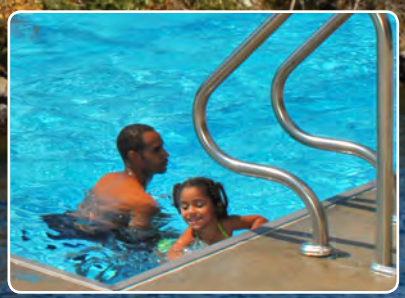
HANDBOOK ON THE
Alienation and Conversion of Municipal Parkland in New York



OFFICE OF PARKS · RECREATION · HISTORIC PRESERVATION
NEW YORK STATE

State of New York
Andrew M. Cuomo, Governor

New York State Office of Parks, Recreation and Historic Preservation
Rose Harvey, Commissioner

An Equal Opportunity/Affirmative Action Agency

CONTENT REVISED MARCH 2012

HANDBOOK ON THE
ALIENATION AND CONVERSION OF MUNICIPAL PARKLAND IN NEW YORK

Introduction

Municipally owned parkland and open space are nonrenewable resources which are carefully preserved in all communities. Once lost to another use, open space is difficult to recover. For this reason, the New York State Office of Parks, Recreation and Historic Preservation strongly endorses the maintenance and expansion of municipal parks and open space, and the recreational opportunities they offer. State Parks encourages a "no net loss of parkland" policy.

While the preservation of municipal parks and open space is our goal, State Parks recognizes that in certain instances a municipality may conclude that a change in parkland use may be necessary to advance public purposes. When a proposal for such a change in parkland use is made, State Parks encourages a careful evaluation of the proposed change and the impacts expected from that change. Municipal decision-makers should also be aware of, and ensure compliance with, legal requirements applicable to the proposed change of use.

This *Handbook* has been prepared for use by municipalities and individuals who have an interest in the process and the deliberations involved in the change of use of municipal parkland and open space. At the outset, it is important to know that there are two procedures that may be triggered when a municipality wishes to change the way it uses parkland. These two procedures are known as parkland "alienation" and, in some instances, parkland "conversion."

What is parkland alienation?

Parkland "alienation" occurs when a municipality wishes to sell, lease, or discontinue municipal parkland. Parkland alienation applies to every municipal park in the State, whether owned by a city, county, town, or village. In order to convey parkland to a non-public entity, or to use parkland for another purpose, the municipality *must* receive prior authorization from the State in the form of legislation enacted by the New York State Legislature and approved by the Governor. The bill by which the Legislature grants its authorization is commonly referred to as a "parkland alienation" bill.

The requirements for parkland alienation bills vary depending upon whether or not State dollars have been invested in the municipal park that is being considered for a potential change of use. Therefore, it is crucial that a municipality identify whether or not State funding has been invested as early in the process as possible.

What is parkland conversion?

Parkland "conversion" may also apply to municipal parks in New York State. The conversion process applies *only* to those municipal parks that have received Federal funds for acquisition or improvement pursuant to either the *Land and Water Conservation Fund* or the *Urban Park and Recreation Recovery Program*. Conversion applies when a municipality wishes to sell or otherwise convey funded parkland to another entity, or if the funded park will cease to be used for public *outdoor* recreation.

It is crucial to understand that under most circumstances, approval for a conversion does *not* replace the need for parkland alienation legislation, which must be obtained first. In other words, parks with Federal dollars invested are subject to *both* alienation and conversion procedures; the conversion process is a second layer of review required when a municipality takes an action that will impact a Federally funded municipal park. The conversion process is governed by the rules and regulations of the National Park Service of the United States Department of the Interior. The National Park Service must be satisfied that the conversion process was followed and that certain conditions are met before they will give their approval. These conditions include the requirement that *substitute lands* be provided that are of at least equal fair market value, and that these lands offer reasonably equivalent recreational opportunities.

Therefore, it is critical that a municipality identify, as early as possible, whether Federal dollars have been invested in the municipal park that is being considered for a potential change of use. If there have been no Federal funds invested, the conversion process does not apply and there is no need to refer to Chapters 3 or 4 of this Handbook. However, the *alienation* process will still apply.

What is the role of the Office of Parks, Recreation and Historic Preservation?

The role of the Office of Parks, Recreation and Historic Preservation ("State Parks") in this process is to provide advice and guidance to the municipality, concerned citizens, the Governor, and the Legislature.

State Parks works with the legislative sponsors of alienation legislation in making recommendations regarding provisions which might be included to assure the maximum protection of public parkland. State Parks requests that the sponsor complete an alienation questionnaire that gathers information which is helpful to State Parks in evaluating the need and appropriateness of the legislation. In many cases, State Parks will undertake a site inspection of the parkland in question to gather further information.

In addition, State Parks advises the Governor regarding each alienation bill that is passed by the Legislature. The memorandum provided by State Parks contains information about the proposed alienation and the Agency's recommendation on whether the bill should be signed into law. This memorandum is eventually filed with the legislative record known as the "bill jacket" if the bill is signed into law. Ultimately, the Governor has final approval on the bill.

In cases where State or Federal dollars in the form of a grant have been invested in the municipal park in question, the role of State Parks is more involved due to the existence of a grant contract between the municipality and State Parks. In those instances, the grant programs, which are created by law, have certain requirements that must be followed by the municipality that accepted the grant. These requirements are set forth in the grant contract with the municipality, and they govern the process. Because State Parks is a party to the grant contract, State Parks has authority to enforce the restrictions in the contract.

In the case of a conversion, which is triggered when the park has received the Federal funding discussed earlier, State Parks acts as the liaison between the municipality and the

National Park Service. State Parks guides the municipality in gathering the required information for the conversion process and, on behalf of the municipality, submits the documentation to the National Park Service with comments and a recommendation. Ultimately, the National Park Service has final approval of all conversions. In addition, because State Parks administers the Federal funding program on behalf of the National Park Service, State Parks is responsible for enforcing the contractual restrictions that the National Park Service places on its municipal grant recipients.

State Parks' Regional Grants Officers, who have offices throughout the State, are available to answer questions regarding specific alienations or conversions, and can assist in determining whether grant funding exists in a specific park. Thus, any questions concerning this Handbook, or on a specific alienation or conversion matter, should first be addressed to the appropriate regional office. These are listed by county in Appendix 1 of this Handbook.

How to use this Handbook

To learn more about parkland alienation, start by reading Chapter 1, *All About Parkland Alienation*. Chapter 2, *The Alienation Process*, sets forth how an alienation should be accomplished. If it has been determined that Federal funding exists in the park or recreation facility, read Chapter 3, *All About Parkland Conversion*, and Chapter 4, *The Conversion Process*. Keep in mind, however, that the concept or process of parkland conversion does *not* apply unless Federal funding exists.

