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Comment on the Climate Action Council's Draft Scoping Plan

About Open New York

Open New York is a grassroots group advocating for abundant homes and lower rent. We believe in housing for all and housing of all types. That means we support more social housing, government subsidized housing, and market rate housing. One of the key tenets that underlie our activism is our firm belief that housing policy is climate policy. From our perspective, one of the most important things that New York City can do to fight climate change is make New Yorkers' low-carbon lifestyle available to more people. New Yorkers' annual greenhouse gas emissions are roughly a third of the US average. We acknowledge multiple important pathways by which housing impacts emissions: first, through buildings' own energy usage, but also secondly, by dictating how many people live where. Housing policy influences travel patterns and transportation emissions, and New York City's density and reliance on low-carbon transportation enable a low-carbon lifestyle by default. As such, many current regulatory practices, enshrined in zoning laws, planning processes, and other policies that limit the construction of new housing in municipalities throughout New York State, have not only caused a dire housing shortage and encouraged climate-destroying sprawl, but actively prevented climate-saving densification in a manner wholly incompatible with the goals of the Climate Leadership and Community Protection Act (CLCPA).

Position Summary

Open New York is supportive of the CLCPA, the work of the Climate Action Council, and the approaches outlined in the Draft Scoping Plan. The attention to detail in the analysis, the breadth of the strategies outlined, and the dedication to the needs of disadvantaged communities are laudable. The purpose of our comments is to strengthen and improve the Scoping Plan.

The Draft Scoping Plan acknowledges the alignment between Open New York's mission of promoting more and denser housing development and the goals of the CLCPA. It says "smart growth (higher density, mixed use development centered around low-carbon transportation options) will help make it easier for New Yorkers to travel without using a personal car" and cites the US Energy Information Agency data showing low-density regions use more energy for transportation. We agree wholeheartedly with this assessment. Moreover, since modern building techniques allow for more efficient energy use in homes - another major driver of New York State's GHG emissions - shifting the housing stock away from old buildings and into new construction (particularly with sustainable building materials) will reduce per-household emissions and further the cause of "greening" New York State.

As our activism is primarily focused on zoning, urbanism, and residential development, the bulk of our comments will be about *Chapter 19: Land Use*. The strategies outlined in

Chapter 19 include emphasizing Smart Growth/Equitable Transit-Oriented Development ("E-TOD"), protecting natural spaces from car-oriented residential sprawl, and promoting investment in transit-oriented affordable housing in disadvantaged communities. These are all necessary and correct steps towards decarbonization and firmly within Open New York's mission; however, we feel the Draft Scoping Plan as written falls short of what is needed to make the transition to a sustainable climate in a just manner along the timeline provided for in the Act.

Specifically, the recommendations in the Draft Scoping Plan rely too much on incentives for local action - rather than direct State intervention - on municipal land use and other regulations, to the degree that it undermines the goals of rapid decarbonization and equity across communities. The State should take this opportunity to lay out a series of more concrete legal steps that will directly enable the production of more climate-friendly housing development. Furthermore, we fear that the draft does not confront the potentially catastrophic problem of local Not-in-My-Backyard sentiment ("NIMBY-ism") with the urgency needed to achieve the goals of the CLCPA. **We recommend the Draft Scoping Plan be amended to include eight additional legislative and regulatory recommendations along these lines.**

1: Enact a State TOD Zoning Law	5: Create an "E-TOD" Density Bonus
2: Eliminate Parking Mandates	6: Enact a Local Housing Accountability Law
3: Classify TOD as SEQRA "Type II"	7: Deny Funding to Non-compliant Jurisdictions
4: Expedite Local Review for TOD	8: Align Local Regulations with Electrification Goals

Smart Growth/E-TOD

The recommendations outlined in *Chapter 19* of the Draft Scoping Plan are divided into three themes: 1) Protection, Restoration, and Monitoring of Natural and Working Lands; 2) Forests and Farmland in Municipal Land Use Policies; and 3) Smart Growth. Each of these themes contains worthwhile initiatives, though only the third falls directly within Open New York's mission and area of expertise. **We are concerned that the strategies outlined for promoting Smart Growth take a different - and, in our opinion, less effective - approach than the other two themes, relying on incentives and technical expertise directed towards local policy makers rather than State-level legislative mandates.**

Consider, for example, strategies *LU1. Mitigate Carbon Emissions by Protection of Forest Lands* and *LU3. Avoid Agricultural and Forested Land Conversion* compared with *LU10. Direct Planning, Zoning, and Pre-Development Assistance to Municipalities* and *LU12. Accelerate Transit-Oriented Development*. LU1 calls for two new pieces of legislation to be adopted: a "Keep Forests as Forests" law and a law to establish and/or require participation in a forest carbon market for GHG emission sources. LU3 further calls for amendments to the Right to Practice Forestry law (ECL Section 9-0815) to prevent municipalities from unreasonably restricting or regulating forestry operations on private land.

