



JUST ATONEMENT INC.

justice
hope peace unity golden age
progress sustainability democracy freedom
human rights harmony civilization
equal opportunity

30 June 2022

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Re: New York State Draft Scoping Plan

Dear Members of the New York State Climate Action Council (“**Council**”):

Just Atonement Inc. (“**JAI**”) submits comments in response to the draft scoping plan prepared by the Council (the “**Scoping Plan**”)¹. We commend the State of New York for preparing the draft Scoping Plan and beginning a long process—one that will take decades if not centuries—to stabilize the climate and to prevent runaway global warming and associated climate change. We also wish to commend the State of New York for recognizing the disparate impacts of climate change on historically excluded groups,² and the need for the State to reduce its own emissions³ in order to participate in the global action necessary to keep warming well below 2°C and at 1.5°C of warming—the limits set by the international Paris Agreement.⁴

While we are greatly encouraged by the scale, scope, and the ambition of the Scoping Plan, there are serious deficiencies with respect to the Scoping Plan that must be brought to the attention of the Council, particularly in light of the new constitutional amendment to the New York State Constitution which now recognizes a right to a healthy environment in the State of New York (the “**Right to a Healthy Environment**”).⁵ We believe that the Right to a Healthy Environment, now formally recognized by the people of New York, and part of the State’s basic constitutional order, requires far more action from the State, as described in detail below.

¹ *Climate Action Council Draft Scoping Plan*, accessed [here](#).

² *Chapter 6 of the Climate Action Council Draft Scoping Plan*, pg. 42.

³ *Chapter 5 of the Climate Action Council Draft Scoping Plan*, pg. 37.

⁴ Article 2 of the *Paris Agreement*, accessed [here](#).

⁵ *Article 1, Section 19 on Environmental Rights of Bill of Rights of the New York State Constitution*, accessed [here](#).



The Scoping Plan Is Deficient As It Fails to Reduce Emissions in the State of New York at the Limits Set by the Paris Agreement.

The New York Scoping Plan aims to reduce economy-wide greenhouse gas (GHG) emissions 40% by 2030 and no less than 85% by 2050 from 1990 levels.⁶ However, the proposals made by the Council remain inadequate, as per the recommendations highlighted in the recent AR6 Intergovernmental Panel on Climate Change (IPCC) Working Group III Report on Mitigation Strategies.

First, the IPCC models indicate that reducing global GHG emissions by **43%** of **2019** levels by 2030 is necessary to have a >50% chance of limiting warming to 1.5°C with no or limited overshoot.⁷ In contrast, the Council proposes reducing GHG emissions by **40%** of **1990** levels. Based on the data of New York’s Statewide Greenhouse Gas Emissions by Gas (1990-2019) figure presented below, which is taken from Department of Environmental Conservation (Figure 1),⁸ the Scoping Plan aims to reduce the State’s emissions to 241.52 mmt of CO₂e. However, the IPCC recommendations require reducing its emissions to 216.28 mmt of CO₂e by 2030 (Table 1). The difference between these two goals is 25.25 mmt of CO₂e. This is a meaningful difference equivalent to 5,440,000 gasoline-power passenger vehicles being driven for one year, or 2,841,000,000 gallons of gasoline consumed.⁹ In fact, the difference between the proposed targets in the Scoping Plan and that of the IPCC is **equivalent** to the GHG emissions produced by **Dominican Republic** in 2021 (i.e., 25.20 mmt of CO₂e), which is a substantial amount that will not be mitigated if the Plan’s targets remain unchanged.¹⁰

Table 1.

	Baseline of CO₂e emissions	Reduction goal by 2030	Total CO₂e emissions in 2030
Scoping Plan	1990: 402.54 mmt CO ₂ e	40% of 1990	241.52 mmt CO ₂ e
IPCC	2019: 379.43 mmt CO ₂ e	43% of 2019	216.28 mmt CO ₂ e

⁶ Chapter 5, Section 5.1 of the Climate Action Council Draft Scoping Plan, pg. 37