This Handbook was written with a broad audience in mind, from concerned citizens with little knowledge of the law, to municipal employees, attorneys, and legislators who are familiar with statutes and case law. Footnotes are provided throughout this document to assist the reader in learning more about a particular concept. Within the footnotes are references to court decisions, statutes, and regulations. If you are unfamiliar with the citations but wish to learn more about a particular concept, you can bring the Handbook to any law library, and a reference person should be able to guide you. New York State law provides that each county have a court law library that is open to the general public. The New York Unified Court system lists these libraries by county on their website at: http://www.courts.state.ny.us/lawlibraries/publicaccess.shtml You can also reach the Unified Court system by calling (800) COURTNY / (800) 268-7869.

The internet can also be used for finding cases and statutes. One excellent free source is from Google which can be found at: http://www.scholar.google.com Within the Handbook's footnotes, there are also other citations to books and internet websites where you will find more information and reference materials.

Please keep in mind that the *Handbook* attempts to cover alienations and conversions in depth, but it is only one source of relevant information and should be used for guidance only.

This *Handbook* is updated every few years. Should you see an error, wish to have an issue included in future versions, or see case law that you believe is relevant, please contact the author, Jeffrey A. Meyers, Associate Attorney, via email at the following address: Jeffrey.Meyers@parks.ny.gov

Chapter 1: All About Parkland Alienation

1. What is the legal basis for parkland alienation?

The requirement that a municipality obtain legislative authorization in order to alienate parkland is not found in a statute, which is a law passed by the State Legislature. Rather, the basic principle for parkland alienation is founded in case law or "common" law.[1] The courts have consistently held that "once land has been dedicated to use as a park, it cannot be diverted for uses other than recreation, in whole or in part, temporarily or permanently, even for another public purpose, without legislative approval."[2] The authorization contained in the act must be plainly conferred, specific, direct or explicit.[3]

In making this determination, the courts have said that parkland held by a municipality is subject to a public trust for the benefit of the public at large and not just for the benefit of residents of the local community.[4] This concept is often referred to as the "public trust doctrine" and it applies not only to parks, but to other publicly held lands as well.[5] The

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[1] Common law is defined as a "the body of law derived from judicial decisions, rather than from statutes or constitutions." Black's Law Dictionary 270 (7th ed. 1999). New York statutes governing state grant programs also include this requirement, as discussed in Part 4 of this Chapter.

[2] United States v. City of New York, 96 F.Supp.2d 195, 202 (E.D.N.Y. 2000)(citing Williams v. Gallatin, 128 N.E. 121, 122 (1920)).

[3] See Aldrich v. City of New York, 145 N.Y.S.2d 732, 741 (Sup. Ct. 1955) and Gewirtz v. City of Long Beach, 330 N.Y.S.2d 495, 509 (Sup. Ct. 1972).

[4] See Gewirtz v. City of Long Beach, 330 N.Y.S.2d 495, 511 (Sup. Ct. 1972)(city could not restrict use of beach park to residents without legislative authority); *but note* Schreiber v. Rye, 278 N.Y.S. 2d 527, 529 (Sup. Ct. 1967)(*facilities* such as swimming pools or golf courses of limited capacity may be limited to residents).

[5] The Public Trust Doctrine provides that public trust lands and resources within the State are held by the State in trust for the public benefit of all people. See Meriwether v. Garrett, 102 U.S. 472, 513 (1880):

> In its streets, wharves, cemeteries, hospitals, court-houses, and other public buildings, the corporation has no proprietary rights distinct from the trust for the public. It holds them for public use, and to no other use can they be appropriated without special legislative sanction. It would be a perversion of that trust to apply them to other uses. The courts can have nothing to do with them, unless appealed to on behalf of the public to prevent their diversion from the public use.

and Potter v. Collis, 50 N.E. 413, 415 (1898)

> But the title of the municipal corporation to the public streets was held in trust for the public, and the power to regulate those uses was vested solely in the legislature. It might delegate that power, as any other appropriate power, to the municipal corporation; but, without such delegation, any such act by the corporation, for not being within the strict or implied terms of its chartered powers, would be invalid.

See, also Illinois Central R. Co. v. State of Illinois, 146 U.S. 387, 458-59 (1892)(citing New York v. New York and State Island Ferry Co., 68 N.Y. 71, 76 (1877))(the public trust doctrine applies to lands under navigable waters) and Phillips Petroleum Co. v. Mississippi, 484 U.S. 469, 481 (1988)(the public trust doctrine applies to coastal tidal lands). For a general discussion of the Public Trust Doctrine, its origins, and applications, see book by David C. Slade, Project Manager, National Public Trust Study, et al.: *Putting the Public Trust*

courts applied the public trust doctrine to New York parkland as early as 1871 when the highest court of the state held that the City of Brooklyn could not sell parkland without first obtaining Legislative approval.[6] Since that time, many courts have commented regarding the importance of parks to a community's health and the happiness of its citizens.[7] As recently as 2001, the highest court in New York State declared that "our courts have time and again reaffirmed the principle that parkland is impressed with a public trust, requiring legislative approval before it can be alienated or used for an extended period for non-park purposes."[8]

In addition to the common law, there are also statutes that deal with parkland alienation in special circumstances. For example, if a municipality received State funding for the acquisition or improvement of the park it wishes to alienate, the statute that authorized the funding usually requires alienation legislation.[9] In these cases, the statute often also requires that the municipality provide lands of equal usefulness, environmental value, and fair market value to replace the parkland being lost.[10] Furthermore, New York State's

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Doctrine to Work: The Application of the Public Trust Doctrine to the Management of Lands, Waters and Living Resources of the Coastal States, (November 1990).

[6] See Brooklyn Park Commissioners v. Armstrong, 45 N.Y. 234, 243 (1871)("Receiving the title in trust for an especial public use, it could not convey without the sanction of the legislature . . . .").

[7] See, e.g. Williams v. Gallatin, 128 N.E. 121, 122-23 (N.Y. 1920):

> A park is a pleasure ground set apart for recreation of the public, to promote its health and enjoyment. It need not, and should not, be a mere field or open space, but no objects, however worthy, such as courthouses and schoolhouses, which have no connection with park purposes, should be permitted to encroach upon it without legislative authority plainly conferred, even when the dedication to park purposes is made by the public itself and the strict construction of a private grant is not insisted upon. . . . Monuments and buildings of architectural pretension which attract the eye and divert the mind of the visitor, floral and horticultural displays, zoological gardens, playing grounds, and even restaurants and rest houses, and many other common incidents of a pleasure ground, contribute to the use and enjoyment of the park. The end of all such embellishments and conveniences is substantially the same public good. They facilitate free public means of pleasure, recreation, and amusement, and thus provide for the welfare of the community. The environment must be suitable and sightly or the pleasure is abated. Art may aid or supplement nature in completing the attractions offered.

