



FLOUTING THE LAW

MAJOR STATE AGENCIES
ARE IGNORING NEW YORK'S
CLIMATE MANDATES

NYLPI
JUSTICE THROUGH
COMMUNITY POWER





AUTHOR'S NOTE

On the eve of the five-year anniversary of the passage of the landmark Climate Leadership and Community Protection Act (the “Climate Act”), key energy agencies stated that **New York is not on track to meet the Climate Act energy mandates**. On July 1, 2024, the New York State Energy Research and Development Authority (“NYSERDA”) and the Public Service Commission (“PSC”) published the Draft Clean Energy Standard Biannual Review under Case 15-E-0302, noting that the state is unlikely to meet the Climate Act’s 70% renewable energy grid by 2030 mandate and that delaying the timeline to 2033 or beyond could be “unavoidable.” The Biannual Review aligns with a previous report issued by Public Power New York and Strategen, which found that New York State is only on track to meet 45–61% of the 2030 mandate.

This report’s findings show that the above statements are unwarranted and premature. It examines whether New York State agencies are implementing the Climate Act and sheds light on agencies — specifically looking at four of the biggest and best funded New York State agencies — who appear to be operating and planning as if the Climate Act does not apply to their agency missions, operations, infrastructure and assets, programs and policies, and budget.

While the report focuses on agencies that are often overlooked when it comes to climate policy, we need to acknowledge that the State agencies and entities that have been at the forefront of Climate Act implementation — such as the Department of Environmental Conservation, PSC, and NYSERDA — are not faultless. Particularly concerning are recent findings by the state comptroller and alarming statements by NYSERDA, PSC, and Governor Hochul indicating a lack of political will to deal with the urgent demands of the climate crisis.

The state of these traditional environmental agencies' compliance with the Climate Act is beyond the scope of this report. However, the failures highlighted in the report are partly the result of a series of actions by the State to undermine the Climate Act, culminating in the aforementioned recent findings and statements. The State is blowing past key climate milestones and, instead of course-correcting, has proposed to throw in the towel by modifying statutory targets or further deregulating private utilities. This in spite of signs that New York can achieve its legislated goals with proper leadership and commitment, such as the newly-bolstered capabilities of the New York Power Authority under the 2023 New York State Budget and a memorandum from early July 2024 showing that New York's grid has ample capacity to serve the additional energy loads needed to electrify our buildings and meet Climate Act targets.

The findings of this report and the State's recent pronouncements showing early resignation as to its ability to deliver on Climate Act targets are unacceptable. The life- and health-threatening floods and heat waves are already here and intensifying. Instead of slow-walking its legal commitment, the State must double down on reducing emissions and mitigating and adapting to climate impacts without burdening environmental justice communities.



EXECUTIVE SUMMARY

New York’s Climate Leadership and Community Protection Act (the “Climate Act”) commits the state to significantly reduce greenhouse gas (“GHG”) emissions and safeguard disadvantaged communities (“DACs”) from further environmental harm. To achieve these goals, the law expressly obligates state agencies to screen their decisions for negative impacts on the climate and DACs and to ensure that 35% — with a goal of 40% — of clean energy investments go to DACs.¹ The Climate Act’s mandates explicitly and unambiguously apply to “*all* state agencies, offices, authorities, and divisions,” not just to those that have historically been tasked with environmental regulation.² As the New York Climate Action Council has emphasized, implementation of the Climate Act “requires an all-hands-on-deck approach across State government.”³

However, a review of public records reveals what appears to be widespread noncompliance with this landmark legislation across almost all New York State agencies. Since the Climate Act took effect on January 1, 2020, state agencies⁴ have made at least 26,454 significant decisions and authorized over \$1.9 billion in clean energy spending, all without performing the required screenings to ensure consistency with climate targets and protections for DACs.

In fact, only a handful of agencies have issued specific guidance or regulations to support compliance efforts. Notably, it appears that the state’s largest and most powerful agencies have entirely failed to comply with the Climate Act and have not yet issued policies or guidance on implementation of the law.⁵ For example:

- The New York State Department of Transportation (“NYSDOT”) has pushed forward at least 40 highway expansion projects without properly assessing their impacts on DACs and the climate;
- Empire State Development (“ESD”) has awarded at least \$780 million in clean energy funding without ensuring that 40% of the benefits go to DACs;
- The New York Education Department (“NYSED”) has approved at least 25,971 construction projects at public schools across the state without properly assessing their climate and DAC impacts; and
- The New York State Department of Health (“NYSDOH”) has approved at least 223 construction projects for new and renovated healthcare facilities without assessing or mitigating their climate impacts.

These findings show a troubling lack of coordination, or at least a lack of transparency, that hinders the effective implementation of an all-of-government approach necessary to transforming our economy and environment. As global temperatures, sea levels, and extreme weather events continue to track worst-case scenarios for climate change,⁶ New York’s state government must urgently prioritize Climate Act implementation, including conducting required screens for all relevant regulatory and investment decisions and adhering to rigorous internal guidance to ensure compliance with the law.

This refocusing is especially urgent in light of a report from the Public Service Commission (“PSC”) and New York State Energy Research and Development Authority (“NYSERDA”) finding that New York is now three to five years behind in meeting the Climate Act requirement of at least a 70% renewable electricity sector by 2030.⁷ That report, and officials’ response to it,⁸ demonstrate that all state agencies and officials, including first and foremost the Governor, must immediately shift their attention and resources to fully meeting the demands of the Climate Act.

This report highlights the noncompliance of four of the largest and best-funded state agencies across a variety of sectors and industries. These entities, though perhaps not traditionally viewed as environmental leaders, nonetheless play a pivotal role in determining whether our state will succeed in reducing greenhouse gas emissions and investing in communities most harmed by legacies of environmental injustice. We plan to analyze the nascent efforts of environmental regulators like the New York State Department of Environmental Conservation (“DEC”), PSC, and NYSERDA in a future report.



BACKGROUND

The Climate Act is New York’s nation-leading climate and environmental justice law. Enacted to combat the pressing threat of climate change, the Climate Act sets economy-wide targets for reducing GHG emissions. New York must reduce statewide GHG emissions to 40% below 1990 levels by 2030, with a goal of achieving an 85% reduction by 2050.⁹ Additionally, the Climate Act sets targets for a 100% renewable energy sector by 2040¹⁰ and net zero emissions statewide by 2050.¹¹ Recognizing that climate change is fundamentally an environmental justice issue,¹² the Climate Act also contains critical protections for DACs to ensure that they are not forced to bear further environmental and public health harms. DACs are identified based on the Climate Justice Working Group’s set of 45 criteria, including indicators of environmental burdens and health vulnerabilities.¹³ There are over 1,700 communities designated as DACs across New York, with 55% located in New York City.¹⁴

To ensure that the substantive goals of the Climate Act are met, the law explicitly obligates each New York State agency to play its part. As a general matter, “all state agencies *shall* assess and implement strategies to reduce their greenhouse gas emissions,”¹⁵ and they must also comply with a number of express requirements spelled out in the Climate Act.

This report focuses on four such requirements, further explained below: the regulation mandate, the climate screen, the equity screen, and the investment mandate. These obligations are mandatory and extend beyond environmental regulation agencies to every agency in every sector of New York’s economy. The regulation mandate applies to 18 named agencies “and any other state agency”;¹⁶ the climate and equity screens apply to “all state agencies, offices, authorities, and divisions”;¹⁷ and the investment mandate applies to all “[s]tate agencies, authorities and entities.”¹⁸

The regulation mandate requires that every agency “shall promulgate regulations to contribute to achieving the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law.”¹⁹ While DEC is also tasked with incorporating Climate Act emissions targets into regulations,²⁰ the regulation mandate is an independent obligation on each agency to issue its own regulations to reduce GHG emissions.

The remaining three requirements are recurring and have been in effect since January 1, 2020.²¹ The climate and equity screens apply when an agency is “considering and issuing permits, licenses, and other administrative approvals and decisions.”²² Under the climate screen, each agency “shall consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in [E.C.L. Article 75].” If such decisions are inconsistent or will interfere with attainment, the agency “shall 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.”²³ Under the equity screen, each agency “shall not disproportionately burden [DACs]” and “shall also prioritize reductions of greenhouse gas emissions and co-pollutants in [DACs].”²⁴

In addition to the equity and climate screens, the investment mandate is triggered when an agency action involves spending on clean energy or energy efficiency. Under the investment mandate, “[s]tate agencies, authorities and entities...shall, to the extent practicable, invest or direct available and relevant programmatic resources in a manner designed to achieve a goal for disadvantaged communities to receive 40 percent of overall benefits of spending on clean energy and energy efficiency programs, projects, or investments...provided however, that disadvantaged communities shall receive no less than thirty-five percent of the overall benefits of [such spending].”²⁵

Despite the urgency and transformational potential of the Climate Act, there are serious implementation shortfalls. There is little transparency as to if or how agencies are complying with these four requirements of the law, and individual instances of compliance are often disjointed. Meeting Climate Act targets will require concerted action and clear direction across all sectors and agencies; otherwise, we risk falling short of our targets and failing communities that are most vulnerable to environmental injustices. This report aims to shed light on these challenges to enable communities across our state to hold the Office of the Governor and state agencies and authorities accountable to their duties under the law.