LU10 and LU12, on the other hand, make vague references to "promoting" and "supporting" Smart Growth and E-TOD, calling for the creation of "model" local laws and offering

incentives and technical assistance. Each of these are worthwhile initiatives, and in many cases incentives and technical assistance will be necessary given the costs and complexity of implementation (particularly in many smaller municipalities), but **ultimately this approach makes compliance with the CLCPA's Smart Growth initiatives optional for municipalities that do not need or want the incentives offered,** without the force of State law that the above-described conservation measures would have.

Open New York and its members are supportive of the efforts to protect forests, wetlands, and agricultural land, and do not want to see attention pulled from these efforts. Rather, **we believe the Draft Scoping Plan would be strengthened by amending the Smart Growth recommendations to achieve parity in legal treatment between conservation and TOD efforts, namely by adding a call for a "TOD Zoning Law."** This law would, like the Right to Practice Forestry law amendments proposed in LU3, institute, at a statewide level, the policy endorsed by the Draft Scoping Plan. Local governments' should not be allowed to opt out of this important policy.

Options for TOD Legislation

As described above, for the Draft Scoping Plan's recommendations to reflect parity between recommendations that restrict residential development and those that encourage it, **it would have to include proposals for legislation directly enshrining TOD in State law.** New York has a plethora of options regarding State-level zoning reform that could encourage TOD and ensure that the Smart Growth/E-TOD recommendations are geared towards protecting vulnerable natural land and encouraging the development of urban downtowns in equal measure. Options and examples are listed below.

S7574

Introduced by Sen. Brad Hoylman, this legislation would have amended the zoning enabling statutes within the General City, Town, and Village Laws to prohibit local governments from imposing exclusionary zoning with a focus on TOD. The measures prohibited by the bill would have included minimum lot sizes of greater than 1,200 square feet, any required off-street parking minimums, and density limits of less than six units per residential lot within a quarter mile of a transit station and less than four units per residential lot outside transit zones. **This Legislation represents, in our opinion, the most wide-reaching and revolutionary TOD proposal introduced in New York State in living memory, and the Draft Scoping Plan would be greatly improved by including something along the same lines.**

Part EE of the FY 2023 ELFA Budget Bill

A less ambitious proposal was put forward by Gov. Kathy Hochul in the FY 2023 State Budget. This legislation would have mandated that suburbs of New York City served by Metro-North or the Long Island Rail Road set a minimum zoned density within a half mile of the train station. Though not as wide-reaching as S7574 would have been, **it was the most aggressive move towards TOD that any Governor of New York has put forward in**

decades, and would have been far more effective than any of the recommendations outlined in the Draft Scoping Plan. The Plan should reflect this and include a similar recommendation.

Parking Mandate Elimination

The Draft Scoping Plan correctly identifies State incentives and technical assistance for structured parking as a more sustainable alternative to space-inefficient off-street surface parking mandates. This approach is necessary and appropriate in very car-dependent parts of the State where transit access between residential areas and commercial downtowns is lacking. However, in New York City and its transit-accessible suburbs, these mandates are wholly inappropriate. **The Draft Scoping Plan should go further and call on the Legislature to prohibit municipalities from imposing mandatory off-street parking requirements in New York State.** In 2017, the City of Buffalo completely eliminated off-street parking mandates in new construction citywide; if Buffalo, which has a much higher percentage of car-owners and regular car-users than much of the rest of New York, can get by without these costly and environmentally-destructive mandates, then the rest of the State can as well.

Zoning Reform in Peer States

A number of populous and largely urban coastal states are tackling the same housing and land use crisis that New York is, and have been leading the way on State-level statutory reforms. Among these:

- **California:** enacted a requirement that local governments allow Accessory Dwelling Units in 2016, which was strengthened in 2019, and legalized duplexes statewide in 2021.
- **Connecticut:** enacted a major zoning reform in 2020 which limited parking requirements statewide, among other measures.
- **Oregon:** enacted a statute in 2019 that prohibited density limits of less than four units per lot in major cities and two units per lot in smaller cities.
- **Massachusetts:** enacted a requirement in 2021 that any suburb of Boston with a passenger rail stop must create a dense TOD zone as a condition of receiving State economic development funds.