(citations omitted). *See also* Aldrich v. City of New York, 145 N.Y.S.2d 732, 742 (Sup. Ct. 1955)("Parks play a vital role in the health of a community, which 'has more to do with the general prosperity and welfare of a state than its wealth or its learning or its culture.'")(quoting Adler v. Deegan, 167 N.E. 705 (N.Y. 1929)) and Williams v. Hylan, 215 N.Y.S. 101, 110 (Sup. Ct. 1926)(parks vital to public health and comfort).

[8] Friends of Van Cortlandt Park v. City of New York, 750 N.E.2d 1050, 1053-54 (N.Y. 2001)(citing Miller v. City of New York, 15 N.Y.2d 34, 37 (1964) Village of Lloyd Harbor v. Town of Huntington, 4 N.Y.2d 182, 190, (1958), Ackerman v. Steisel, 480 N.Y.S.2d 556 (App. Div. 2nd 1984), Stephenson v. County of Monroe, 351 N.Y.S.2d 232 (App. Div. 4th 1974), Aldrich v. City of New York, 145 N.Y.S.2d 732, 741 (Sup. Ct.. 1955), In re Central Parkway Schenectady, 251 N.Y.S. 577, 140 Misc. 727, 729 (Sup. Ct. 1931))(*See* Appendix 2).

[9] State funding and restrictions on alienation are discussed later in Chapter 1, *What if parklands have received State funding?* See also N.Y. Parks, Rec. & Hist. Preserv. Law §§ 15.09 and 17.09; N.Y. Envtl. Conserv. Law §§ 52-0907, 54-0909(1), and 56-0309(12).

[10] State funding and the requirement to provide substitute lands are discussed later in Chapter 1 under the section entitled: *What if parklands have received State funding?* and in Chapter 2, *Determine if State or Federal funding exists in the park.* See also N.Y. Envtl. Conserv. Law §§ 52-0907, 54-0909(1), and 56-0309(12).

General City Law provides that city-owned parklands are "inalienable" and thus require legislative approval to alienate.[11]

2. To what types of land do the principles of alienation apply?

• Formal dedication of parkland or implied dedication of parkland?

The term "dedicated" is often used in referring to municipal parkland subject to State alienation requirements. Common phrases include "lands dedicated for park purposes" and "dedicated parklands." The dedication of parkland may be *formal* through an official act by the governing body of the municipality, such as the passage or adoption of a formal resolution or local law.[12] However, dedication can also be *implied*. This may occur through actions which demonstrate that the government considers the land to be parkland or the public used it as a park. Examples include: a municipality publicly announcing its intention to purchase the lands specifically for use as a park, "master planning" for recreational purposes, budgeting for park purposes, "mapping" lands as parkland, or constructing recreational facilities.[13] Dedication through implication can also occur when the common and accepted use of the land is as a park.[14]

Accordingly, in order for the principles of alienation to apply to municipal land, it need not have been formally dedicated, or even developed with amenities such as lawns, playing fields, or picnic tables.

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[11] N.Y. Gen. City Law § 20(2).

[12] 1996 N.Y. Op. Atty. Gen. (Inf.) 1093 (village board may act by resolution or by local law to dedicate a parcel as parkland). New York State Office of the Attorney General, Informal Opinion No. 96-37 can be found at: http://www.ag.ny.gov/bureaus/appeals_opinions/opinions/1996/informal/96_37.pdf

[13] Kenny v. Board of Trustees of Village of Garden City, 735 N.Y.S.2d 606, 607 (App. Div. 2nd 2001)(property acquired for recreational purposes and used for recreation was instilled with public trust even though never officially dedicated).

[14] Village of Croton-on-Hudson v. Westchester County, 331 N.Y.S.2d 883, 884 (App. Div. 2nd 1972)("While the deeds into the county are in fee and contain no restriction of the land to park use and while there does not appear to have been a formal dedication of the land to such use . . .we think the long-continued use of the land for park purposes constitutes a dedication and acceptance by implication."); Riverview Partners. v. City of Peekskill, 710 N.Y.S.2d 601 (App. Div. 1st 2000)(implied dedication due to evidence showing property was purchased for park purposes, named "Fort Hill Park" on maps and sign at entrance, and used as a park by the public since it was purchased); Gewirtz v. City of Long Beach, 330 N.Y.S.2d 495, 504 (Sup. Ct. 1972)("The essential elements necessary to establish a dedication are an offer by an owner, either express or implied, to appropriate land or some interest or easement therein to public use and an acceptance of such offer, either express or implied when acceptance is required, by the public."); but see Pearlman v. Anderson, 307 N.Y.S.2d 1014, 1016 (N.Y.Sup. 1970), *affd.* 314 N.Y.S.2d 173 (App Div 2nd 1970) (portion of property purchased for general purposes but which may have been used as a park, the proof of which was not convincing to the court, did not require legislative approval for other public use); O'Shea v. Hanse, 147 N.Y.S.2d 792, 798 (Sup. Ct. 1955)(where land never dedicated or used as park and no deed restriction required use as park, Village had authority to sell after finding unsuitable for park).

- **What about other municipal recreational facilities?**

The principles of parkland alienation also apply to the alienation of other types of public recreational facilities. For example, courts have held or implied that the alienation of golf facilities and marinas are subject to Legislative approval.[15] Other recreation facilities such as ice rinks, ski trails, or bridle and bicycle paths are also likely subject to the same approval.[16] Therefore, it is recommended that a municipality seek legislative approval for the discontinuance or conveyance of all public recreational facilities. It is also worth noting that grant contracts with municipalities involving the development of recreational facilities with State or Federal funds require the municipality to obtain alienation legislation.[17]

- **Does the size of the parcel being alienated make a difference?**

Even if the parcel of parkland being alienated is small, the requirements are the same. While the courts have not been asked specifically to exempt small parcels from the legislative process, it is clear they have been concerned with the nature and use of the lands rather than their size. In fact, one early case dealt with a building within a park. The relatively small size of the lands on which that building rested had no bearing on the court's decision.[18] Indeed, the Legislature regularly passes alienation bills that involve small pieces of parkland.[19]

3. What is, what is not, and what may be an alienation.

Because the requirement to obtain legislation to alienate parkland is primarily based in case law, in order to determine what is and what is not an alienation, we rely on judges' decisions, or "precedent" established by the courts to answer the question. The following section discusses some examples of what are, what are not, and what may be alienations. Be sure to look at Section 5 of this chapter for further discussion of specific examples as well.