METHODOLOGY

Relevant agency decisions were identified from State Register notices and Governor’s Office press releases. These were supplemented by targeted investigations into agencies with the largest annual budgets²⁶ and whose actions have historically had significant negative impacts on the climate and environmental justice communities — namely, agencies that control or manage projects and funding involving physical infrastructure and/or fossil fuel industries. These investigations involved searching agency websites for publicly available policies, notices, databases, and files.²⁷

To screen for relevant agency decisions, three questions were asked:

1. *Is the entity a state agency, office, authority, or division subject to Climate Act Section 7(2) and (3)?* This determination was made using New York State’s official list of agencies.²⁸
2. *Is the action a permit, license, or other administrative approval or decision subject to Section 7(2) and (3)?* Only those actions that involve consideration by agencies and could reasonably interfere with statewide emissions targets or disproportionately burden DACs were included. Actions that are mandatory, nondiscretionary, or highly unlikely to have such impacts (e.g. a decision to rename a park) were not included. Actions completed prior to January 1, 2020 — the date on which the Climate Act became effective — were not included.²⁹

3. Does the action involve spending on clean energy or energy efficiency subject to the investment mandate of Environmental Conservation Law Section 75-0117? In addition to the text of the statute, the parameters set forth in NYSERDA's draft guidance for DAC reporting were used to determine eligibility.³⁰ Actions completed prior to January 1, 2020 — the date on which the Climate Act became effective — were not included.

The profiled agencies were selected because they have significant resources and represent a diverse cross-section of New York State's economy. Relevant actions by each of these agencies were investigated to obtain the following supporting information:

- Description of the action, including relevant dates and how much money was spent, if applicable;
- For an action that is a permit, license, or other administrative approval or decision, whether and to what extent the climate screen was conducted;
- For an action that is a permit, license, or other administrative approval or decision, whether and to what extent the equity screen was conducted;
- For an action that involves spending on clean energy or energy efficiency, whether and to what extent the investment screen was conducted; and
- Links to relevant documents.

The authors also submitted requests for records under the Freedom of Information Law to NYSDOT, ESD, NYSDOH, and NYSED, which remain pending.



Source: Ken Schles, NY Renew

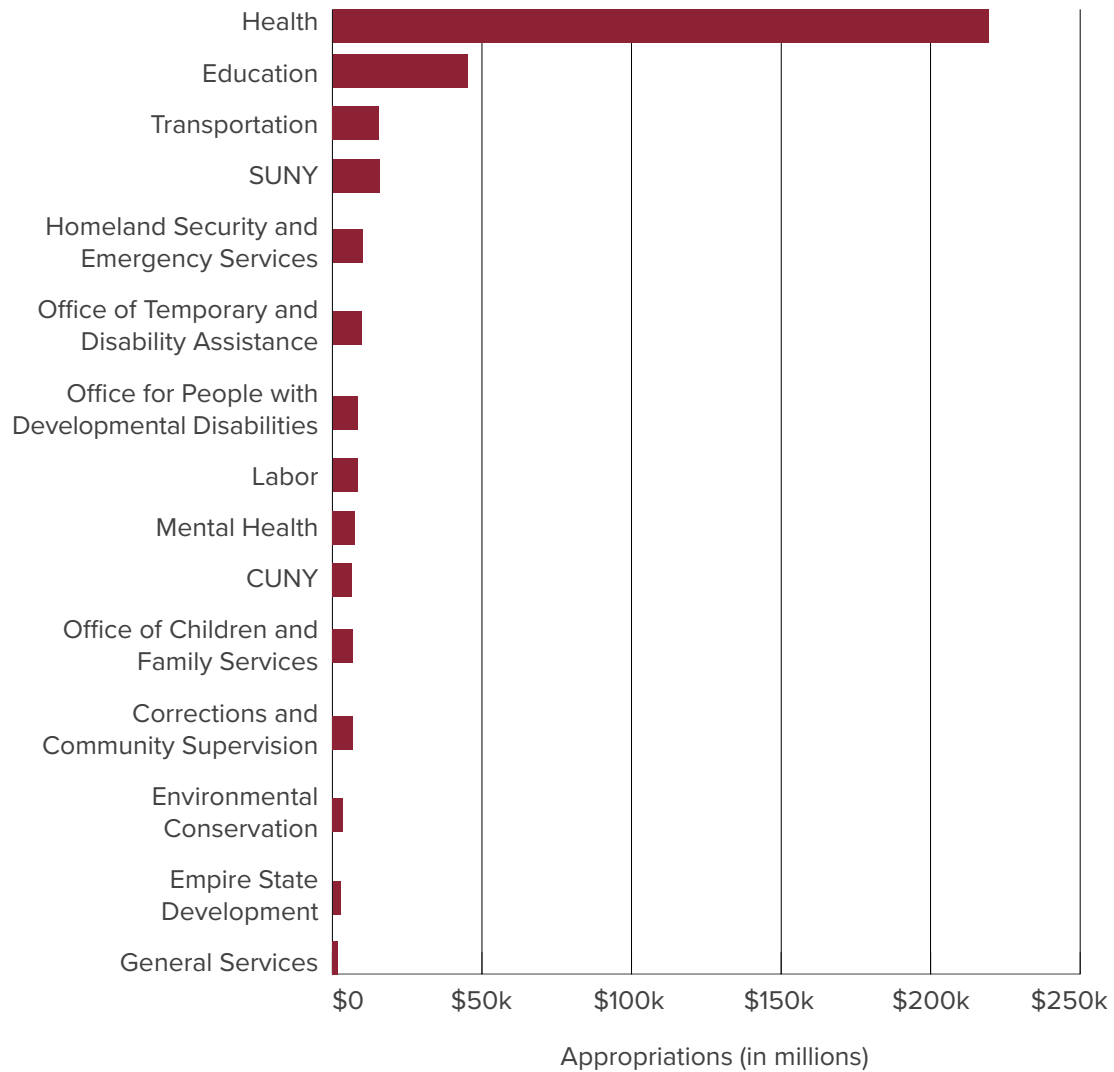
FINDINGS

Since the Climate Act went into effect, New York State agencies have made at least 26,454 significant decisions without the requisite climate and equity screens.³¹ Furthermore, agencies have invested at least \$1.9 billion in clean energy and energy efficiency programs without completing the requisite climate and equity screens or complying with the investment mandate. While it is promising that some agencies are supporting clean energy initiatives, this amount pales in comparison to resources being directed to non-renewable energy projects, and it is concerning that the latter funds are being expended without proper screening.³²

Furthermore, only a handful of agencies have issued GHG regulations as required by Section 8 of the Climate Act. The mandate applies to all agencies but specifically names 18;³³ of the 18, only one has issued any regulations relating to GHG emissions.³⁴ Of New York State's 96 agencies and authorities, only three have issued internal guidance relating to Climate Act implementation.³⁵

Discussed next is how four of the biggest and best funded New York State agencies are failing to comply with the Climate Act.

Agency Appropriations: New York's Best Funded Agencies



Source: New York State Division of the Budget, [Agency Appropriations](#) (last updated Jan. 16, 2024).

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

The New York State Department of Transportation (“NYSDOT”) plays a pivotal role in managing the state’s extensive transportation infrastructure. With more than 8,000 employees,³⁶ its budget is over \$14 billion, making it the third most well-funded agency in the state.³⁷ The transportation sector is a major contributor to climate change, accounting for roughly one-fifth of New York State’s GHG emissions — an amount comparable to the total annual emissions of entire countries like Colombia, Greece, Austria, or Peru.³⁸ Additionally, environmental racism has shaped the siting and accessibility of transportation infrastructure: lower-income Black and Brown communities have often been disproportionately saddled with traditional polluting infrastructure like highways while excluded from lower-emission mobility options.³⁹ Accordingly, the Climate Action Council identified NYSDOT as a key stakeholder to implement major transportation-sector decarbonization strategies, such as reducing vehicle miles traveled — which on highways in 2018 were as high as 123.5 billion⁴⁰ — and enhancing public transportation alternatives.⁴¹

Since 2020, NYSDOT has approved, identified funding for, and/or awarded contracts for at least 40 highway expansion and widening projects — totaling more than \$3.8 billion, or roughly one-quarter of NYSDOT’s annual budget, all without conducting *any* required climate and equity screens.⁴² Notable projects include the one-billion-dollar Van Wyck Expressway widening in Queens, and a second one-billion-dollar proposed expansion for Route 17 spanning several counties in upstate New York. Of the few projects whose planning documents mention environmental impacts, none include analysis of GHG emissions — they all either claim that a GHG analysis is unneeded or erroneously conclude that the project will reduce GHG emissions⁴³ without even attempting to analyze emissions. Moreover, none of the projects include an assessment of consistency with Climate Act DAC protections.⁴⁴

In line with its obvious neglect of environmental concerns, NYSDOT has allocated only \$247 million — less than two percent of its annual budget — to fund low- and zero-emission transportation projects. As with its highway projects, NYSDOT has approved this funding without performing the necessary climate and equity screens or complying with the investment mandate to ensure that such funds appropriately benefit DACs.⁴⁵

Furthermore, NYSDOT has failed to issue GHG regulations as explicitly required by Section 8 of the Climate Act; indeed, it lacks *any* internal policies or guidance on the law’s implementation. Even in its Carbon Reduction Strategy — released nearly four years after the law went into effect — NYSDOT fails to articulate concrete steps for how the agency will meet its Climate Act mandates.⁴⁶

PROJECT SPOTLIGHT: ROUTE 17 EXPANSION

NYSDOT and Governor Hochul have proposed a \$1 billion project to widen 30 miles of Route 17 from Harriman to Wurtsboro. Proponents of the project claim that it will reduce congestion, upgrade the highway to federal interstate standards, and bring economic benefits to the region — claims that are dubious at best and flat-out false at worst.⁴⁷ The expansion is expected to induce hundreds of millions of additional vehicle miles traveled annually, leading to a total increase of up to two million tons of GHG emissions by 2050.⁴⁸ Despite these obvious environmental implications, NYSDOT has failed to complete the climate screen mandated by Section 7 of the Climate Act. Instead, the agency has falsely claimed that the expansion will reduce GHG emissions.⁴⁹ NYSDOT’s blatant disregard for the Climate Act will subject New Yorkers to greater air pollution and climate harms and risks throwing New York State off course for meeting its climate targets.

The Route 17 expansion also neglects the equity considerations required by the Climate Act. The project would pass through at least nine DACs,⁵⁰ yet there has been no assurance from NYSDOT that it plans to follow Section 7(3), which clearly bars agency decisions that would disproportionately burden DACs.⁵¹ Moreover, the agency has not considered alternative transportation solutions such as expanding bus and train service in the Route 17 corridor, which could alleviate traffic congestion much more effectively and equitably while following the Climate Act mandate to reduce air pollution burdens in DACs.



