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June 30, 2022

Draft Scoping Plan Comments  
NYSERDA  
17 Columbia Circle  
Albany, NY 12203-6399

RE: CLCPA Draft Scoping Plan - Comments

To the Members of the Climate Action Council,

Thank you for the opportunity to present the following comments on the draft New York State Climate Action Council Draft Scoping Plan, which is intended to guide the implement of the Climate Leadership and Community Protection Act (“CLCPA”).

My company provides consulting services to several hundred mines in New York State, including several that would be located in areas identified as potential covered by the proposed regulations. These mines provide valuable and irreplaceable aggregate materials and services that support public and private construction, including infrastructure and public works, and the people of this State. The industry is vital not only to the roadways, bridges, and buildings we all use and rely on every day but also an integral part of the State’s economy. The mines we represent employ thousands of workers located in over most of New York State.

I have often thought that the mining industry is the most over regulated industry in New York. The impacts associated with mining in New York are essentially nuisance items and yet the NYSDEC treats them as if the world will end if a mine is permitted. The number of permitted mines in New York has decreased from over 2800 in 2002 to less than 1700 today. There are many causes for this, including reactive zoning, lack of planning, overzealous environmental review and a general dwindling of available mining resources that can be economically mined.

The future operations and viability of our company, and the industry as a whole, will be severely impacted, if the draft Scoping Plan is adopted as written. The final version of the plan requires significant modification in order to address the potentially devastating impacts that will result from an unsupported and drastic push to electrification of the industry.

The Scoping Plan can only succeed if the State considers a balanced and integrated approach to environmental, social, and economic sustainability. Regrettably, the draft Scoping Plan presented for comment fails to provide such balance. In fact, the alternatives put forth do not provide the greatest return on investment for achieving short and longer-term emissions reduction goals. Rather, the draft Scoping Plan is pre-decisional and outcome determinative in its near exclusive reliance on the electrification as well as its dependence on induced changes in individuals' behavior to achieve the CLCPA's goals. Specifically, the plan fails to adequately assess and/or:

- (1) Overstates the benefit-costs analysis on individuals and businesses of transitioning facilities, equipment and fleets to all electric energy sources;
- (2) Undervalues prior contributions by certain sectors, including transportation and construction, in the development of new strategies and policies to support topline Plan reductions;
- (3) Omits the cost effectiveness/fiscal impacts of each mitigation strategy as a stand-alone action;
- (4) Disregards the probability for success for each mitigation strategy in lieu of aspirational goals, including any meaningful assessment pertaining to the availability or reliability of proposed solutions;
- (5) Excludes independent safety and engineering-based validations for recommendations impacting construction materials, means and methods;
- (6) Ignores physical and geographic limitations for certain types of activities, such as the sourcing of aggregates; and
- (7) Overestimates the commercial viability of hard to electrify industries/equipment and underestimates, or completely ignores, fiscal impacts of 'make ready' costs on such individuals and businesses.

In addition to the shortcomings of the draft Scoping Plan, we, as a company and an industry, remain concerned with Section 7 of the CLCPA. Section 7 grants each New York agency and authority the unprecedented license to deny any and all sensible projects requiring State approval or decision without due process by arbitrarily determining that a proposed industry action is inconsistent with or will interfere with achievement of the Climate Act's emission mandates/goals. This new and unparalleled 'administrative' influence may afford any entity with an inherent bias or an alleged aggrieved individual, including persons who may be in direct competition, the ability to delay or indefinitely defer action on a proposed project or the renewal of new or an existing permit. This section of the CLCPA at best appears to be a direct effort to circumvent existing statutory requirements, policies and processes and at worst an explicit infringement of the State and Federal Constitution on a variety of grounds.

Mines are preferentially located in more rural areas, not because they are trying to impact disadvantaged communities but because it is easier to develop and operate mines where the population density is less. I have been in the mining industry for over 38 years and I have never once heard it suggested that a mine should be placed in a certain location because the community won't be able to afford to fight the mine. Essentially, this proposed law would punish the mining companies for doing the right thing and trying to reduce the environmental impact of their mines.

One of the most alarming aspects of the proposed law is the intention to apply it to existing, permitted mines seeking to renew their permit. This idea will have a severe impact on effected mines for the following reasons:

- (1) The mines have undergone an extensive review period and, by law, renewals are *de minimis* actions and not an opportunity to pull the rug out from under an existing, operating business.
- (2) Making it harder for businesses to get permits in disadvantaged communities will result in less businesses working in those communities and less employees and revenue being generated.
- (3) Mines require large capital investments in land, exploration, permitting and equipment before they can even start operations. It often takes decades to repay this initial investment. Changing the rules on existing mines would literally pull the rug out from under their business and change their profitability. This practice would simply be unfair.
- (4) I have permitted hundreds of mines in New York and I cannot recall a single instance where a home or community was treated differently because it was richer or poorer. The prevailing attitude was that a person's house is their castle and all were treated with equal respect. The whole premise behind this proposed law is flawed and should be immediately abandoned or re-written.

For the reasons stated above we believe that the draft Scoping Plan does not accomplish its purported goal of implementing impactful actions to mitigate harmful emissions and enhance environmental sustainability. The lack of practical and feasible low-emission and renewable alternatives included in the draft Scoping Plan not only will substantially increase the costs of living and doing business in New York, it further places the State at a competitive disadvantage with other states. It is unreasonable to assume that other states competing for development opportunities with New York will implement and/or enforce equivalent climate policies, and in that vacuum, the Scoping Plan and CLCPA will serve only to drive further businesses and industries out of New York State.

Thank you for your time and consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Paul A. Griggs".

Paul Griggs, President  
Griggs-Lang Consulting Geologists and Engineers, P.C.