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[15] Friends of Van Cortlandt Park v. City of New York, 750 N.E.2d 1050, 1055 (2001)(temporary disruption of public golf course and driving range required legislative approval)(*See* Appendix 2); Port Chester Yacht Club v. Village of Port Chester, 507 N.Y.S.2d 465, 467 (App. Div. 2nd 1986)(lease that would create an exclusive use of public marina would be invalid without legislative authorization); Lake George Steamboat Co. v. Blais, 281 N.E.2d 147, 148-49 (1972)(lease of dock space absent legislative authorization to purely private profit making concern violates public trust) .

[16] Rivet v. Burdick, 6 N.Y.S.2d 79 (App. Div 4th Dept. 1938)(public ski trails, ski practice slopes, toboggan slides, bob runs, bridle paths, and winter sports facilities constituted public parks or playgrounds) and Opinion 92-49 N.Y. Office of the State Comptroller (recreational trails constitute public parks). Office of State Comptroller Opinion No. 92-49 can be found at: http://www.osc.state.ny.us/legal/1992/legalop/op92-49.htm.

[17] See Chapter 1, *What if parklands that have received State funding?* and Chapter 3, *What is the legal basis for parkland conversion?* in this Handbook.

[18] Williams v. Gallatin, 128 N.E. 121, 122-123 (1920)(New York City prohibited from entering into lease for building in Central Park because foreign to park purposes).

[19] See, e.g. 2004 N.Y. Laws Ch. 492 (easement alienation of 2/5 of an acre park parcel to water district for construction of well).

- **Alienations**

The following have been determined by the courts to be alienations:

- The conveyance, sale, or lease of municipal parkland or recreational facilities to another public or private entity, such as an adjoining property owner, a developer, or a school district, which results in the facility no longer being used for public park and recreation purposes.[20] As discussed earlier, the courts have determined that the conveyance or lease of even a small portion of a park is an alienation.[21] For this reason, leases of parkland for cellular towers require legislative authorization.[22]
- The lease of municipal park or recreational facilities, especially one to a private profit-making concern, even though the resource may continue to be used for public park and recreational purposes.[23]
- The use of parkland by a municipality for a non-park purpose even though the use may be public in nature. Examples include use as a water filtration facility, a landfill, a museum, senior housing, temporary parking of police or municipal vehicles, or street or subway construction.[24]

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[20] Brooklyn Park Commissioners v. Armstrong, 45 N.Y. 234, 243 (1871)(held that legislation was required to sell land held in trust for the public by the authorities) and Williams v. Gallatin, 128 N.E. 121, 122-23 (N.Y. 1920)(New York City prohibited from entering lease with a quasi-public safety agency for building in Central Park without legislation because foreign to park purposes); Ellington Construction v. Village of New Hempstead, 549 N.Y.S.2d 405, 414 (App. Div. 2nd 1989)(sale of parkland to developer requires legislative authorization).

[21] Williams v. Gallatin, 128 N.E. 121, 122-123 (1920)(New York City prohibited from entering into lease for building in Central Park absent legislation because foreign to park purposes).

[22] The New York State Legislature routinely passes parkland alienation bills for cellular towers on municipal parkland. For a sample bill, see Appendix 12.

[23] Lake George Steamboat Co. v. Blais, 281 N.E.2d 147, 149 (N.Y. 1972)(lease of dock space absent legislative authorization to purely private profit making concern violates public trust), Miller v. City of New York, 15 N.Y.2d 34, 37-38 (1964)(a lease for the construction and operation of a golf driving range was unlawful without legislative approval) and Johnson v. Town of Brookhaven, 646 N.Y.S.2d 180, 181-82 (App. Div. 2nd 1996)(12 year lease giving exclusive use of park to homeowner's corporation invalid).

[24] Friends of Van Cortlandt Park v. City of New York, 750 N.E.2d 1050, 1054 (N.Y. 2001)(construction of underground water treatment facility requires act of legislature even if surface of park restored due to 5 year disruption of park)(*See* Appendix 2); Ackerman v. Steisel, 480 N.Y.S.2d 556, 558 (App. Div. 2nd 1984)(city sanitation trucks, equipment and physical improvements could not exist in park without legislation); In re Central Parkway, Schenectady, 251 N.Y.S. 577, 580 (Sup. Ct. 1931)(without express authority from the legislature, municipal corporations cannot appropriate any part of a public park for laying out streets); Tuck v. Heckscher, 320 N.Y.S.2d 419, 424-25 (Sup. Ct. 1971), judgment affirmed 323 N.Y.S.2d 659 (App. Div. 1st 1971), order affirmed by 277 N.E.2d 402, (1971)(use of city parkland by museum requires legislative approval); Stephenson v. County of Monroe, 351 N.Y.S.2d 232 (App. Div. 2nd 1974)(use of park as landfill required legislative approval); Kenny v. Board of Trustees of Village of Garden City, 735 N.Y.S.2d 606, 607 (App. Div 2nd 2001)(private senior housing inconsistent with purpose for which parkland was acquired), Chatham Green v. Bloomberg, 765 N.Y.S.2d 446, 453-54 (Sup. Ct. 2003)(parking of police vehicles on parkland for less than two years an alienation), Bates v. Holbrook, 64 N.E. 181, 182-83 (N.Y. 1902)(City park commissioners did not have the authority to erect temporary three year structures that also constituted a nuisance on parkland for subway construction absent legislative approval). Ackerman v. Steisel, 480 N.Y.S.2d 556, 558 (App. Div. 2nd 1984)("temporary" use of park for sanitation vehicles an alienation requiring

- Easements on parkland for utilities that result in any above-ground facilities.[25]
- Restricting to local residents the use of parkland that had previously been open to all persons.[26]
- Failure to keep a public park or recreational facility equally open to the public. A public park or recreational facility must be open to the public on an equitable basis.[27] Where availability of public facilities such as ball fields or marina berths is limited, a potential alienation issue can be avoided by providing everyone the same opportunity for access, such as assignment on a "first-come, first-served" basis, or by using a lottery system.

• **Non-alienations**

The following have been determined by the courts *not* to be alienations:

- The issuance of a revocable *license* to a profit-making entity for the operation of a park facility such as a café, snack bar, parking, or for a boat rental service which serves park patrons in connection with their use of the park.[28]
- A revocable *permit* for the use of park facilities for a special program or function, such as an arts and crafts fair, or a permit of greater duration for the temporary use of park facilities which are not otherwise being used by the public. The permit should

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legislative approval); but see In re Central Parkway, Schenectady, 251 N.Y.S. 577, 579-80 (Sup. Ct. 1931)(in dictum: museums, galleries or free public libraries would not require alienation legislation).

