing, workforce development, pollution reduction, low income energy assistance, energy, transportation and economic development." At a minimum, the DCIM provides that "no less than thirty-five percent of the overall benefits from spending on clean energy projects and energy efficiency programs, projects or investments" shall go to disadvantaged communities.

The DCIM is a floor for directing climate-related investment to disadvantaged communities, and not a ceiling. Under the CLCPA, disadvantaged communities will be identified by a Climate Justice Working Group in consultation with other bodies, based on a set of criteria outlined in the Act.² The final list will be subject to public review and comment.³

Investing in and protecting disadvantaged communities is a central priority of the CLCPA. The language of the Act makes clear that it is in the interest of the State to "protect and promote the interests" of low-income people, women, and workers who are disproportionately impacted by climate change, and actions taken by New York State to reduce greenhouse gas emissions should "prioritize the allocation of public investments" in disadvantaged communities.⁴ In order to ensure compliance with the CLCPA, it is important that State agencies, entities and authorities are clear on how to interpret and apply the DCIM in the near term and on a strategic timeline. The following outlines our recommendations for implementing the DCIM in a way that ensures compliance with the CLCPA.

¹ See CLCPA Section 2, amending *Environmental Conservation Law §75-0117*.

² *Id.* at §75-0111.

³ *Id.*

⁴ *Id.* at Section 1(7).

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1. *Commit to a scope of DCIM compliance that is comprehensive across multiple sources of climate investment by the state.* State investment in climate goals is not differentiated by sources of revenue in the CLCPA, which means that the DCIM has a comprehensive reach. The scope of State spending subject to the DCIM should include spending by all relevant agencies, authorities and entities. In addition to relevant programmatic spending from agency budgets, this would encompass, for example, certain funds allocated by the Public Service Commission for the New York State Energy Research and Development Agency's programs, revenues of any climate-related bond financing, revenues from carbon pricing, and other alternative sources of revenue for climate investments.
2. *Measure compliance with DCIM by dollars spent, not value of benefits.* An important concern for DCIM compliance is how to interpret "overall benefits of spending." In order to create a standard for ensuring compliance with the DCIM, New York should follow the lead of California⁵ in treating the DCIM as a beneficial spending mandate rather than using a "value of benefits" analysis. A beneficial spending mandate will mean that forty percent of total spending or financing by state agencies, entities and authorities for achieving eighty-five percent emission reductions and net zero emissions by 2050 should be directed for the benefit of disadvantaged communities.

Using a beneficial spending mandate provides the clarity and consistency that the Administration and staff of the State's agencies, authorities and entities need to meaningfully carry out the DCIM. This does not preclude or prohibit the use of a valuation methodology to conduct impact analyses in order to, for example, value public benefits over investment costs. A value of benefits analysis, however, should not be used to measure compliance with the DCIM.

3. *Within 120 days, undertake an initial programmatic audit of existing programs with the goal of expanding, restructuring and/or developing programs to benefit disadvantaged communities in order to comply with the DCIM.* The State should immediately commence an initial audit of existing programs and spending to determine which programs meet a high standard of community benefits (as discussed at point 5 below) with regard to one or more of the needs and challenges defining disadvantaged communities.

The first round of this audit process should be completed as soon as practicable in order to inform the work of the Climate Justice Working Group and related bodies. If the result of the initial programmatic audit finds, for example, that only five percent of overall relevant spending meets a high standard of community benefits, the State will need to either expand or develop programs and processes to comply with the DCIM. The initial audit should include a calculation of the State's current rate of compliance with the DCIM, and should also identify programmatic changes to remedy DCIM shortfalls over the next audit period. The State should plan subsequent rounds of audits each year, or at another reasonable interval, using publicly available information.

⁵ California law mandates that an investment minimum of funds must be allocated from that state's cap and trade proceeds into disadvantaged and low-income communities. See California Senate Bill 535 (De Leon, Statutes of 2012) as modified by California Assembly Bill 1550 (Gomez, Statutes of 2016).

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4. *Develop a draft Interagency Compliance Plan by October 1, 2020.* Specific proposals and actions of State agencies, entities and authorities engaged in climate-related programmatic investments subject to the CLCPA should be accountable to the DCIM starting in 2020 with effectuation of the CLCPA. Meaningful and consistent compliance with the DCIM, however, will require a new and transformative approach to budget proposals, revenue generation, and programmatic choices. To this end, State agencies, entities and authorities should begin to review programs to assess gaps and develop a public draft interagency plan for compliance with the DCIM. The draft Interagency Compliance Plan should begin in the interim period where the Climate Justice Working Group is working to identify disadvantaged communities under the DCIM and be completed by October, 1, 2020.