⁷ IPCC AR6 WGIII Summary for Policy makers, C1.1, pg. 23

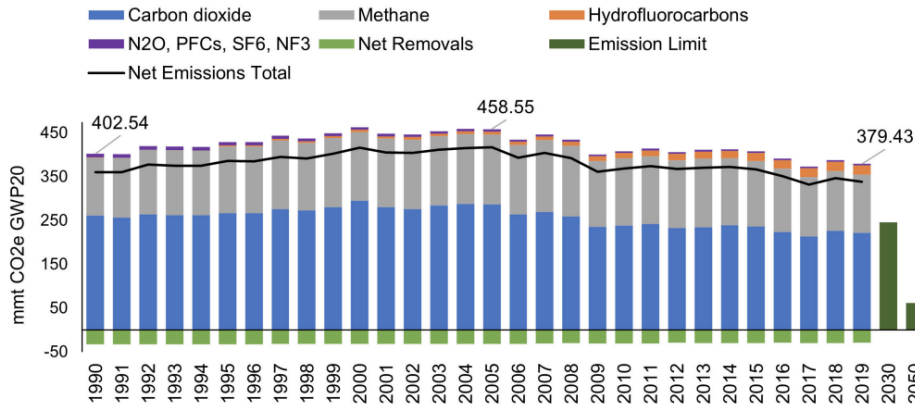
⁸ 2021 Statewide GHG emissions report, accessed [here](#).

⁹ United States Environmental Protection Agency (EPA), Greenhouse Gas Equivalences Calculator, accessed [here](#).

¹⁰ World Population Review, Greenhouse Gas Emissions by Country 2022, accessed [here](#).



Figure ES.1: NYS Statewide Greenhouse Gas Emissions by Gas, 1990-2019 (mmt CO₂e GWP20)



As a point of comparison, when applying the conventional, or UNFCCC, format for governmental accounting, emissions declined 21% percent from 1990 to 2019, or from a net emission rate of 210.43mmt to 165.46mmt CO₂e GWP100. This format does not meet CLCPA accounting requirements.

Figure 1: New York Statewide Gas Emissions by Gas

If the current proposed targets are not aligned with IPCC recommendations, there will be an increased risk and frequency of heavy precipitation and other extreme weather events.¹¹ Region-specific changes could include the intensification of tropical cyclones and/or extratropical storms, as well as increases in flooding.¹² Therefore, the Council proposals suffer from an inadequacy that breaches every New Yorker’s human and constitutional Right to a Healthy Environment. This right, at minimum, requires the State to take meaningful emissions reductions consistent with the best available consensus science—in this case, IPCC recommendations—with respect to preserving a habitable planet.

We thus urgently recommend that the Scoping Plan incorporate current IPCC recommendations and continually incorporate updated IPCC recommendations with respect to the emissions cuts necessary to prevent a breakdown of the climate system. This will require the State to commit to deeper reductions cuts than the ones currently proposed in the draft Scoping Plan.

¹¹ C.2.3 of WGI IPCC AR6 Report

¹² C.2.4 of WGI IPCC AR6 Report



The State of New York’s Definition of “Statewide Greenhouse Gas Emissions” Is Deficient and Must Include Emissions That Are Produced Because of Investment or Commercial Activity Taking Place in the State of New York

A *second* deficiency of the Scoping Plan is that it fails to include emissions produced by investment or commercial activity taking place in the State of New York, even if the fossil fuels are extracted, burned, or used in other jurisdictions. The definition of “Statewide greenhouse gas emissions” under the Climate Act is “the total annual emissions of greenhouse gases **produced within the state** from anthropogenic sources.”¹³

The Scoping Plan **must take into account emissions that are produced primarily from investment or commercial activity taking place in the State of New York**, even if the actual burning or use of fossil fuels takes place in another jurisdiction. *First*, New Yorkers’ Right to a Healthy Environment must be protected from the actions of investment and commercial firms in New York that take advantage of New York City’s position as a world investment hub and invest in or enable fossil fuel projects that contribute to the breakdown of the Earth’s climate system. The IPCC notes that in order to have a meaningful chance of staying within 1.5°C of warming this century, GHG emissions must peak globally by 2025—in just 3 short years.¹⁴ All jurisdictions are thus under notice of the immediate need to move away from fossil fuels as soon as possible. But in New York, where there is now an added constitutional burden on the State to protect the Right to a Healthy Environment for New Yorkers, there is an unequivocal constitutional duty to protect, defend, and enforce this right by imposing meaningful and aggressive restrictions on the financing, investment, and commercial enabling of fossil fuel projects in the State. For example, JPMorgan Chase, Citibank, and Morgan Stanley have together invested \$664.99 billion in fossil fuel companies between 2016-2020.¹⁵ Where these emissions are released is irrelevant—in each case, the emissions are contributing to the breakdown of the climate system that will threaten New Yorkers.