[25] Friends of Van Cortlandt Park v. City of New York, 750 N.E.2d 1050, 1055 (N.Y. 2001)(easements over parkland for construction, operation and maintenance of water treatment facility)(*See* Appendix 2).

[26] Gewirtz v. City of Long Beach, 330 N.Y.S.2d 495, 512 (Sup. Ct. 1972)(city could not restrict use of beach park to residents without legislative authority).

[27] Port Chester Yacht Club v. Village of Port Chester, 507 N.Y.S.2d 465, 467 (App. Div. 2nd 1986)(factual dispute existed as to whether membership of public facility was truly open to all residents); Gewirtz v. City of Long Beach, 330 N.Y.S.2d 495, 508 (Sup. Ct. 1972)(beach that had been historically open to the public could not be closed to the public at large absent legislative authority).

[28] See McNamara v. Willcox, 77 N.Y.S. 294, 295 (App. Div. 1st 1902)(license revocable at the pleasure of the city does not require legislative approval); 795 Fifth Ave. Corp. v. City of New York, 205 N.E.2d 850, 851 (1965)(legislative approval was not required for construction of a café and restaurant in Central Park); Williams v. Gallatin, 128 N.E. 121, 122-123 (1920)(restaurants and rest houses compatible with use and enjoyment of a park); Gredinger v. Higgins, 124 N.Y.S. 22 (App. Div. 1st Dept. 1910)(revocable license to sell refreshments and to rent skates and boats did not raise alienation question); Ott v. Doyle, 654 N.Y.S2d 975, 978 (Sup. Ct. 1997)(operation of city-owned golf course by private entity did not require legislation because it was license, not lease), but see Miller v. City of New York, 203 N.E.2d 478 (1964)(a lease for the construction of a golf driving range was unlawful without legislative approval) and Williams v. Hylan, 215 N.Y.S. 101, 110 (Sup. Ct. 1926)(license that amounts to a lease for restaurant on parkland void without legislative authority); Blank v. Browne, 216 N.Y.S. 664 (App. Div. 1st 1926)(concession for automobile parking not an alienation).

contain a provision that it may be revoked at will by the municipality.[29] A temporary use should not be allowed to lapse into a permanent one.[30]

- Charging "use fees," as long as they are reasonable and non-discriminatory. Where use fees are charged, whether by a public or private operator, they should not be in excess of those charged for comparable facilities in the area. A municipality may charge persons who are not residents of the community higher fees than it charges to residents, but case law suggests that non-resident fees should not substantially exceed the comparable fees assessed to residents. [31]

• Possible Alienations

The following actions affecting parkland have not specifically been subject to court action but *may be* alienations. Until there is a legal precedent in each example, State Parks recommends that a municipality obtain alienation legislation.

- The granting of temporary or permanent easements for the installation of underground facilities such as water and sewer pipelines even when the surface of the land will be restored and continue to be used for park and recreational purposes.[32] The New York State Legislature routinely passes underground easement related alienation bills,[33] and this fact would give a court a basis for finding such an easement to be an alienation.

- The discontinuance of park facilities developed on lands not owned by the municipality. For example, a company may offer to *lease* a parcel of land to a town for use as a park. If the park ceases to exist as a result of the termination of the lease by the land owner, State Parks does not believe legislative authorization would be required because the land on which the park was located was not in the public domain. However, the terms and conditions of the lease between the municipality and the land owner would need to be reviewed closely in making that determination. Furthermore, if State or Federal funding was used to improve the park, other restrictions would apply.[34]

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[29] See, e.g. Miller v. New York, 203 N.E.2d 478, 480 (1964)(because "property was as a park impressed with a trust for the public it could not without legislative sanction be alienated or subjected to anything beyond a revocable permit.")

[30] See, e.g. Ackerman v. Steisel, 480 N.Y.S.2d 556, 558 (App. Div. 2nd 1984)(25 year "temporary" use of park was an alienation that required legislative approval).

[31] Gewirtz v. City of Long Beach, 330 N.Y.S.2d 495, 512-13 (Sup. Ct. 1972)(city imposed different rates for residents and non-residents for beach access; suggests two-times the resident fee is reasonable).

[32] Friends of Van Cortlandt Park v. City of New York, 750 N.E.2d 1050, 1054 (N.Y. 2001)(Court of appeals refused to answer question whether construction of underground water treatment facility was a substantial intrusion on parkland which requires act of legislature even though surface to be restored)(*See* Appendix 2).

[33] See, e.g. 2001 N.Y. Laws Ch. 459 (authorizing Monroe county to convey an easement through Webster Park for sanitary sewer development) attached to this Handbook as Appendix 11. It is worth noting that utility easements that do not have significant impacts on the recreational utility of a park are not *conversions* which are discussed in Chapters 3 and 4 of this Handbook.

[34] See Chapter 1 of this Handbook, *What if parklands have received State funding?*

- **Transfers of parkland from one municipal entity to another municipal entity**

  The conveyance of parkland from one municipality to another municipality without changing the status of the facility which will remain a park open to the public for recreational purposes may be an alienation of parkland. For example, a county may wish to convey a county park to a village or town so that the responsibility for maintaining the facility will rest upon those who are using it the most. An exhaustive review of the case law addressing parkland alienation leaves this question unanswered. However, in the past, many municipalities have sought legislation, and the Legislature has routinely passed laws to address the transfer.[35] This fact may lead a court to find that such a transfer is an alienation.

  The New York State Office of the Attorney General has issued an informal opinion stating that this area of law has not been settled, and suggests that because control of parkland is vested solely with the Legislature, parkland alienation legislation is recommended.[36] If the park has received grant funds, notice should be provided to State Parks.[37] The safest course of action is to obtain alienation legislation.

- **The Operation of Parkland by Not-For-Profit Pursuant to a Lease**

  A municipality may wish to lease its parkland to a not-for-profit entity that would improve the facility and then share its use with the public. For example, a private local college may want to use public parkland to create ball fields for its sports programs and share the space with the public.

  In one instance of this type, a court determined that the operation of a marina on public lands by a not-for-profit entity pursuant to a lease did not require legislative approval.[38] That court found that in order to avoid an alienation problem, the agreement must serve a public purpose, must not result in exclusively private use, and must be one that is compatible with and appropriate for the park or recreational area in question.[39]

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[35] For a sample bill, see Appendix 9.

[36] 2008 N.Y. Op. Atty. Gen. (Inf.) 11 New York State Office of the Attorney General, Informal Opinion No. 2008-11 can be found at: http://www.ag.ny.gov/bureaus/appeals_opinions/opinions/2008/Informal/I%202008-11%20pw.pdf

[37] If State or Federal funding has been provided to the park being transferred, written notification should be sent to State Parks stating that the transfer will be taking place. The letter should also affirm that the municipal entity taking over the park will be accepting the responsibilities set forth in the contract between State Parks and the municipality that received the funding for the park being transferred.