The current single-track commuter rail line in the Route 17 corridor could be upgraded to multiple tracks, making transit more frequent and reliable.

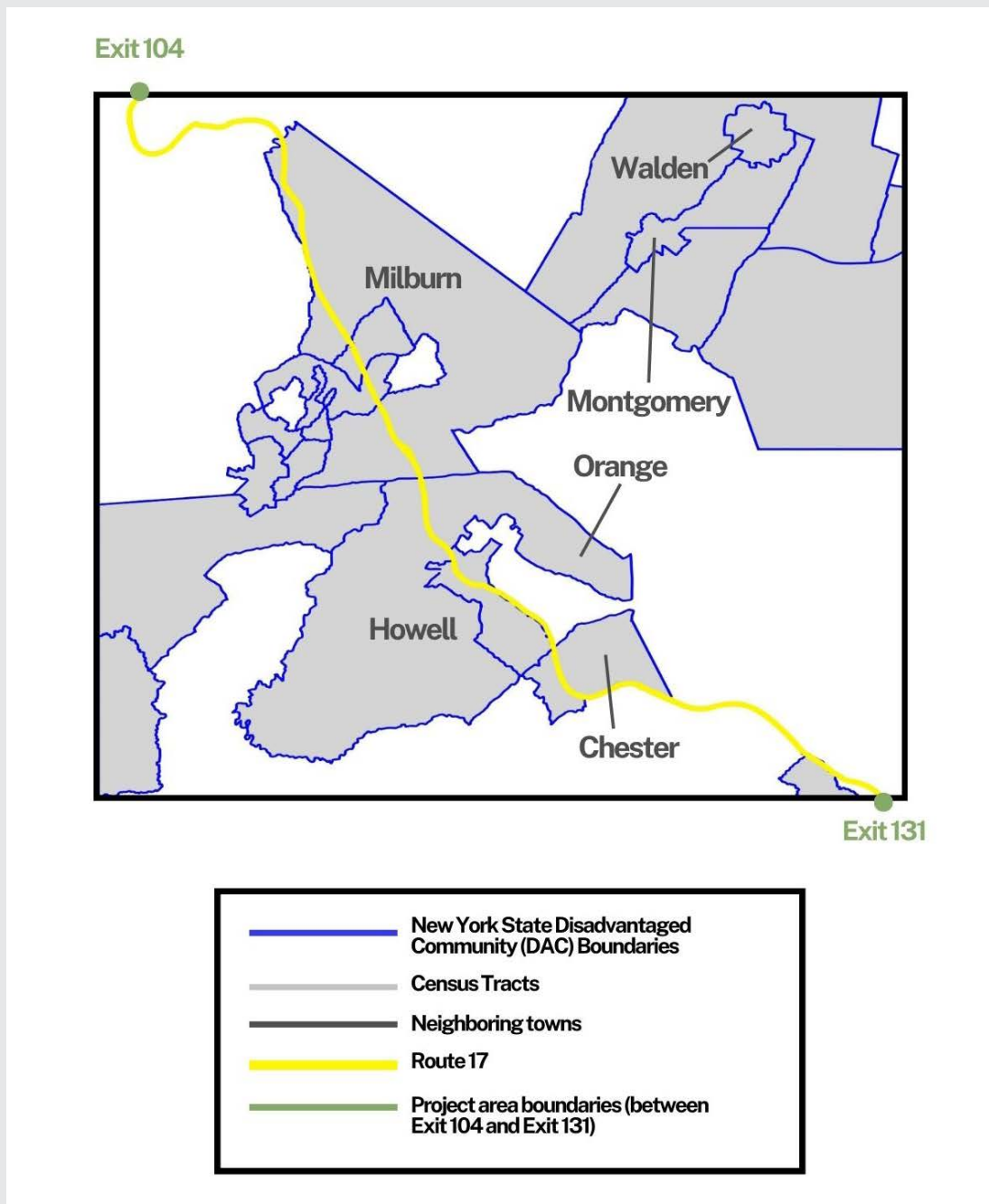
Source: Adam Moss (2015)

INBOUND: Monday – Friday		Effective May 19, 2024					
TO HOBOKEN & PENN STATION, NY		OFF-PEAK					
		56 Q	58 Q	62 Q	64 Q	66 Q	68
Port Jervis	♿	AM 7 39	AM 9 21	AM 11 35	PM 1 35	PM	PM 9 22
Otisville		7 59	9 42	11 56	1 56		9 43
Middletown/Town of Wallkill	♿	8 10	9 53	12 07	2 07	3 20	9 57
Campbell Hall	♿	8 18	10 00	12 14	2 14	3 27	10 04
Salisbury Mills	♿	8 30	10 13	12 27	2 27	3 39	10 16
Harriman	♿	8 45	10 28	12 42	2 42	3 57	10 30
Tuxedo		8 55	10 38	12 52	2 52	4 07	10 40
Sloatsburg		9 00	10 43	12 57	2 58	4 12	10 45
Suffern, NY		9 08	10 50	1 04	3 06	4 20	10 53

Middletown, NY, is served by the Port Jervis rail line, a mostly single-track commuter line that operates at relatively infrequent intervals—in Middletown, up to six and a half hours apart during off-peak times—between Suffern, NY, and Port Jervis, NY. Like other towns along the Route 17 corridor, Middletown would benefit from investments in public transportation infrastructure, rather than a highway expansion that will increase pollution and decrease safety in the region.

Source: Metropolitan Transit Authority (excerpt of original)

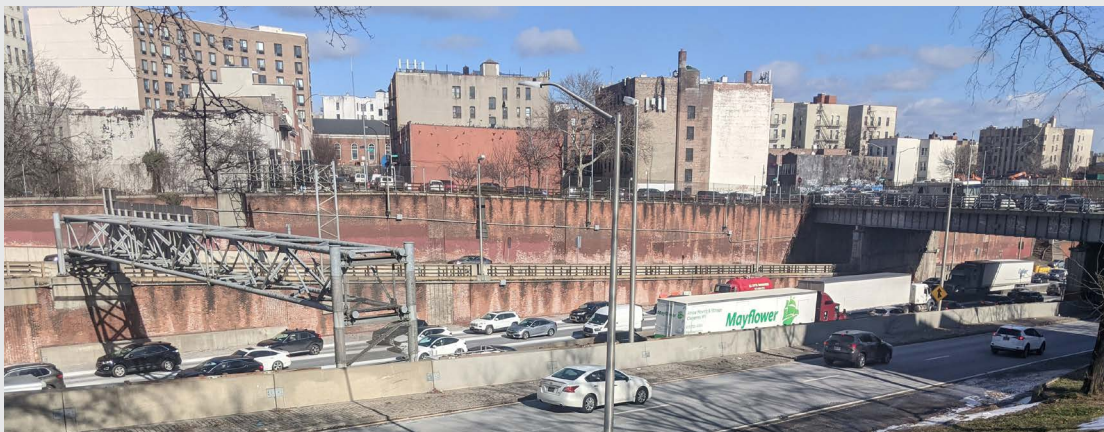
Proposed Route 17 Expansion



Source: See N.Y. State Energy Rsch. and Dev. Auth., [Disadvantaged Communities](#) (last visited Jul. 22, 2024); New York State Dep't of Transp., [Route 17 Project Location](#) (last visited Jul. 22, 2024).

PROJECT SPOTLIGHT: CROSS BRONX EXPRESSWAY

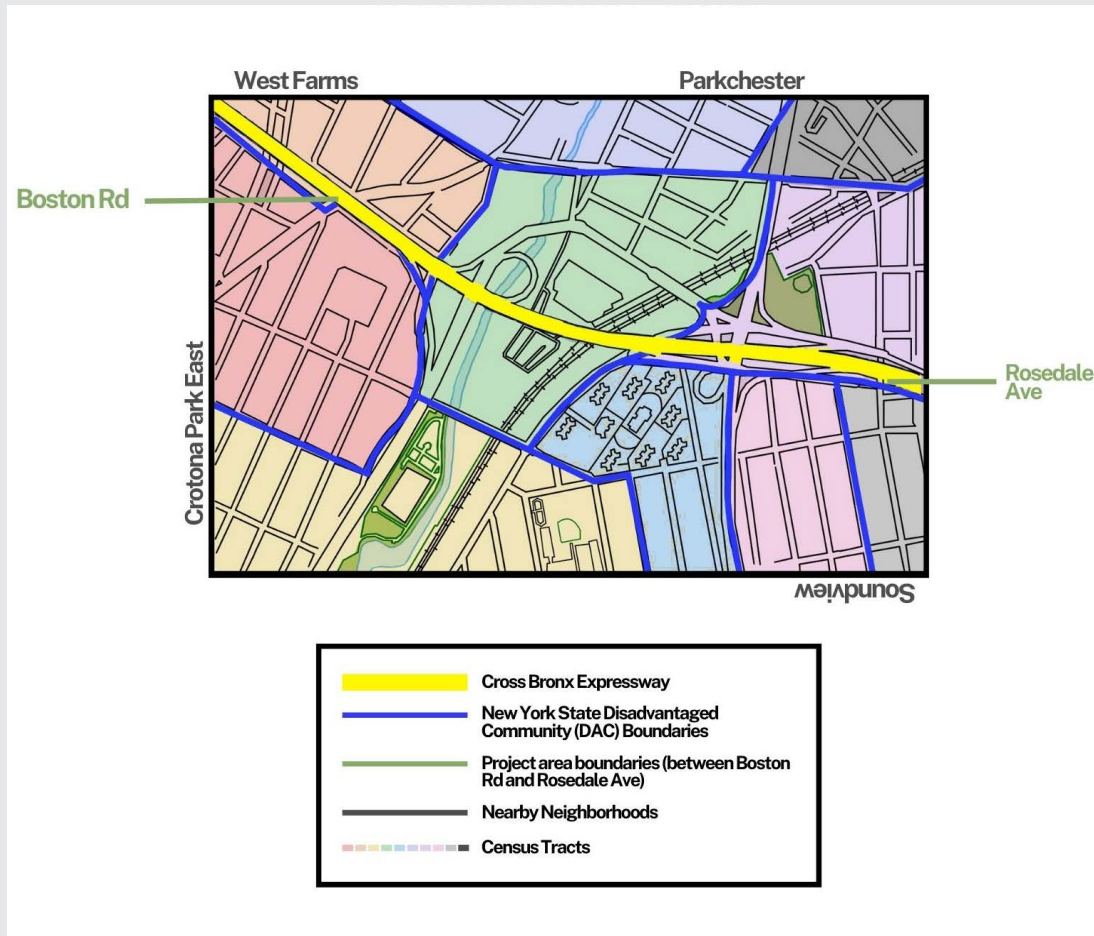
NYSDOT has undertaken a project to expand the Cross Bronx Expressway, framing it as an initiative to revitalize infrastructure in the South Bronx and create a “multimodal community connector roadway.”⁵² The project, which aims to widen a mile of the expressway, has been awarded \$150 million in federal grant money⁵³ and will cost New Yorkers an additional estimated \$740 million in tax dollars.⁵⁴ The expansion will worsen air pollution by increasing vehicle miles traveled⁵⁵ and increase stormwater pollution by generating runoff during the construction process.⁵⁶ Additionally, the surrounding communities — including seven DACs⁵⁷ — will be forced to endure over four years of heavy demolition and construction, further exacerbating environmental and health issues. This is a community that was already harmed back when the Cross Bronx Expressway was first built in the mid-1900s, when over 60,000 residents were displaced to pave the way for the project.⁵⁸