If New York is going to live up to the name of the Climate Leadership and Community Protection Act, it must not fall behind other states that are making important strides on TOD and zoning reform. In crafting the final Draft Scoping Plan, the Climate Action Council should look to these states as models. **Replicating any one of these reforms would be a major step forward for TOD and climate justice in New York State.**

Incentive-Only Approaches Have a Poor Track Record for Motivating Local TOD

As NYU Furman Center Legal Fellow Noah Kazis' research has shown, **peer states that have used purely incentive-based approaches to encourage municipal governments to adopt TOD zoning have all failed.**[1] In response to an op-ed published in Newsday this past February that lauded local control of zoning and called for incentives to promote TOD, Kazis pointed out that Massachusetts, which offers generous cash bonuses to local governments that adopt Smart Growth plans, produced just 3,500 units of housing through the incentive program in a 14 year period. Moreover, Kazis noted, only 5% of the units were produced in the transit-rich suburbs around Boston, which he theorized was due to those suburbs being the wealthiest parts of the state with little need for additional State revenue. This is the same type of Smart Growth incentive regime envisioned by the Draft Scoping Plan, and if these results were to be replicated in New York it would undermine the CLCPA's mandate for equity and environmental justice and do little to encourage rapid decarbonization.

Constitutional "Home Rule"

The Draft Scoping Plan states that its Smart Growth strategies and recommendations "acknowledge and respect the fact that land use zoning falls largely within the authority of municipalities" and posits that State "policies, programs and incentives can influence and inform" these decisions by local actors. This is an erroneous reading of the New York State Constitution as interpreted by the Court of Appeals. In the 1929 Court of Appeals case *Adler v. Deegan*, the Court ruled that the State had the authority to overrule local governments when there was a "substantial state interest" conflicting with local action. In the 1973 case *Floyd v. Urban Development Corp.* the Court of Appeals specifically cited the remedying of a housing shortage as a "substantial state interest" that authorized the Legislature to override local zoning regulations. Given the dire need for climate action and its inherent connection to residential development patterns, there is a clear "substantial state interest" in setting standards for land use regulations along the lines described above. The Legislature's right to do so is clear, and the CLCPA will fail if we do not use all the tools the Constitution allows to facilitate climate smart investments. **Any resistance to State action on residential land use is political, not constitutional, and should be disregarded if we are to make important headway on climate action.**

Expedited Local Review

Delays in getting residential projects off the ground are frequently cited as major drivers of housing costs in New York, in municipalities of all sizes. In addition to the added costs - which drain precious State subsidy dollars and undermine the mandate to protect disadvantaged communities when these costs are passed along in the form of higher rents - these delays complicate the aggressive timeline for decarbonization mandated by the CLCPA. In order to

[1] Kazis, Noah. *Ending Exclusionary Zoning in New York City's Suburbs*. (New York: NYU Furman Center, 2020).

meet the aggressive sustainability goals to which New York is committed, the State and local governments tasked with implementing the recommendations in the Draft Scoping Plan will need to, in many cases, get out of their own way and allow climate smart investments to be made with minimal “red tape.”

Align SEQRA with a Smart Growth Agenda

The State Environmental Quality Review Act (SEQRA) is one of the most important environmental policy tools available to the government of New York State, ensuring that policy makers at all levels of government are informed of potential negative impacts on the environment before they make decisions. Consequently, it is also a powerful driver of land use patterns across the State, with considerable influence on what gets built where and how much it costs, driven by the need to spend time and money assessing potential impacts. **In keeping with our above-stated position that the Draft Scoping Plan should give measures promoting Smart Growth legal parity with those promoting non-residential land conservation, we believe the Draft Scoping Plan should call for changes to the SEQR process that favor Smart Growth/E-TOD.**

2017 SEQRA Reforms

In 2017, the New York State Department of Environmental Conservation (DEC) went through an extensive review of the SEQRA Enabling Regulations (Title 6 NYCCR, Sec. 617) and adopted amendments the following year meant to, in the Department's words, "streamline and improve the SEQR process without sacrificing meaningful environmental review." Chief among the amendments adopted were those expanding the list of so-called "Type II actions," those that are either statutorily exempt from environmental quality review or determined by the Department to not warrant such a review because they categorically do not have a significant environmental impact. At the time of the amendments' adoption, DEC explained in its Findings Statement that "expansion of the Type II list also serves the purpose of ensuring that an environmental impact statement is used as the Legislature intended, which is to assess the potential for significant environmental effect."