[38] Port Chester Yacht Club v. Village of Port Chester, 507 N.Y.S.2d 465 (App. Div. 2nd 1986)(not-for-profit yacht club with membership open to the public operating on public lands acquired for marina purposes pursuant to lease was not necessarily an alienation if it served a public purpose and was not profit-making; case remanded to determine if extent of limited public use and access in lease was sufficient to qualify as a public purpose); cf Lake George Steamboat Co. v. Blais, 281 N.E.2d 147, 149 (1972)(lease of dock space absent legislative authorization to purely private profit making concern violates public trust).

[39] Port Chester Yacht Club v. Village of Port Chester, 507 N.Y.S.2d 465, 467 (App. Div. 2nd 1986)(leases of public lands to private not-for-profit organizations valid so long as public purpose is served and use is not exclusively private); cf Ackerman v. Steisel, 480 N.Y.S.2d 556 (App. Div. 2nd 1984)(storage of city sanitation trucks, equipment and physical improvements not compatible with park).

Because the decision in that case was based on unique facts, this area of law remains uncertain, and it is the opinion of State Parks that the safest course of action is for the municipality to obtain alienation legislation. This position is bolstered by the fact that the courts have not yet fashioned a test for determining whether a particular public-private partnership may result in an exclusively private use with no public benefit which would constitute an alienation. Therefore, these arrangements will be analyzed on a case-by-case basis. A court could determine that *any* private use that results in the public being excluded from municipal parkland is "exclusive" and is therefore an alienation.

Until the law becomes clearer, State Parks recommends that the following factors be considered in evaluating whether proposals to lease municipal parkland or recreational facilities to a non-profit private entity may constitute an alienation (State Parks uses these criteria when evaluating municipal park grants that include a lease to a private entity).[40] The municipality and the Legislature should consider the extent to which the lease arrangement:

1) replaces or improves an inadequate facility or creates a new facility;
2) provides 51 per cent or greater public use of and access to the facility for extended periods of time on a continuous or regular basis during the year;
3) maximizes public use of and access to the facility during periods of peak recreational demand;
4) diverts all or part of the facility to exclusive non-public use; and
5) involves private funding for the improvements that is high (in value, expenses, or costs of labor or services) in proportion to the total project cost.

If the lease arrangement replaces inadequate facilities or creates new facilities, this is one factor that could weigh in favor of the arrangement. Similarly, the arrangement may be viewed favorably if the public has more access than the not-for-profit, especially during peak periods of demand; the more public access, the more favorable the arrangement becomes. In addition, if the not-for-profit's investment is high in proportion to the total project cost, this could be viewed favorably as well. However, if the project results in exclusive use of any portion of the facility, it would likely be viewed unfavorably.

- **Mineral Extraction, Timber Harvesting and Farming in Municipal Parks**

Natural resources, such as coal, gas and oil, may be located beneath municipal parkland and a municipality may receive offers to extract them. If the act of removing the resources results in a temporary or permanent use of parkland, it constitutes an

[40] *See* 9 N.Y.C.R.R. 441.4(a).

alienation.[41] This would be true of timber harvesting which is a non-park use and disruptive of parkland.[42] Likewise, Farming crops that exist on municipal parkland, for example, on parkland that was formerly a farm, is also a non-park use and constitutes an alienation.[43]

It is unclear whether the removal of resources beneath parkland *without* disrupting the surface of the parkland, for example by horizontal directional drilling, would be considered an alienation. Horizontal directional drilling (in which a well is drilled from outside the park's boundaries and continues horizontally underneath the park) should theoretically avoid any disruption of park use and long-term discontinuance of parkland. However, generally speaking, real property law holds that land ownership carries with it a bundle of rights, including not only that which is on the surface, but that which is beneath and above the surface as well.[44] This would suggest that any resources removed from parkland, either on the surface, such as timber, or beneath, such as oil and gas, are also held in trust for the People of the State.[45] Arguably, therefore, the rule that a municipality can't sell its parkland without obtaining Legislative permission applies equally to the sale of the resources on and beneath the parkland.

State Parks therefore recommends that, until a court addresses the issue directly, municipalities seek the permission of the Legislature prior to leasing or selling any of the resources on or beneath municipal parkland. If such permission is obtained, State Parks further recommends that the proceeds of the conveyance be used for capital improvements to existing municipal parks and/or for the acquisition of additional municipal parkland due to the fact that the resources themselves are held in trust for the People of the State.[46]

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[41] Friends of Van Cortlandt Park v. City of New York, 750 N.E.2d 1050 (N.Y. 2001) (temporary loss of parkland)(*See* Appendix 2).

[42] 1995 N.Y. Op. Atty. Gen. (Inf.) 52 (non-park uses such as timber harvesting inconsistent with park use and require legislative approval). New York State Office of the Attorney General, Informal Opinion No. 95-52 can be found at: http://www.ag.ny.gov/bureaus/appeals_opinions/opinions/1995/informal/95_52.pdf

[43] 1963 N.Y. Op. Atty. Gen. (Inf.) 250 (park property cannot be leased for agricultural purposes without the express authority of an act of the Legislature.

[44] Real Property is often referred to as containing a "bundle of rights" that encompasses all aspects of ownership that exists in land. Accordingly, the rights associated with Real Property include not only "the ground or soil, but every thing which is attached to the earth, whether by the course of nature, as trees, herbage, and water, or by the hand of man, as houses and other buildings; and which has an indefinite extent, upwards as well as downwards, so as to include every thing terrestrial, under it or over it." Lupo v. Town of Huron, 799 N.Y.S.2d 405 (Sup. Ct. Wayne Co. 2005) (quoting 3 James Kent, Commentaries on American Law, 1st Ed. 1828 at 321).

[45] 2000 N.Y. Op. Atty. Gen. (Inf.) 3 (managing forest by limited and selective cutting of timber to preserve park and enhance use (as opposed to harvesting for profit) does not require legislative permission, however proceeds from sale of timber should be used for park improvement purposes). New York State Office of the Attorney General, Informal Opinion No. 2000-3 can be found at: http://www.ag.ny.gov/bureaus/appeals_opinions/opinions/2000/informal/2000_3.pdf , and 1963 N.Y. Op. Atty. Gen. (Inf.) 250 (crops and farm infrastructure that exist on parkland that was formerly a farm should not go to waste and can be sold, but proceeds should go toward capital improvements to park facilities).