Source: Kevin Garcia (Feb. 2022)

NYSDOT must thoroughly assess the project’s projected GHG emissions and impacts on DACs before proceeding with the expansion. NYSDOT should also engage communities and respond to communities’ vision for the space. In a recent survey, residents’ three most salient concerns were unsafe streets, outdoor air pollution, and challenges for pedestrians⁵⁹ — all three of which will be exacerbated by widening the expressway. The Cross Bronx Expressway project highlights a broader issue with NYSDOT’s policy of prioritizing highway expansions that increase GHG emissions in some of New York’s most disadvantaged communities, rather than investing in sustainable and equitable transportation solutions that are crafted with meaningful community input.

Cross Bronx Expressway Proposed Multimodal Community Connector Zone



The one-mile stretch of the proposed multimodal community connector zone will lead to increased GHG emissions from vehicle traffic and cut through 7 state designated Disadvantaged Communities (DACs).

Source: See N.Y. State Energy Rsch. and Dev. Auth., [Disadvantaged Communities](#) (last visited Jul. 22, 2024); New York State Dep't of Transp., [Design Report: Rehabilitation of Six Bridges on or Spanning the Cross Bronx Expressway from Boston Road to Bronx River Parkway](#), (PIN X727.07) (Jan. 2018) at 4-86. (last visited Jul. 22, 2024).

EMPIRE STATE DEVELOPMENT CORPORATION

Empire State Development (“ESD”) is a public authority charged with promoting economic growth in New York State. Historically, many economic development initiatives have imposed environmental harms on marginalized communities, resulting in these communities being forced to host an outsized share of fossil fuel infrastructure while receiving scant investment in clean energy.⁶⁰ With a budget of \$1.5 billion,⁶¹ which likely represents only a fraction of the resources at its disposal, ESD has substantial power to reverse historical patterns of divestment in DACs and to completely align its policies, programs, and investment decisions with the Climate Act goal of a net zero emission economy by 2050.⁶² The Climate Action Council identified ESD as a key leader in New York’s climate transition, tasking ESD with leveraging economic incentives to businesses to advance decarbonization strategies across the energy, transportation, agriculture, and other sectors.⁶³

However, like NYSDOT, ESD has not issued GHG regulations as explicitly required by Section 8 of the Climate Act, nor has it issued any internal policies to ensure that allocations of funds and credits are consistent with the law. Meanwhile, the authority has also awarded at least \$780 million through programs supporting energy efficiency projects without conducting the required climate and equity screens or complying with the DAC investment mandate.⁶⁴

This figure is almost certainly an underestimate, as much of ESD’s financial leverage is in the form of tax abatements and credits.⁶⁵ Such off-budget spending occurs outside of New York State’s procurement process, is obscure to the public, and is not subject to independent review by the Office of the State Comptroller or other oversight bodies.⁶⁶ These tax abatements and credits are nonetheless subject to the Climate Act and must undergo the required climate and equity screens, as well as satisfy the investment mandate.⁶⁷

On May 13, 2024, ESD announced another \$175 million in available funding for clean energy and other sustainable development projects.⁶⁸ Alarming, this announcement came without any assurance or indication that ESD would conduct the required climate and equity screens or ensure compliance with the investment mandate when selecting grant awardees. ESD must be held accountable to ensure that this substantial investment advances statewide climate goals and prioritizes DACs as required by the Climate Act.

PROJECT SPOTLIGHT: MICRON TECHNOLOGY

ESD has executed an agreement to give \$5.5 billion in state incentives to Micron Technology (“Micron”) over 20 years to build a massive semiconductor chip plant in Central New York.⁶⁹ Slated to span 1,400 acres, it would be the largest semiconductor fabrication facility ever built in the United States.⁷⁰ It would also pose serious health risks to nearby residents; as part of the chip manufacturing process, the facility would burn natural gas⁷¹ and produce a class of toxic, long-lasting chemicals known as per- and polyfluoroalkyl substances.⁷² In addition, the Micron facility is projected to release significant amounts of GHG, jeopardizing New York’s attainment of its climate goals.⁷³

ESD’s preliminary agreement with Micron does include “targets” of reaching net-zero emissions from its operations and purchased energy by 2050, using 100% renewable energy in U.S. operations by the end of 2025, and reducing GHG emissions.⁷⁴ However, the sustainability provisions in the preliminary agreement allow Micron to meet these goals by purchasing renewable energy credits from outside of New York State.⁷⁵ A renewable energy credit is a certificate representing one megawatt-hour of electricity generated from a renewable energy source.⁷⁶ Such allowances are not unique to Micron, but in fact are standard terms in ESD’s grant programs that allow corporations to claim GHG emissions reductions without contributing to the state’s clean energy goals or reducing local emissions.⁷⁷

ESD has not yet disclosed any measures to enforce these targets, nor has the agency published plans to mitigate GHG emissions or local pollution impacts from the construction and operation of the massive new Micron complex. In particular, ESD has failed to develop plans to avoid or mitigate the following:

- Increased GHG emissions and co-pollution that could affect DACs if Micron purchases renewable energy credits from outside New York but expands local fossil fuel combustion;
- Transportation sector emissions from an expected workforce of 10,000 employees; and
- Emissions from manufacturing approximately 4.9 billion metric tons of concrete and 320,000 metric tons of steel,⁷⁸ or an estimated 4.6 billion metric tons of carbon dioxide.⁷⁹



Spanning 1,400 acres, Micron's huge semiconductor chip plant would be the largest in the United States.

Source: Micron Technology

ESD's failure to account for construction-related emissions of the Micron facility contravenes the Climate Action Council's call for embodied carbon reductions to be considered in permitting and construction of commercial projects.⁸⁰

This project exemplifies broader issues with ESD's noncompliance with the Climate Act, highlighting the agency's prioritization of economic growth at the expense of environmental justice and sustainable development.

PROJECT SPOTLIGHT: WESTERN NEW YORK STAMP DEVELOPMENT

In November 2023, ESD directed \$56 million to the struggling WNY Science and Technology Advanced Manufacturing Park (“STAMP”), a proposed industrial megasite adjacent to the Tonawanda Seneca Nation.⁸¹ The funds, from ESD’s Focused Attraction of Shovel-Ready Tracts New York grant program, prop up a project that failed a state-mandated smart growth screen in 2010⁸² and bring total ESD investment in the industrial development to over \$100 million.⁸³

While Section 7(3) of the Climate Act prohibits disproportionate impacts on DACs, and DEC last year determined that “the entire STAMP site is within a... Disadvantaged Community,” the STAMP project has never been subject to a comprehensive climate change review.⁸⁴



In 2023, contractors working on the STAMP facility spilled over 100 gallons of hydraulic fracturing fluids into federally protected wetlands that border the Tonawanda Seneca Nation.⁸⁵

Source: Steve Miller (Sept. 8, 2023), via Investigative Post.