Despite this worthwhile intention, DEC did not see fit to include sustainable residential land use practices - including Smart Growth, TOD, infill development, or dense residential development generally - on the expanded Type II list. Given the Draft Scoping Plan's finding that "Smart growth land use patterns facilitate reductions in GHG emissions in the transportation sector by reducing VMT, increasing the viability and practicality of low-carbon transportation modes, and decreasing the travel distance between locations through a denser concentration and mix of residential and commercial development" it was a mistake not to include transit-oriented residential development as a Type II action in the 2017 reforms.

SEQRA Has Been a Barrier to Smart Growth

Sec. 8-0105(6) of the New York State Environmental Conservation Law defines the environment within the scope of SEQRA to include “existing patterns of population concentration, distribution or growth, and existing community or neighborhood character.” As described above and in the Draft Scoping Plan, residential density (or the lack thereof) is a major driver of emissions from transportation and of climate-damaging deforestation. Consequently, the existing patterns of population concentration, distribution or growth must necessarily change in order for the State to meet its climate goals. The Draft Scoping Plan’s integration analysis and the Pathways model both acknowledge the importance of these changes in meeting the statutory emissions reductions, and therefore the reference to the *existing patterns* arguably makes the statute incompatible with the aggressive climate action called for by the CLCPA. The Climate Action Council's mandate is for a bold re-imagining of land use patterns towards a less carbon-intensive New York, and SEQRA must be harmonized with this mandate.

In his 2014 case study in Sustainable Development Law and Policy, Vol. 14 (*How Environmental Review Can Generate Car-Induced Pollution: A Case Study*), researcher and environmental law professor Michael Llewyn documents the ways in which - because environmental impact statements in populated areas are much more complicated and more likely to be challenged than those for "greenfield" development - SEQR can hamstring Smart Growth by adding costs and delays much higher than those associated with residential sprawl. This unintended consequence of SEQRA is inconsistent both with the intent of the statute and with the goals of the CLCPA; the Legislature never intended to disincentivize environmentally-friendly, dense infill development by requiring an overly burdensome environmental impact statement. **In keeping with the 2017 precedent, the Draft Scoping Plan should call for DEC to develop an expansive definition of transit-oriented infill housing development and add it to the list of Type II actions, thereby removing this barrier to Smart Growth.** As with other types of residential developments under SEQRA, TOD infill projects under this classification should come with a corresponding conditional Type I action outlining extreme circumstances in which an otherwise-compliant project would need a supplemental environmental impact statement.

Other states' experiences show the potential for Smart Growth and TOD planning to be stymied by misapplication of environmental review laws. Just this past month, a judge in Minnesota delayed implementation of Minneapolis' "2040 Plan" - a legally mandated comprehensive plan that called for greater urban density and the elimination of parking requirements in urban areas, exactly the kind of plan envisioned by the recommendations in *Chapter 19* of the Draft Scoping Plan - on the grounds that it did not meet the technical requirements of that state's environmental quality review law. The goals of the CLCPA will never be met if implementing entities at the State and local level are consistently having their decisions second-guessed in court based on technicalities. Such an outcome would undermine the intent of both the CLCPA and SEQRA, and either the Legislature or the Commissioner of DEC can avoid it by designating the relevant land use changes as Type II actions.

As discussed above, the scope of SEQRA as defined in NY ECL Sec. 8-0105(6) creates an inherent status quo bias that thwarts efforts to promote TOD and Smart Growth. But we should not lose sight of the fact that the reference to "existing community or neighborhood character" also carries with it insidious historical baggage incompatible with a bold transformation of land use. For decades many towns and cities throughout the United States and parts of New York in particular have defined their "neighborhood character" as being inherently low-density and dependent on automobile traffic - precisely the opposite of Smart Growth/E-TOD. Moreover, the term is inherently connected with the United States' history of deliberate racial segregation, connected first with racial covenants in housing which were eventually ruled to be unconstitutional but were common in predominantly white neighborhoods throughout the first half of the twentieth century. In 2020, when the State of Connecticut enacted the transit-oriented zoning reform law described above, the Legislature - recognizing the implications of the term and its incompatibility with TOD, Smart Growth, and racial justice - deleted "neighborhood character" from the zoning enabling statute as a consideration for local planners. **The Draft Scoping Plan should be amended to likewise call for the deletion of "neighborhood character" from SEQRA.**

Expedite Local Review of TOD Infill

Beyond SEQR, any residential development projects will need to go through a number of permitting processes - some discretionary and some "as-of-right" - before it can move forward. These can include permits issued by local planning departments, zoning boards, fire departments, local water and sewer districts, etc. The inconsistent timetables and requirements of these processes are frequently cited as major cost-drivers for new development projects. Additionally and most importantly, many discretionary actions by local policy makers are undertaken or reviewed by local elected officials, adding an unpredictable and inconsistent political element to local permitting decisions.