Second, international law requires that States regulate non-State actors to ensure that such non-State actors do not nullify or impair the enjoyment of economic, social and cultural rights, via administrative, legislative, investigative and adjudicative measures.¹⁶ Unrestricted and unregulated investment of fossil fuel projects are now quite literally burning the planet. All jurisdictions are on notice of the urgent need to restrict such business activity and guide investment and commercial conduct into areas that can help address climate change, or, at minimum, will not exacerbate it. We note that the Scoping Plan discusses, in several places, finance-related action

¹³ Section 75 of the Climate Act, Environmental Conservation (ENVC) Chapter 43-B, accessed [here](#).

¹⁴ IPCC AR6 WGIII Summary for Policy makers, C1

¹⁵ *Banking on Climate Chaos: Fossil Fuel Finance Report 2021*, accessed [here](#).

¹⁶ Principle 25 of the Maastricht Principles, accessed [here](#).



related to disadvantaged communities and general “investments” for adaptation strategies. However, the Scoping Plan omits any discussion related to the prevention or prohibition of financing activities that cause environmental harm.

A *third* deficiency of the Scoping Plan is the need for more substantive solutions for frontline communities, especially for indigenous communities. The Scoping Plan highlights the Just Transition Principles to “Preserve [the] Culture and Tradition” of indigenous peoples, but such a principle is inadequate in providing climate solutions to a community that is already disproportionately impacted by climate change. First, JAI proposes a repossession of land back to indigenous peoples given that indigenous communities have been displaced to areas with greater climate change risks.¹⁷ Second, JAI recommends increased state funding towards the conservation of these lands. For example, the Sinnecock Indian Nation in Long Island have been disproportionately impacted by rising sea levels and eroded shorelines, and reside in areas vulnerable to ocean storm surges and floods.¹⁸ More state funding is needed for indigenous communities to mitigate the impacts of climate change. While we commend the Scoping Plan’s efforts to integrate greater participation in climate change decision-making, JAI recommends more substantial solutions for these indigenous communities.

We noted that the Scoping Plan as drafted may expose the State and local municipalities to takings claims due to sea level rise (SLR). SLR will make the coastline less inhabitable, and government inaction to address SLR at the State and local level could give rise to takings claims.¹⁹ Such claims lead to possible losses for the State which were not factored into the scoping plan regarding the costs of inaction. By setting more ambitious goals, New York will be in a better position to avoid such takings claims.

¹⁷ *How Loss of Historical Lands makes Native Americans more vulnerable to climate change*, NPR, accessed [here](#).

¹⁸ *How a Native American tribe on Long Island is losing its land to rising seas*, CNBC, accessed [here](#).

¹⁹ *Passive Takings: The State's Affirmative Duty To Protect Property*, 113 Mich. L. Rev. 345, pg. 376, accessed [here](#).



We welcome the Scoping Plan as an urgently needed first step by the State of New York to do its part to tackle the climate crisis. However, the Scoping Plan is deficient in several material respects and in ways that infringe on the constitutional and human right of New Yorkers to have a healthy environment. JAI recommends:

- That **emissions reductions targets be set to IPCC recommendations** related to keeping warming under 1.5°C of total warming, with no overshoot, and that such emissions reductions targets be updated to remain consistent with IPCC recommendations. This will require more aggressive emissions reductions targets than the ones currently proposed.
- **That the State of New York limit, restrict, and regulate, the business and investment activity of investment and commercial firms doing business in New York related to the financing of fossil fuel projects**, even if the burning or use of fossil fuels associated with such projects takes place in other jurisdictions. This is not addressed substantively in the current Scoping Plan and remains a significant omission.
- **That the Scoping Plan contains more substantive climate change solutions for frontline communities, especially indigenous communities.**

We stand ready to assist in any way with these recommendations, and we reserve all rights and remedies under law for our members and for other New Yorkers to the extent that the Scoping Plan fails to protect, defend, and enforce the Right to a Healthy Environment as guaranteed by the Constitution of the State of New York.

Very sincerely,

Dave Inder Comar
Executive Director
Just Atonement Inc.

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