NEW YORK STATE EDUCATION DEPARTMENT

The New York State Education Department (“NYSED”), which has a budget of \$44 billion,⁸⁶ oversees the state’s public education system — the largest in the United States. The education sector has major implications for the environment, as public schools occupy large swaths of land, produce substantial waste, and are some of the biggest consumers of energy in the country. Between buildings and bus fleets, U.S. public schools emit as much GHG as 18 coal-fired power plants or 15 million cars on the road.⁸⁷ The siting of public schools can also exacerbate environmental and public health injustices. In New York State, many public schools are located dangerously close to sources of air pollution, with over 1,800 schools — including over 50% of special education schools — located within half a mile of more than 50 pollution sources (such as Brownfield sites, Superfund sites, Resource Conservation & Recovery Act facilities, and Toxic Release Inventory facilities).⁸⁸

NYSED was named by the Climate Action Council as a key agency responsible for implementing decarbonization efforts in the education sector, including transitioning to zero-emission fleets, developing climate science curricula, and making emissions reduction upgrades to school buildings.⁸⁹ However, despite playing a pivotal role in New York State’s climate agenda, NYSED has entirely failed to comply with the Climate Act. Since January 1, 2020, NYSED has approved at least 25,971 new construction, reconstruction, and addition and alteration projects at public schools without performing the required climate and equity screens. It is unacceptable that so many projects are moving forward without a proper assessment of their climate impacts or a comprehensive plan for ensuring such buildings are constructed or retrofitted to have net-zero emissions, especially in light of the fact that buildings are the largest source of GHG emissions in the state.⁹⁰ These construction projects have also been approved without proper accounting of their embodied carbon, at odds with the Climate Action Council’s recommendation that embodied carbon budgets be applied to all new construction and alteration projects.⁹¹ NYSED also has not issued any guidance or internal policies regarding Climate Act implementation, nor has it promulgated GHG regulations as required by Section 8. NYSED’s most recent Manual of Planning Standards, which contains environmental health and safety guidelines for schools and was issued three years after the Climate Act was passed, makes no mention of the Climate Act.⁹²

PROJECT SPOTLIGHT: GREEN, HEALTHY SCHOOLS

In October 2022, New York City launched the Leading the Charge Initiative — a \$4 billion plan to electrify 100 existing schools by 2030 and to ensure newly constructed schools are fully electric.⁹³ This plan also aims to transition schools away from dependence on fossil fuels, specifically the highly polluting No. 4 heating oil.⁹⁴ If implemented, this program would achieve a 120,000 ton reduction in GHG emissions annually and removal of 20,000 pounds of particulate matter from the air, resulting in improved air quality and, by extension, reduced respiratory illnesses and hospitalizations.⁹⁵



Source: ALIGN

Unfortunately, this program has been delayed; funding has only been allocated to electrify 33 schools of the promised 100,⁹⁶ and only nine schools have been selected for retrofits. Furthermore, in a city with 1,400 school buildings — many with severely aged infrastructure⁹⁷ — electrifying 100 schools is not nearly enough.⁹⁸ NYC can and should set its ambitions higher to fulfill the promise of the Climate Act; if the city made its school district net-zero by 2030, it could reduce emissions by the equivalent of over 713,000 metric tons of carbon dioxide.⁹⁹

Section 7(3) mandates that DACs be prioritized in the selection of schools for electrification retrofits, yet there is an overall lack of transparency as to how schools are being chosen for retrofits¹⁰⁰ and how funding will be made available for undertaking these much-needed projects. NYSED must support initiatives like Leading the Charge in school districts across the state to ensure that they are implemented in accordance with Climate Act mandates.

NEW YORK STATE DEPARTMENT OF HEALTH

The New York State Department of Health (“NYSDOH”) oversees public health and healthcare facilities across the state and has the largest budget of all state agencies.¹⁰¹ The healthcare sector is a significant contributor to climate change, making up 8.5% of national GHG emissions.¹⁰² Hospitals, which are extremely energy intensive, are responsible for one-third of these emissions.¹⁰³ They also generate substantial car traffic because they are poorly served by accessible, lower-emission transit options, even in places like New York City with relatively robust public transportation networks.¹⁰⁴ Investing in renewable energy, efficiency, and transit improvements for hospitals — especially for under-resourced safety net institutions located in DACs — would greatly benefit surrounding communities. Recognizing this, the Climate Action Council named NYSDOH as a critical agency in addressing issues at the intersection of health and environmental justice, particularly as they relate to heat emergencies and community resilience to climate change.¹⁰⁵

Despite its public health expertise, NYSDOH has not announced *any* steps to comply with the Climate Act. Since January 1, 2020, the agency has approved at least 223 construction projects, which collectively cost about \$5 billion, without conducting required climate and equity screens.¹⁰⁶ Given that buildings are the number-one source of GHG emissions in New York State,¹⁰⁷ it is critical that NYSDOH ensure that new and renovated healthcare facilities are free from fossil fuels — or, where that is not feasible, require detailed plans for mitigation of electricity consumption and vehicular traffic associated with such facilities. Additionally, NYSDOH has not issued GHG regulations as required by Section 8 of the Climate Act, nor has it issued internal guidance or policies regarding Climate Act implementation.¹⁰⁸

PROJECT SPOTLIGHT: HOSPITAL CONSTRUCTION AND CLOSURES IN NEW YORK CITY

There are five major healthcare facilities being constructed (and three more recently proposed) on the Upper East Side in Manhattan.¹⁰⁹ For example, an expansion to the Hospital for Special Surgery will be 30 stories tall, span 400,000 square feet, and cost \$225 million¹¹⁰ — all without increasing the number of patient beds.¹¹¹ The hospital will consume an estimated 10.8 million

kilowatt hours per year¹¹² and produce an estimated 16 million pounds of carbon dioxide per year.¹¹³ Despite this, NYSDOH issued a Certificate of Need (“CON”) — allowing this project to proceed with construction — without conducting the required climate screen to ensure consistency with Climate Act emissions reductions targets.¹¹⁴

New York’s lack of climate mitigation and adaptation planning in the healthcare sector may exacerbate an historic lack of planning for investments to match local community health needs. For example, while the predominately white and affluent Upper East Side prepares to host a slew of new medical facilities, lower-income communities of color continue to experience a decades-long trend of hospital closures. Over the past 25 years, 18 hospitals have closed across New York City, leading to a loss of thousands of hospital beds — most in the outer boroughs — and exacerbating capacity issues and healthcare inequities during the COVID-19 pandemic.¹¹⁵ In 2020, central Brooklyn had just 2,600 hospital beds for its over 536,000 residents; the Upper East Side had 4,200 beds to serve a population less than half that size.¹¹⁶



Construction on the Victoria and Lloyd Goldman Health Care Pavilion at 1345 Third Avenue broke ground in October 2022. The 200,000-square-foot, 215-foot-tall facility is just one of five major healthcare facilities currently being constructed on the Upper East Side.¹¹⁷

Source: Mackenzie Hymes, Jul. 2024



Source: Ken Schles, NY Renew

RECOMMENDATIONS

These findings reveal a troubling lack of compliance with the Climate Act across key New York State agencies with a cumulative \$279 billion in annual spending, highlighting a need for accountability, coordination, and transparency across our state government. More than five years since the passage of the Climate Act, we make the following recommendations for immediate action:

1. ***The Office of the Governor should coordinate and oversee Climate Act implementation across agencies.*** Most state agencies, including three of the four major agencies highlighted above, report directly to the Office of the Governor, and it should be the executive's responsibility to ensure that all agencies have the necessary funding, staff, and authority to align their actions and spending with Climate Act mandates. The Office of the Governor should also immediately provide resources to agencies, such as model regulations or guidance, to facilitate meeting Climate Act requirements. The Governor must then use her oversight authority and leverage the powers of the Division of the Budget and the Authorities Budget Office to ensure that agencies use those resources to fully implement the Climate Act. The Office of the Governor has taken a leadership role in other statewide environmental and climate initiatives,¹¹⁸ and it must do so again now to signal to agencies that the Climate Act is a priority and must be fully implemented.

2. ***The Office of the Governor must comply with its existing obligations under Environmental Conservation Law Section 48-0105(1)–(2).*** The law, which was signed by Governor Cuomo in 2019 and still has not been acted upon, established a permanent Environmental Justice Advisory Group and Environmental Justice Interagency Coordinating Council. These bodies would provide much-needed centralized policy and guidance for agencies tasked with implementing environmental and climate justice policies like the Climate Act. The Office of the Governor must follow through on this commitment and provide the necessary funding and channels for interagency coordination that communities have been calling for since the Climate Act was passed half a decade ago.
3. ***The Office of the Comptroller should supplement this work. It must commit to comprehensive tracking of agencies’ climate expenditures to hold agencies accountable to directing 40% of clean energy investments to DACs.*** The Comptroller should conduct regular audits of agencies’ spending to provide transparency about where agencies are focusing their resources. If agencies are not directing ample resources to implementing the Climate Act, or even funding initiatives that actively undermine the law, the public needs to know so that it can hold State officials accountable and make specific demands for compliance, such as reallocation of agency funds to local renewable energy projects.
4. ***Individual agencies must act immediately to implement the Climate Act.*** At a minimum, agencies should promulgate the GHG regulations explicitly required by Section 8 of the law and issue internal policy or guidance to ensure that agency staff conduct the required climate and equity screens and satisfy the investment mandate when making administrative decisions.¹¹⁹

The agencies highlighted in this report — which have some of the largest budgets and staff in the state — must be mandated, empowered, and fully staffed to implement Climate Act requirements and, especially in light of their projects’ historic and current impact on DACs, should be leaders in the transition to a renewable economy.

Specific recommendations for these agencies include the following:

1. *Each agency should establish an office dedicated to Climate Act implementation, or at a minimum hire or designate existing staff to oversee Climate Act implementation within the agency.* Such position(s) should have authority to impact all relevant decision-making within the agency to create the comprehensive institutional, legal, and cultural shifts required to meet Climate Act mandates. Internal agency staff could liaise with designated DEC staffers, who have more expertise in Climate Act implementation, to ensure thorough and consistent implementation of the law's mandates.
2. *NYSDOT should collaborate with the Thruway Authority and other transit agencies to develop a coordinated plan for meeting Climate Act goals in the transportation sector.* NYSDOT must integrate the required climate and equity screens into its process for approving highway construction projects and develop internal policies to guide NYSDOT staff in conducting such screens.
3. *ESD should develop policies to integrate climate and equity screens into new funding streams for 2024 that were recently announced.* It should take care to train staff to properly consider GHG and DAC impacts when evaluating proposals and selecting grant awardees. ESD should also revamp its online spending tracker to track which investments go to DACs, ensure that 40% of clean energy investments go to DACs as required by Section 7(3) of the Climate Act, and provide accurate data to the public. ESD should also ensure that contractual agreements with private entities include emissions reductions targets and renewable energy goals that are in line with Climate Act mandates and enforceable by ESD and the state.
4. *NYSDOH should modify its Certificate of Need process to require applicants to develop plans for decarbonization and sustainability in healthcare facilities in line with Climate Act requirements before receiving approval.* Together with NYSDOT, transit authorities, and local DOTs, NYSDOH should also develop and enact comprehensive plans to improve transit access to healthcare facilities for workers and patients.