Harmonizing these processes, ensuring they move expeditiously, and ensuring that all actors involved are accountable to the goals of the CLCPA are essential for New York's climate future. **The Draft Scoping Plan should look to Massachusetts' General Law Chapters 43D and 43E, which created expedited local and State permitting processes for development in designated priority growth areas, as models to be replicated in New York.** These programs involve an interagency permitting board; "one-stop-shops" for permitting; funding priority for water and sewer connections and brownfield clean-up; and a strict 180-day timeline for permitting decisions to reduce red tape and unnecessary delays. New York should create something similar.

Encourage E-TOD and Promoting Accountability

As an organization focused on building dense, affordable, mixed-income communities, Open New York agrees with the recommendation in strategy *LU12. Accelerate Transit-Oriented Development* that "Smart Growth planning should accelerate mixed-use, mixed-income TOD, with an emphasis on E-TOD [Equitable Transit-Oriented Development], around key transit hubs

served by rail and bus rapid transit." We endorse this approach in the strongest possible terms. Additionally, Open New York supports the Draft Scoping Plan's calls to amend the Smart Growth Public Infrastructure Policy Act to more effectively discourage government-funded "sprawl."

However, it is the unfortunate case that many policy makers throughout New York State and its municipalities do not share the same commitment to environmental and housing justice that we and the authors of the CLCPA do, and given the unique challenges that builders of affordable low- and moderate-income housing face, we feel it is important that the State give additional consideration to E-TOD measures. As described above, **we feel the most effective means to accelerate E-TOD is to use the force of State law to align local policy with what is necessary to make E-TOD feasible and ensure accountability.** This approach should include both "carrots," like those outlined in the Draft Scoping Plan, and "sticks." But most importantly, it should be results-driven, tying the process of local land use decision-making to each municipalities' success in generating E-TOD.

"As-of-Right" E-TOD

As described above, the delays, cost, and, most importantly, unpredictability of many local permitting processes create a major impediment to the creation of new housing, particularly in urban areas with low carbon footprints. This is a particular barrier to the development of affordable housing targeting people of low- and moderate-incomes, builders of which have more limited access to capital and tighter budgets than those constructing more expensive, market rate homes. The corresponding disincentive to construct affordable housing is incompatible with the emphasis the CLCPA places emphasis on equity and the Draft Scoping Plan's places on E-TOD. **The Draft Scoping Plan should call for a State law mandating that all residential projects wherein 20% of homes are set aside for low- and moderate-income households located in transit zones or other dense urban areas be allowed as-of-right, with only those discretionary permits necessary to protect health and safety.** This law should include a statewide zoning overlay outlining minimum density, setback and lot coverage requirements, etc. consistent with the TOD zoning law proposal outlined above.

Indeed, the Draft Scoping Plan should go further in encouraging the creation of much-needed E-TOD by calling on the Legislature to **create a statewide "density bonus" applicable in all municipal zoning districts where residential use is allowed.** Density bonuses - wherein a residential development that goes above-and-beyond in providing public benefits is allowed to exceed otherwise applicable regulations on the number of dwelling units - have been a useful tool in urban planning and promoting Smart Growth for years. The Draft Scoping Plan references the Metropolitan Transportation Authority's collaboration with the private sector on One Vanderbilt and associated subway accessibility improvements in Manhattan as a successful example of a density bonus to facilitate E-TOD. **Given the Climate Action Council's focus and the CLCPA's mandate to prioritize equity, this bonus should be tied to the inclusion of affordable, mixed-income housing with additional considerations for investment in disadvantaged communities.**

As with E-TOD building permits, the bonus should be applied "as-of-right" to avoid unnecessary delays and political "NIMBY-ism." It should, at a minimum, be equal to 20% of the residential density allowed as-of-right, measured either by allowed residential units or allowed residential square footage. In order to prevent local governments from "baking in" the density bonus through "downzoning" after it is enacted, the base residential density should be set at the greater of the residential density allowed as-of-right at the time of permitting or the residential density allowed as-of-right at the time of adoption of the final Scoping Plan.