Closing DCIM gaps should be a focal point in this Executive Budget and should also be specifically addressed in budget proposals going forward, in keeping with DCIM audit findings and the Interagency Compliance Plan. Further, compliance with the DCIM should be a requirement in channels of climate spending that may lie outside of the State budget. This includes but is not limited to New York Public Service Commission proceedings and the design of bond acts pursuant to CLCPA goals. Likewise, DCIM compliance as outlined here should be integrated into the next State Energy Plan process going forward.

5. *Develop a State DCIM investment rubric to ensure high and consistent standards for what qualifies as beneficial spending so that benefits will actually accrue in disadvantaged communities.* To ensure compliance with the DCIM, staff of State agencies, entities and authorities should develop a DCIM investment rubric designed to ensure that state spending addresses and remediates the needs and challenges of disadvantaged communities and can be subsequently evaluated. At a minimum, qualified benefits for disadvantaged communities could include the following:
 - A. Reduction in localized pollution from stationary and mobile sources and related health benefits.
 - B. Health benefits related to reduction in thermal vulnerability and exposure to extreme heat and cold, as well as improved indoor environmental quality resulting from the mitigation and abatement of legacy environmental hazards (e.g., lead, asbestos).
 - C. Economic benefits, including but not limited to job creation, energy efficiency savings, utility bill assistance, energy resilience, and community ownership of renewable distributed energy resources.
 - D. Job training, apprenticeship programs, entrepreneurship opportunities and small business support for residents and youth, both now and as public and publicly-leveraged investment expands employment in emerging clean energy sectors. This should include community-based models for inclusive job creation, such as the Green Resilient Industrial District (GRID)

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- proposal for Sunset Park, Brooklyn.⁶ These models can be a guide for inclusive job creation as part of DCIM compliance.
- E. Funding, education, and resources for existing businesses to adopt climate adaptive and mitigative practices, designs, and operations.
 - F. Workforce and business funding and technical support programs to prevent clean energy transition-related worker displacement.
 - G. Quality of life benefits, such as housing security and protection from neighborhood displacement, as well as increased access to mass transit/active mobility, green infrastructure, recreational green spaces, and public amenities.
 - H. Benefits related to democratic participation, such as access to community-determined climate and clean energy planning and decision making processes and accountability frameworks.

The State's DCIM investment rubric should also maintain a distinction between investments in programs and projects that are directly located in disadvantaged communities and/or are community-based (direct benefits), and investments that are not located in disadvantaged communities but are potentially beneficial to disadvantaged populations (indirect benefits). Compliance with the DCIM should reflect a balance favoring the former but not excluding the latter. For example:

- A. Direct benefits located in communities: replacing polluting fossil fuel “peaker” plants located in disadvantaged communities with both large-scale renewables and distributed energy storage and community-owned, neighborhood-scale solar power generation in those communities.
- B. Indirect benefits: a Statewide energy efficiency program targeted for low- and middle-income households.

Similarly, investments that are physically located, at least in part, within disadvantaged communities but won't provide economic, environmental, health or other benefits to people within those communities should not be counted toward the DCIM. Further, State agencies, entities and authorities should also consider, and design programs to avoid, potential negative implications of investments. For example:

- A. Building a high-speed rail line through a community without a stop within that community or with fares that will be unaffordable to low-income populations should not count as a DCIM compliant beneficial investment.
- B. Economic benefits, including but not limited to energy efficiency improvements in rental housing should accrue directly to low-income tenants and homeowners, and landlords cannot use such improvements as a basis for increasing rent.

⁶ For more information about GRID, see the UPROSEe web site at: <https://www.uprose.org/the-grid> (last viewed February 5, 2020).

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- C. Investments should contribute to development that prevents, rather than enables, gentrification and displacement from disadvantaged communities.

NY Renews understands that developing policies and investment plans to fulfill the State's responsibility to prioritize disadvantaged communities under the CLCPA may be challenging. In order to do so with integrity, transparency and accountability, the State must utilize clear and consistent benchmarks of compliance with the DCIM. We are eager to work with your Administration and staff on these recommendations and others designed to help the State to achieve DCIM compliance. Thank you for your consideration.

Sincerely,
NY Renews Steering Committee