5. *NYSED should incorporate climate and equity screens into policies governing school construction applications and approval to ensure GHG emissions, climate impacts, and statewide climate mandates are central in the development of school construction plans and selection of schools for retrofits.* As part of these changes, NYSED should, in consultation with local environmental justice groups, develop and make accessible on its website guidelines for how the agency assesses the climate impacts of its school construction projects (including embodied carbon) and prioritizes schools for electrification retrofits. Because NYSED is overseen by the New York State Board of Regents instead of the Office of the Governor, it is even more critical that NYSED be transparent about its compliance with the Climate Act so that communities—especially DACs whose schools may be passed over for important retrofits—can hold agency officials accountable.

ABOUT NYLPI

New York Lawyers for the Public Interest's mission is to advance equality and civil rights, with a focus on environmental justice, health justice, and disability rights, through the power of community lawyering and partnerships with the private bar.

For over two decades, NYLPI's Environmental Justice Program has worked to eliminate the disproportionate and unfair burden of environmental hazards distributed to disadvantaged and other environmental justice communities, and to create a more equitable, sustainable, and climate resilient New York. In partnership with local grassroots organizations and community groups accountable to frontline communities, lawmakers, City and State agencies, and other clients, our interdisciplinary team of attorneys, policy experts/advocates, and organizers develops and implements robust campaigns, launches strategic litigation, increases public awareness and education, and shapes and informs policy. NYLPI's work supports local leadership and strengthens communities' ability to assert their right to a healthy and sustainable environment.

For more information visit nylpi.org.

ABOUT NY RENEWS

NY Renews is a coalition of more than 380 environmental justice, community, faith, labor, and multi-issue organizations fighting for just climate policy for New Yorkers. We are the force behind the nation's most progressive climate law, the Climate Leadership and Community Protection Act. We fight for good jobs and climate justice for New Yorkers statewide. Learn more at nyrenews.org.

ACKNOWLEDGMENTS

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ENDNOTES

¹ NYSERDA, which has developed draft guidance regarding this mandate, has proposed using direct investments in DACs as the primary metric for measuring compliance with New York State Environmental Conservation Law Section 75-0117. “Benefits” or “co-benefits” to DACs, which are more subjective and lack clear guidance on valuating, are proposed by NYSERDA as a supplementary metric. See N.Y. State Energy Rsch. and Dev. Auth., Draft Climate Act Disadvantaged Communities Investment and Benefits Reporting Guidance (Jan. 3, 2024).

² Climate Leadership and Community Protection Act (“Climate Act”) § 7(2)–(3) (emphasis added). Note that the investment mandate applies to all “[s]tate agencies, authorities and entities.” N.Y. State Env’t Conservation L. § 75-0117.

³ N.Y. State Climate Action Council, Scoping Plan (Jan. 1, 2023) at 28.

⁴ This report uses “agencies” as shorthand to refer to agencies, offices, authorities, and divisions of the state.

⁵ As of this writing, the authors have submitted requests for records under the Freedom of Information Law (“FOIL”) to NYSDOT, ESD, NYSDOH, and NYSED. Records requested include all relevant records pertaining to the agencies’ implementation of and compliance with the Climate Act.

⁶ Intergovernmental Panel on Climate Change, Climate Change 2023: Synthesis Report (Mar. 2023) at 33.

⁷ N.Y. Rsch. Energy and Dev. Auth., Draft Clean Energy Standard Biannual Review (Case 15-E-0302) (Jul. 1, 2024).

⁸ The Office of the Governor and PSC Commissioner Rory Christian have indicated their interest in shifting back the 2030 target to 2033 or later. See Ry Rivard and Marie French, ‘Too soon to wave the flag’, Politico (Jul. 8, 2024).

⁹ N.Y. State Env’t Conservation L. § 75-0107.

¹⁰ Climate Act § 12(d).

¹¹ *Id.* § 4.

¹² Poor people and people of color worldwide are the hardest hit by climate change while often contributing the least to it. See, e.g., United Nations Development Programme, *Climate change is a matter of justice – here’s why* (Jun. 30, 2023). For an overview of climate and environmental justice in the United States, see Renée Cho, *Why Climate Change is an Environmental Justice Issue*, State of the Planet, Columbia Climate School (Sept. 22, 2020).

¹³ N.Y. State Dep’t of Env’t Conservation and N.Y. Rsch. Energy and Dev. Auth., New York State’s Disadvantaged Communities Criteria (Sep. 2023).

¹⁴ N.Y.C. Mayor’s Office of Climate and Env’t Justice, EJNYC: A Study of Environmental Justice Issues in New York City (2024) at 192.

¹⁵ Climate Act § 7(1) (emphasis added).

¹⁶ *Id.* § 8 (“The public service commission, the New York state energy research and development authority, the department of health, the department of transportation, the department of state, the department of economic development, the department of agriculture and markets, the department of financial services, the office of general services, the division of housing and community renewal, the public utility authorities established pursuant to titles 1, 1-A, 1-B, 11, 11-A, 11-B, 11-C and 11-D of article 5 of the public authorities law *and any other state agency shall promulgate regulations* to contribute to achieving the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law”) (emphasis added).

¹⁷ *Id.* § 7(2)–(3).

¹⁸ N.Y. State Env’t Conservation L. § 75-0117.

¹⁹ Climate Act § 8 (requiring named agencies — including NYSDOT, NYSDOH, and NYSEDA — and “any other state agency” to promulgate regulations regarding GHG emissions).

²⁰ See N.Y. State Env’t Conservation L. § 75-0109 (“[DEC]...shall, after no less than two public hearings, promulgate rules and regulations to ensure compliance with the statewide emissions reduction limits and work with other state agencies and authorities to promulgate regulations required by section eight of the chapter of the laws of two thousand nineteen that added this article”).

²¹ See Climate Act § 14. The climate and equity screens apply to “all state agencies, offices, authorities, and divisions.” *Id.* § 7(2)–(3). The investment screen applies to all “[s]tate agencies, authorities and entities.” N.Y. State Env’t Conservation L. § 75-0117.

²² See Climate Act § 7(2)–(3).

²³ *Id.* § 7(2).

²⁴ *Id.* § 7(3).

²⁵ N.Y. State Env’t Conservation L. § 75-0117.

²⁶ N.Y. State Div. of the Budget, Agency Appropriations (last updated Jan. 16, 2024).

²⁷ FOIL requests to each of the featured agencies in this report have been submitted and remain pending.

²⁸ *Agencies*, NY.gov (last visited May 21, 2024).

²⁹ Actions that were initiated prior to January 1, 2020, but which involved issuance of an agency permit or other agency consideration after such date, were included.

³⁰ N.Y. State Energy Rsch. and Dev. Auth., Draft Climate Act Disadvantaged Communities Investment and Benefits Reporting Guidance (Jan. 3, 2024).

³¹ The authors conservatively chose to characterize agency decisions as “significant” if they involve substantial consideration by agency officials. Section 7 of the Climate Act, which describes the climate and equity screens, applies to all “permits, licenses, and other administrative approvals and decisions” that are “consider[ed]” by a state agency. Climate Act § 7(2)–(3). For more details, see Methodology, *supra*.

³² This data captures only a fraction of total agency activity over the past four years; there are likely many more actions and investments lacking proper screenings that are not included here due to lack of transparency and availability of agency records.

³³ Climate Act § 8; for a list of the named agencies, see note 16, *supra*.

³⁴ The single agency is NYSERDA. See, e.g., 21 N.Y.C.R.R. 507 (implementing the CO2 Budget Trading Program).

³⁵ These are DEC, NYSERDA, and the New York State Department of Public Service (“DPS”).

³⁶ Dep’t of Civ. Serv., New York State Workforce Management Report (2023).

³⁷ This represents the agency’s budget for the 2024 fiscal year. N.Y. State Div. of the Budget, Agency Appropriations (last updated Jan. 16, 2024).

³⁸ N.Y. State Dep’t of Env’t Conservation, 2023 Statewide GHG Emissions Report (2023) at v.

³⁹ See, e.g., David Karas, *Highway to Inequity: The Disparate Impact of the Interstate Highway System on Poor and Minority Communities in American Cities*, 7 New Visions for Pub. Affairs 9 (Apr. 2015); Christof Spieler, *Racism has shaped public transit, and it’s riddled with inequities*, Kinder Inst. for Urban Rsch. (Aug. 24, 2020); Julianna Cuba, *Report: Racial and Economic Inequities in Transit Affect Accessibility to Jobs, Healthcare*, Streetsblog (Jun. 18, 2021).

⁴⁰ U.S. Dep’t of Transp., New York Transportation by the Numbers (Jan. 2020) at 2.

⁴¹ N.Y. State Climate Action Council, Scoping Plan (Jan. 1, 2023) at 153–69.

⁴² These projects can be found by accessing NYSDOT’s project database and searching for “widen” and/or “safety enhancement” in the project description field. Projects involving NYSDOT approval or other action since January 1, 2020, have the following identification numbers: OT2173, OT2174, OT2175, OT2176, OT2514, OT2630, OT2631, OT2632, OT2633, 004243, 005423, 051654, 076078, 081001, 081002, 081009, 081057, 081060, 111660, 202967, 401828, 439096, 511177, 518110, 530837, 530844, 535001, 901338, X02172, X03416, X11026, X22869, X72707, X73127, X73179, X73184, X73582, X73583, X73584, X80738. New York State Dep’t of Transp., Projects in Your Neighborhood (last accessed May 23, 2024).

⁴³ Research shows that widening highways increases GHG emissions without improving congestion due to a phenomenon known as induced travel. See, e.g., Susan Handy, *Increasing Highway Capacity Unlikely to Relieve Traffic Congestion*, Nat’l Ctr. for Sustainable Transp. (Oct. 2015) at 1.