[46] Id. and 1995 N.Y. Op. Atty. Gen. (Inf.) 52 (non-park uses such as timber harvesting inconsistent with park use and require legislative approval). New York State Office of the Attorney General, Informal Opinion No. 95-52 can be found at: http://www.ag.ny.gov/bureaus/appeals_opinions/opinions/1995/informal/95_52.pdf

4. What if parkland has received State funding?

When a municipality accepts State funding for the acquisition or improvement of parkland or recreational facilities, certain other restrictions on alienation are created. The restrictions depend largely upon the source of the funding that was provided to the municipality. The restrictions vary, but include a restriction on alienation requiring legislative approval at minimum, and in some cases, a requirement to provide substitute lands. It is imperative that a municipality that wishes to alienate parkland find out *early in the process* whether funding was used for the acquisition or the development of the park.

Over the years, there have been many different grant programs administered by the Office of Parks, Recreation and Historic Preservation for park and recreation purposes from both State and Federal sources. Below is a list of State programs through which a municipality may have obtained funding and the restrictions imposed by those programs. Remember, the *Federal* funding restrictions are discussed in Chapter 3.

- ***Park and Recreation Land Acquisition Bond Acts*** **of 1960 and 1965: Provides for a restriction on alienation.**

  > Lands acquired by a municipality with the aid of funds made available pursuant to this article shall be retained by the municipality and shall not be disposed of or . . . used for other than public park and related purposes without the express authority of an act of the legislature.[47]

- ***Outdoor Recreation Development Bond Act*** **of 1965: Provides for a restriction on alienation.**

  > Real property acquired or developed by a municipality with the aid of funds made available pursuant to this article shall not be sold or disposed of or used for purposes other than public park, marine, historic site or forest recreation purposes without the express authority of an act of the legislature.[48]

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[47] N.Y. Parks, Rec. & Hist. Preserv. Law § 15.09. *See also* 1995 N.Y. Op. Atty. Gen. (Inf.) 52 (non-park uses such as timber harvesting, establishment of a town hall, chamber of commerce or granting of an easement on lands purchased with funds issued through the Park and Recreation Acquisition Bond Act of 1960 are prohibited absent legislative authorization). New York State Office of the Attorney General, Informal Opinion No. 95-52 can be found at:
http://www.ag.ny.gov/bureaus/appeals_opinions/opinions/1995/informal/95_52.pdf

[48] N.Y. Parks, Rec. & Hist. Preserv. Law § 17.09.

- ***Environmental Quality Bond Act* of 1986: Provides for a restriction on alienation and a requirement to provide substitute lands.**

This Act is commonly referred to as the "Environmental Quality Bond Act," the "EQBA," or the "1986 Bond Act." The statute provides:

> Real property acquired, developed, improved, restored or rehabilitated by a municipality pursuant to subdivision four of section 52-0901 of this title[49] with funds made available pursuant to this title shall not be sold or disposed of or used for other than public park purposes without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.[50]

- ***Environmental Protection Act* of 1993: Provides for a restriction on alienation and a requirement to provide substitute lands.**

This Act is commonly referred to as the "Environmental Protection Fund," or the "EPF." For municipal park projects, the statute provides:

> Real property acquired, developed, improved, restored or rehabilitated by or through a municipality pursuant to paragraph a of subdivision four of section 54-0903 of this title[51] or undertaken by or on behalf of the city of New York with funds made available pursuant to this title shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than public park purposes without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonable equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.[52]

The EPF also allows for municipal park projects to be undertaken through not-for-profit corporations and provides:

> Real property acquired by a not-for-profit organization with funds made available pursuant to paragraph b of subdivision four of section 54-0903 of this title[53] shall not be used in violation of an agreement entered into pursuant to the provisions of paragraph b of subdivision two of section 54-0907 of this title,[54] or sold, leased,

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[49] N.Y. Envtl. Conserv. Law § 52-0901(4) is entitled "Municipal park projects."
[50] N.Y. Envtl. Conserv. Law § 52-0907.
[51] N.Y. Envtl. Conserv. Law § 54-0903(4)(a) addresses municipal park projects.
[52] N.Y. Envtl. Conserv. Law § 54-0909(1).
[53] N.Y. Envtl. Conserv. Law § 54-0903(4)(b) addresses municipal park projects undertaken by not-for-profit corporations.
[54] N.Y. Envtl. Conserv. Law § 54-0907(2). This section of the EPF requires that the not-for-profit enter into a contract with the commissioner which shall include the following:

> exchanged, donated or otherwise disposed of without the express authority of an act of the legislature.[55]

- ***Clean Water/Clean Air Bond Act* of 1996: Provides for a restriction on alienation and a requirement to provide substitute lands.**

This Act is commonly referred to as the "Clean Water/Clean Air Bond Act," or the "1996 Bond Act." For municipal park projects, the statute provides:

> Real property acquired, developed, improved, restored or rehabilitated by or through a municipality for park projects undertaken pursuant to this section with funds made available pursuant to this section shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than public park purposes without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.[56]

Similar to the EPF discussed above, the 1996 Bond Act also allows for municipal park projects to be undertaken through not-for-profit corporations. The statute provides:

> Real property acquired by a not-for-profit organization with funds made available pursuant to this section for park projects undertaken pursuant to this section shall not be used in violation of an agreement entered into pursuant to this section[57] or sold, leased, exchanged, donated or otherwise disposed of without the express authority of an act of the legislature.[58]

> a. An agreement to make and keep the lands accessible to the public unless the commissioner determines that public accessibility would be detrimental to the lands or any natural resources associated therewith; b. an agreement not to sell, lease, exchange or donate the lands except to the state, a local government unit or another qualifying tax exempt non-profit organization for recreation and conservation purposes approved by the commissioner; and c. an agreement to execute and convey to the state at no charge a conservation easement, pursuant to title three of article forty-nine of this chapter, over the lands to be acquired with state assistance payments.

[55] N.Y. Envtl. Conserv. Law § 54-0909(2).

[56] N.Y. Envtl. Conserv. Law § 56-0309(12).

[57] N.Y. Envtl. Conserv. Law § 56-0309(11). This section of the Bond Act requires that the not-for-profit enter into a contract with the commissioner which shall include the following:

> a. an agreement to make and keep the lands accessible to the public unless the not-for-profit corporation can demonstrate to the commissioner's satisfaction that public accessibility would be detrimental to the lands or any natural resources associated therewith;
>
> b. an agreement not to sell, lease, exchange or donate the lands except to the state, a local government unit or another qualifying tax exempt non-profit organization for recreation and conservation purposes consistent with this title and approved by the commissioner; and
>
> c. an agreement to execute and convey to the state at no charge a conservation easement, pursuant to title three of article forty-nine of this chapter, over the lands to be acquired with state assistance payments.

[58] N.Y. Envtl. Conserv. Law § 56-0309(13).