Enact a Local Housing Accountability Law

As stated above, Open New York believes that, in order for the CLCPA's goals to be met, land use processes must be goal-oriented with an eye towards accountability. Consequently, we believe **the Draft Scoping Plan should include a call for a Local Housing Accountability Law which would include a mandate for regional comprehensive planning and measures to ensure such a plan is adhered to after its adoption.** The Local Housing Accountability Law could look to the 2012 Regional Sustainability Plan process as a model, with the State providing resources and technical assistance to the Regional Economic Development Councils as well as county and municipal governments to understand their interconnected sustainable growth needs. These plans should specifically outline the needed investment in housing growth and identify priority growth areas sufficient to accommodate it.

Most importantly, the Local Housing Accountability Law should combine "carrots" and "sticks" to ensure compliance with the plans, particularly meeting the projected housing needs. Cities, towns, and villages that are found to be thwarting housing growth in defiance of the Regional Sustainability Plans should be deprioritized for other areas of local assistance funding not related to housing or sustainability. **In extreme cases, the State Executive or Judiciary should be empowered to overrule local actors to ensure compliance with the Sustainability Plans, either through an administrative procedure or an Article 78 proceeding.**

In 2017, the California State Legislature enacted amendments to that state's Housing Accountability Act to ensure local actors were permitting housing that was compliant with their local plans and zoning resolutions. This process, combined with the State's Regional Housing Needs Assessment process, has created a system more or less in line with our proposed Local Housing Accountability Law, wherein local governments would be expected to meet an allotted regional housing need or else risk being overruled by State law. New Jersey's 1985 Fair Housing Act, which meant to codify the principles of the "Mt. Laurel Doctrine" into state law, creates another such example combining local target-setting with state-level oversight, including the threat that noncompliant local actors will be overruled. The Draft Scoping Plan should include calls to replicate these examples in New York.

Ensure Local Regulations Do Not Prevent Building Electrification or Decarbonization

A 2021 piece published by the Sierra Club titled *The NIMBY Threat to Renewable Energy* outlined the ways in which local objections to climate smart land use practices can thwart climate action. The piece specifically cites an episode in the Town of Coxsackie where a local group calling itself Citizens for Sensible Solar petitioned to block renewable energy investments on the grounds they would compromise their town's aesthetic appeal. Recognizing the threat posed by these types of objections, *Chapter 19* of the Draft Scoping Plan sensibly calls for expedited permitting and other methods to streamline the approval of new clean energy investments over local objections. Open New York endorses these measures wholeheartedly.

The Scoping Plan does not, however, give the same attention to efforts that may be on a smaller scale than utility-scale solar farms of the kind in Coxsackie, and we believe this is a potentially significant oversight. **Specifically, we fear that the aggressive electrification and energy efficiency measures outlined in *Chapter 12: Buildings* could be undermined by local landmarking, zoning, and building regulations.** An article in the Washington Post published in January of 2020 profiled numerous homeowners in Washington, DC's historic districts whose plans to install solar panels were rejected by the city's historic preservation boards for purely aesthetic reasons, and quotes a member of the board saying "I have this vision of a row of houses with solar panels on the front of them and it just - it upsets me." This notwithstanding that city's commitment to convert entirely to renewable energy sources by 2032. Similarly, one can easily imagine insulation and electrification being stalled completely in New York City's many historic districts because of trivial matters such as the style of the new windows or the location of heat pump technology. If the potential for climate investments to be stymied or deprioritized in favor of aesthetic concerns, it will undermine the entire CLCPA.

The Draft Scoping Plan must make clear that residential decarbonization measures such as building electrification, energy efficiency, improved envelope design, rooftop solar - as well as Smart Growth/E-TOD - take priority over aesthetic and other considerations in local rulemaking. **Consequently, the Draft Scoping Plan should call for a State law making this prioritization explicit and barring local regulatory and administrative bodies from standing in the way of decarbonization activities in circumstances where health and safety are not directly threatened.**

Conclusion

In conclusion, while we and our members are eager and excited to follow the Climate Action Council's lead into a carbon-neutral future, we fear the recommendations in the Draft Scoping Plan do not confront the potentially catastrophic problem of local NIMBY-ism with the urgency needed to achieve the goals of the CLCPA. We at Open New York hope that you will take our recommendations under advisement and strengthen the land use recommendations in Chapter 19 along these lines. We thank you for your time and consideration.