⁴⁴ While most lack any mention at all of DACs, one project claims that it will have no environmental justice impacts without providing supporting explanation or documentation. See New York State Dep’t of Transp., [Draft] Project Scoping Report/Final Design Report: Highway Reconstruction and Bridge Replacement US Route 20 from Leydecker Road to NY Route 16 (PIN 5111.77) (Jun. 2022) at 1–6.

⁴⁵ This includes \$103 million through the Transportation Alternatives Program, \$62 million through the Public Transportation Modernization and Enhancement Program, \$51 million through the Congestion Mitigation and Air Quality Improvement Program, \$20 million through the Accelerated Transit Capital Program, and \$11 million through the Carbon Reduction Program. For information on these programs see N.Y. State Dep’t of Transp., *2023 TAP-CMAQ* (last visited May 23, 2024) and N.Y. State Dep’t of Transp., *Public Transportation Funding Sources* (last visited May 23, 2024).

⁴⁶ The document pays lip service to the Climate Act while explicitly noting that it “does not set policy or provide specific program implementation details.” N.Y. State Dep’t of Transp., *New York State Carbon Reduction Strategy* (Nov. 2023) at 1.

⁴⁷ See Rachel Weinberger et al., *Evaluating the Route 17 Highway Widening Project*, RPA (Jan. 18, 2024).

⁴⁸ Mark Izeman and Isabel Freidman, *Proposed Highway Expansion Will Undercut New York Landmark Climate Law*, Nat. Res. Def. Council (Feb. 17, 2023).

⁴⁹ N.Y. State Dep’t of Transp., *Route 17 Transportation Planning and Environment Linkage (PEL) Study* (Oct. 2021) at 44. Research shows that widening highways increases GHG emissions without improving congestion due to a phenomenon known as induced travel. See, e.g., Susan Handy, *Increasing Highway Capacity Unlikely to Relieve Traffic Congestion*, Nat’l Ctr. for Sustainable Transp. (Oct. 2015) at 1.

⁵⁰ Affected DACs include census tracts 36071014102, 36071014301, 36071012100, 36071011900, 36071011000, 36071011200, 36071011300, 36071011101, and 36105951800. See N.Y. State Energy Rsch. and Dev. Auth., *Disadvantaged Communities* (last visited Jul. 22, 2024).

⁵¹ While NYSDOT has acknowledged that these communities have been identified, it only commits to reviewing impacts under the federal National Environmental Policy Act, which does not meet the specific equity screen requirements of the Climate Act. N.Y. State Dep’t of Transp., *Route 17 Transportation Planning and Environment Linkage (PEL) Study* (Oct. 2021) at 40 (“The potential for any project to result in disproportionately high and adverse effects on minority and low income (environmental justice) populations will be assessed as part of future NEPA documentation consistent with the FHWA’s ‘Guidance on Environmental Justice and NEPA’ and USDOT Order 5610.2C”).

⁵² Office of the Governor of the State of N.Y., *Governor Hochul Announces Unprecedented Investment to Revitalize Infrastructure in the Bronx* (Jan. 25, 2024).

⁵³ *Id.*

⁵⁴ See N.Y. State Dep’t of Transp., *Rehab 5 CBE Bridges from Boston Rd to BRP, Bronx County, NYC, Project ID No. X72707* (last visited Jul. 15, 2024) (estimating the project’s total cost, comprising a mix of state and federal funding, at \$890 million).

⁵⁵ Research shows that widening highways increases vehicle miles traveled and GHG emissions due to a phenomenon known as induced travel. See, e.g., Susan Handy, *Increasing Highway Capacity Unlikely to Relieve Traffic Congestion*, Nat'l Ctr. for Sustainable Transp. (Oct. 2015) at 1. Despite this, the project's Design Report dismisses the need for a climate analysis, claiming that "[a] greenhouse gas analysis is not required...since no change in traffic volumes or vehicle mix would occur." N.Y. State Dep't of Transp., Design Report: Rehabilitation of Six Bridges on or Spanning the Cross Bronx Expressway from Boston Road to Bronx River Parkway, (PIN X727.07) (Jan. 2018) at 4-86.

⁵⁶ See New York State Dep't of Transp., Design Report: Rehabilitation of Six Bridges on or Spanning the Cross Bronx Expressway from Boston Road to Bronx River Parkway, (PIN X727.07) (Jan. 2018) at 4-27–4-29.

⁵⁷ Affected DACs include census tracts 36005006000, 36005035900, 36005016100, 36005006200, 36005006400, 36005021800, and 36005007600. See N.Y. State Energy Rsch. and Dev. Auth., Disadvantaged Communities (last visited Jul. 22, 2024).

⁵⁸ Segregation by Design, *The Bronx: The Cross Bronx Expressway* (last visited Jul. 15, 2024).

⁵⁹ N.Y. State Dep't of Transp. et al., Reimagine the Cross Bronx Engagement Summary Report (Jun. 2024) at 27.

⁶⁰ See, e.g., Timothy Q. Donaghy et al., *Fossil fuel racism in the United States: How phasing out coal, oil, and gas can protect communities*, Energy Rsch. & Soc. Sci. (Jun. 2023) at 1; Jamal Lewis et al., *Energy Efficiency as Energy Justice: Addressing Racial Inequities through Investments in People and Places*, 13 Energy Efficiency 419 (Mar. 2019).

⁶¹ This represents the agency's budget for the 2024 fiscal year. N.Y. State Div. of the Budget, Agency Appropriations (last updated Jan. 16, 2024).

⁶² Climate Act § 4.

⁶³ N.Y. State Climate Action Council, Scoping Plan (Jan. 1, 2023).

⁶⁴ This includes at least \$251 million awarded through the Regional Economic Development Council Initiative, which supports green buildings and sustainable development, and at least \$529 million awarded through the Excelsior Jobs Program, which supports green projects aimed at reducing greenhouse gas emissions and promoting clean energy use. Data on expenditures through these programs was sourced from ESD's database of loans, grants, and tax credit projects, filtered to show awards through each program since January 1, 2020. The database shows data through the fourth quarter of New York State Fiscal Year 2023–24. Empire State Dev., *Database of Economic Incentives* (last visited May 21, 2024).

⁶⁵ Reinvent Albany, Open ESD: Increasing the Transparency and Accountability of Empire State Development (Jul. 2023) at 1, 20, 22.

⁶⁶ *Id.* at 23.

⁶⁷ The Climate Act broadly mandates agencies to direct “available and relevant programmatic resources” such that DACs receive 40% of the benefits of such spending. N.Y. State Env’t Conservation L. § 75-0117. Tax credits are “resources” and therefore subject to the investment mandate under the plain meaning of the law. This interpretation is supported by guidance from NYSEDA and DPS. NYSEDA’s draft guidance confirms that “[a]pplicable investments include incentives, grants, loans, and financing providing by agencies,” of which tax credits can appropriately be categorized as “incentives” or “financing.” N.Y. State Energy Rsch. and Dev. Auth., Draft Climate Act Disadvantaged Communities Investment and Benefits Reporting Guidance (Jan. 3, 2024) at 3. DPS and NYSEDA agree in their guidance that bill credits and other subsidies are subject to the mandate; tax credits, which function nearly identically to reduce the amount owed by a payer, should logically also be covered. *Id.* at 6; Dep’t of Pub. Serv., CLCPA-Disadvantaged Communities Investment and Benefits Reporting Guidance (Sept. 27, 2023) at 9.

⁶⁸ This includes \$100 million through Empire State Development Grant Funds and \$75 million through the Excelsior Jobs Program. Empire State Dev. Regional Econ. Dev. Councils, Available CFA Resources 2024 (May 13, 2024).

⁶⁹ Micron Technology, Key Terms and Conditions for Development of the Micron Green Manufacturing Memory Chip Fab in Clay, New York (Sept. 22, 2022).

⁷⁰ Empire State Dev., Micron Will Invest \$100 Billion to Establish Leading-Edge Memory Fab in Central NY (last visited Jul. 10, 2024).

⁷¹ See Micron Technology, Key Terms and Conditions for Development of the Micron Green Manufacturing Memory Chip Fab in Clay, New York (Sept. 22, 2022) at 28 (“The natural gas service plan involves installation of approximately 2.5 miles of 124 psig, 12” distribution main with 30 psig delivery pressure, and installation of a new transmission regulator station with heaters”); Micron Semiconductor Fabrication: Final SEQRA Scope of Work (Dec. 14, 2023) at 12 (off-site improvements include “[e]xtension of a 16-inch diameter natural gas line from National Grid’s Gas Regulator Station (GRS) 147 at 4459 NYS Route 31 to the Micron Campus (approximately 3.15 miles) and construction of GRS 147A at the same address as the existing GRS”).

⁷² See Glenn Coin, *Micron would bring a new era of manufacturing to Central NY – and fears of new pollution*, Syracuse.com (Apr. 23, 2024).

⁷³ See Glenn Coin, *Micron’s concrete dilemma: Building the vast complex in Clay conflicts with green promises*, Syracuse.com (Jun. 13, 2024).

⁷⁴ Micron Technology, Fact Sheet: Micron Makes Historic Megafab Investment in Central New York (last updated Jun. 6, 2023).

⁷⁵ Micron Technology, Key Terms and Conditions for Development of the Micron Green Manufacturing Memory Chip Fab in Clay, New York (Sept. 22, 2022) at 7.

⁷⁶ See U.S. Env’t Protection Agency, Renewable Energy Certificates (RECs) (last updated Jan. 15, 2024).

⁷⁷ See Empire State Dev., Green CHIPS Sustainability Plan Template at 2.

⁷⁸ See Glenn Coin, *Micron's concrete dilemma: Building the vast complex in Clay conflicts with green promises*, Syracuse.com (Jun. 13, 2024) (stating that the Micron facility will require approximately 2.7 million cubic yards of concrete). This number was converted into metric tons using the average density of concrete: 2.4 g/cm³.

⁷⁹ See Princeton Student Climate Initiative, *Cement and Concrete: The Environmental Impact* (Nov. 3, 2020) (0.93 pounds of carbon dioxide released per pound of concrete produced); Alex Kamczyc, *World Steel Association releases paper on CO2 emission reduction*, Recycling Today (May 17, 2021) (1.85 metric tons of carbon dioxide released per metric ton of steel produced).

⁸⁰ N.Y. State Climate Action Council, Scoping Plan (Jan. 1, 2023) at 215.

⁸¹ J. Dale Shoemaker, *More state money for embattled industrial park*, Investigative Post (Nov. 3, 2023).

⁸² Mark Scheer, *Spiraling costs at remote industrial park*, Investigative Post (Apr. 26, 2021).

⁸³ J. Dale Shoemaker, *More state money for embattled industrial park*, Investigative Post (Nov. 3, 2023).

⁸⁴ Letter from New York State Dep't of Env't Conservation to Genesee County Economic Development Center (Feb. 27, 2023).

⁸⁵ J. Dale Shoemaker, *STAMP pipeline drilling goes awry*, Investigative Post (Sept. 28, 2023).

⁸⁶ This represents the agency's budget for the 2024 fiscal year. N.Y. State Division of the Budget, Agency Appropriations (last updated Jan. 16, 2024).

⁸⁷ Andrew Bauld, *Why Schools Need to Look at Their Own Carbon Footprint*, Harvard Graduate School of Education (Nov. 1, 2021).

⁸⁸ M. Morgan et al., *The Proximity of Children's Public Schools to Nearby Pollution Sources in the United States*, Int'l Society of Exposure Sci., Chicago, IL (Aug. 27–31, 2023).

⁸⁹ N.Y. State Climate Action Council, Scoping Plan (Jan. 1, 2023) at 153, 202, 427.

⁹⁰ N.Y. State Dep't of Env't Conservation, 2023 Statewide GHG Emissions Report (2023) at vi.

⁹¹ N.Y. State Climate Action Council, Scoping Plan (Jan. 1, 2023) at 215.

⁹² N.Y. State Ed. Dep't, Manual of Planning Standards for School Buildings 2022 (last revised Mar. 31, 2023).

⁹³ Office of the Mayor of N.Y., Mayor Adams Announces \$4 Billion Plan to Make New Schools All-Electric, Electrify 100 Existing Schools (Oct. 28, 2022).

⁹⁴ *Id.*

⁹⁵ N.Y.C. Get Stuff Done, Leading the Charge (last visited Jul. 8, 2024).

⁹⁶ ALIGN, Align on NYC Budget: NYC Leadership Falls Short for Climate Investments in Schools (Jun. 28, 2024).

⁹⁷ ALIGN, Green, Healthy Schools: A Blueprint for Mayor Adams (May 2022) at 2.

⁹⁸ School Construction Auth., History (last visited Jul. 9, 2024).

⁹⁹ ALIGN, Green, Healthy Schools: A Blueprint for Mayor Adams (May 2022) at 2.

¹⁰⁰ The Office of the Mayor’s press release announcing the initiative states that “[s]chools located in environmental justice communities will be prioritized for these retrofits,” but there is no transparency as to whether DACs in particular will be prioritized, as required by the Climate Act, or as to how such communities will be prioritized. Office of the Mayor of N.Y., Mayor Adams Announces \$4 Billion Plan to Make New Schools All-Electric, Electrify 100 Existing Schools (Oct. 28, 2022).

¹⁰¹ This represents the agency’s budget for the 2024 fiscal year. N.Y. State Division of the Budget, Agency Appropriations (last updated Jan. 16, 2024).

¹⁰² Samantha Goveia, *How are hospitals doing on greenhouse gas emissions?*, Lown Inst. (May 25, 2023).

¹⁰³ *Id.*

¹⁰⁴ Ctr. for an Urban Future, *An Unhealthy Commute: The Transit Challenges Facing New York City’s Healthcare Sector* (Jan. 2018) at 4.

¹⁰⁵ N.Y. State Climate Action Council, Scoping Plan (Jan. 1, 2023) at 411–16. The connections between health and environmental justice were also recognized by the Climate Justice Working Group, which included driving time to hospitals and health outcomes as criteria for identifying DACs. N.Y. State Dep’t of Env’t Conservation and N.Y. Rsch. Energy and Dev. Auth., New York State’s Disadvantaged Communities Criteria (Sep. 2023).

¹⁰⁶ Here, approval refers to issuance of a Certificate of Need (“CON”), which applicants must obtain from NYSDOH before proceeding with the “erection, building, acquisition, alteration, reconstruction, improvement, extension or modification of a medical facility.” 10 N.Y.C.R.R. § 710.1(c). CON applicants must submit various forms, including a Health Equity Impact Assessment, none of which satisfies the required climate or equity screens. N.Y. State Dep’t of Health, List of CON Schedules (last updated Aug. 2022). The 223 CONs reported here include only construction projects and were identified by accessing NYSDOH’s project database, searching for “construct” in the project description field, selecting “approved” and “contingent approval” as review status, and inputting January 1, 2020, as the start date parameter. A handful of results contained “no construction” in the description and were subtracted from the total. N.Y. State Dep’t of Health, *Advanced Search Applications* (last accessed May 23, 2024).

¹⁰⁷ N.Y. State Dep’t of Env’t Conservation, 2023 Statewide GHG Emissions Report (2023) at vi.

¹⁰⁸ NYSDOH does have older guidance relating to environmental justice, permitting, and siting, but these have not been updated to reflect Climate Act mandates. N.Y. State Dep’t of Health, Environmental Justice & Permitting (last updated Feb. 2021).

¹⁰⁹ Steve Cuozzo, *NYC hospital-building boom on Upper East Side roils upper-crust residents*, MSN (May 16, 2024).

¹¹⁰ Nick Garber, *Medical Tower To Be Built on Long-Empty Upper East Side Block*, Patch (Oct. 25, 2021).

¹¹¹ N.Y. State Dep’t of Health, Project No. 231258, NYSE-CON (last visited Jul. 19, 2024) (noting that the extension clinic will have no patient beds).

¹¹² Grumman Butkus, GBA 2021 Hospital Benchmarking Report Released (2021) (finding an average energy consumption rate of 27 kilowatt hours per square foot per year).

¹¹³ Grumman Butkus, GBA 2021 Hospital Benchmarking Report Part 2 (2021) (finding an average carbon footprint of around 40 pounds of carbon dioxide per square foot per year).

¹¹⁴ To see the project approval and other general information, go to <https://apps.health.ny.gov/facilities/cons/nysecon/AdvancedSearch> and search for project number 231258.

¹¹⁵ Lena Afridi and Chris Walters, *Land Use Decisions Have Life and Death Consequences*, ANHD (Apr. 10, 2020).

¹¹⁶ See Caleb Melby et al., *Mapping New York City Hospital Beds as Coronavirus Cases Surge*, Bloomberg (Mar. 25, 2020; updated Apr. 28, 2020); CoreData.nyc, N.Y. Univ. Furman Ctr. (showing that the Upper East Side population based on 2017–2021 data was 217,279, and that the population of central Brooklyn (composed of Crown Heights, Flatbush, and East Flatbush) was 536,356).

¹¹⁷ *Northwell breaks ground on \$450M NYC specialty care project*, The Construction Broadsheet (Oct. 7, 2022); Michael Young and Matt Pruznick, *Foundations For Victoria And Lloyd Goldman Health Care Pavilion Take Shape At 1345 Third Avenue On Manhattan’s Upper East Side*, New York YIMBY (Apr. 10, 2024).

¹¹⁸ For example, in issuing Executive Order 22, the Office of the Governor urged state agencies to lead by example by decarbonizing their own facilities and operations. While this executive initiative is commendable, its implementation appears only to be in its early planning stages, and it does not go far enough. Executive Order 22 does not address the requirements set forth in Climate Act Sections 7(2), 7(3), or 8, and it only partially incorporates the requirements of Section 7(1) in the public works context while omitting reference to other agency approvals and decisions. See Office of the Governor of the State of N.Y., Executive Order No. 22: Leading by Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program (Sept. 20, 2022); see also GreenNY Council Meeting Minutes (Dec. 13, 2023) at 3 (indicating that in this most recent meeting, members were still reviewing and improving training materials to onboard Sustainability Coordinators). Similarly, the Office of the Governor has taken a positive — albeit limited — step with its Climate Action Premium Credit Pilot Program, which provides credits to New York State Insurance Fund-insured hospitals that voluntarily commit to have net zero emissions by 2050. See Office of the Governor of the State of N.Y., Governor Hochul Launches First-in-the-Nation Climate Action Pilot Program to Help New York Hospitals Achieve Net-Zero Carbon Emissions by 2050 (May 8, 2024). Such a program should be mandatory and coordinated across sectors to achieve the cross-economy emissions reductions required by the Climate Act.

¹¹⁹ There are ample resources to assist even under-funded and under-staffed agencies with Climate Act implementation, such as existing guidance from DEC, NYSERDA, and DPS. See N.Y. State Dep’t of Env’t Conservation, DEP 24-1: Permitting and Disadvantaged Communities (May 8, 2024); N.Y. State Energy Rsch. and Dev. Auth., Draft Climate Act Disadvantaged Communities Investment and Benefits Reporting Guidance; Dep’t of Pub. Serv., CLCPA-Disadvantaged Communities Investment and Benefits Reporting Guidance (Sept. 27, 2023). The NYSERDA guidance in particular walks through which investments are subject to the mandate and how agencies should track and report such investments. (The authors of this report take issue with elements of NYSERDA’s draft guidance, which misleadingly implies that not all agencies are subject to the mandate and creates confusion around the terms “benefits” and “investments.” For a comprehensive list of shortcomings and suggested improvements to the guidance, see N.Y. Renews, Comments to DEC on DAC Investment and Benefits Reporting.) Such guidance was intended to facilitate other agencies’ compliance with the law and provides concrete recommendations that agencies can easily follow.

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