5. Other Alienation Issues

• Do Municipal Alienation Principles Apply to State Parkland?

Under the public trust doctrine, State parkland is held in trust for the People of the State and the discontinuance or conveyance of State parkland is governed by State statute. Enactment of park-specific legislative authorization is not required for State Parks to convey or change the use of State parkland.[59] The acquisition, discontinuance or conveyance of State land, waters and resources including parkland, is governed by provisions of general applicability in the Parks, Recreation and Historic Preservation Law,[60] the Environmental Conservation Law,[61] and the Public Lands Law.[62] It is worth noting that the method of acquiring State parkland may restrict its use to a public park, or have a bearing on whether or not it may be conveyed to a non-public entity. For example, if lands are gifted to the State for use as parkland, there may be a restriction in the deed that mandates that the land be maintained as parkland.[63]

All conveyances of property under the jurisdiction of the Office of Parks, Recreation and Historic Preservation, including leases, licenses, easements and permits, are reviewed by State Parks' Real Property Bureau.

• What About Department of Transportation Projects?

Generally, the Department of Transportation ("DOT") acquires lands for highway purposes according to the Eminent Domain Procedure Law.[64] If the highway project will utilize Federal funds, the DOT must comply with section 4(f) of the Federal Department of Transportation Act of 1966.[65] This section applies when a Federally-funded highway project requires the use of any land in a public park, recreation area, wildlife or waterfowl refuge, or historic property. It requires the Secretary of Transportation to ensure that the project is undertaken *only* if there is no prudent or feasible alternative, and requires that the design used minimizes any harm done to the resources affected.[66]

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[59] The cases cited herein have all involved *municipal* actions concerning *municipal* parklands and have not concerned State owned parklands. Exhaustive research has failed to reveal any parkland alienation cases involving State parklands.

[60] See N.Y. Parks, Rec. & Hist. Preserv. Law §§ 3.09(1), 3.17, 3.19 and 13.06.

[61] See N.Y. Envtl. Conserv. Law §§ 3-0305, 3-0307, 9-0105(2), (7) and (7-a), 41-0105.

[62] See N.Y. Pub. Lands Law §§ 2-a, 21, 24, 25, 27 30-a and 75.

[63] See, e.g., Grant v. Koenig, 325 N.Y.S.2d 428 (Sup. Ct. 1971)(land conveyed to city with express condition it be used as park returns to original owners or their heirs if it ceases to be used as park).

[64] See, generally, N.Y. Em. Dom. Proc. Law.

[65] Section 4(f) is entitled "Preservation of Parklands" and is codified at 23 U.S.C.A. § 13. The implementing regulations for this section of law can be found at 23 C.F.R. 771.135. See also the Federal Highway Administration's website at http://environment.fhwa.dot.gov/4f/index.asp

[66] Section 4(f) provides:

> After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project (other than any project for a park road or parkway under section 204 of this title) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and

Department of Transportation projects which are subject to section 4(f) are reviewed by State Parks' Environmental Management Bureau to assure that they are being undertaken in accordance with the statute. In addition, the State Historic Preservation Office ("SHPO"), an office within State Parks, reviews the project to evaluate impacts to historic and cultural properties under the National Historic Preservation Act.[67]

- **What About Urban Renewal Projects?**

It has been held in New York that the transfer of parkland by a municipality to an urban renewal agency when the municipality is implementing an urban renewal program does not require alienation legislation.[68] However, the decision was limited to the transfer to the urban renewal agency and did not address the use of the parkland once the agency had jurisdiction. Given the Court of Appeals' clear and recent reassertion of the principle,[69] it should be assumed that if an urban renewal agency seeks to use the parkland for other than public park purposes, legislative authorization is required. It should be noted that an urban renewal program is very narrow in its application and must meet certain strict criteria.[70]

- **What About Public Housing Projects?**

Municipalities that wish to use parkland as part of a public housing project need specific legislative approval to do so.[71] The New York Public Housing Law was specifically

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> waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.

23 U.S.C.A. § 13. See also Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 411 ("This language is a plain and explicit bar to the use of federal funds for construction of highways through parks - - only the most unusual situations are exempted.")

[67] 16 U.S.C. § 470(f). The National Historic Preservation Act and the role of the SHPO are discussed in greater detail in Chapter 4 of this Handbook entitled *"The Conversion Process."*

[68] Village Green Realty Corp. v. Glen Cove Community Development Agency, 466 N.Y.S.2d 26 (2nd Dept. 1983)(N.Y. Gen. Mun. Law §503-a(4) allows for transfer of parkland to an urban development agency and supersedes N.Y. Gen. City Law §20 which prohibits alienation of parkland without legislative approval.) This decision extended the same court's prior holding in *Fisher v. Becker*, 302 N.Y.S.2d 470 (2nd Dept. 1969)(*aff'd* 258 N.E.2d 727 (1970)) that N.Y. Gen. Mun. Law §507 supersedes §311 of the N.Y. Village Law concerning the sale of a public parking lot (not parkland) Of course, a parking lot does not have the same protections as parkland which is covered by the principle of parkland alienation.

[69] Friends of Van Cortlandt Park v. City of New York, 750 N.E.2d 1050, 1055 (N.Y. 2001) ("'use [of parkland] for other than park purposes, either for a period of years or permanently, requires the direct and specific approval of the State Legislature, plainly conferred.'")(*See* Appendix 2).

[70] *See, generally*, N.Y. Gen. Mun. Law Article 15.

[71] See N.Y. Pub. Hous. Law §124:

> In connection with projects located within its territorial boundaries, a government may, . . .grant, convey or lease any of its property, whether held in a proprietary or governmental capacity, to an authority or government, including real property already devoted to a public use, provided that the

modified by the Legislature to address an action by a municipality that wished to take land which may have been parkland for use in a public housing project.[72]

- **What Buildings Are Appropriate in Municipal Parks?**

Municipal parks often have buildings that support the park itself. Buildings that are consistent with park purposes, such as park maintenance buildings and restroom facilities, are acceptable in a park setting.[73] The Court of appeals has ruled that buildings are appropriate in a park only if they are consistent with park purposes and if they "facilitate free public means of pleasure, recreation, and amusement and thus provide for the welfare of the community."[74] The construction of other buildings on municipal parkland, such as schools, town halls, or courthouses, require alienation legislation, even if the buildings serve a public purpose.[75]

6. Legal Enforcement of Alienation Principles

As discussed earlier, State law does not provide State Parks legal authority to regulate or police the principles of municipal parkland alienation or the public trust doctrine. The only exception is if the municipality has accepted State funding for the park pursuant to the grant programs mentioned in subdivision 4, or Federal funding which is discussed in Chapter 3. In those cases, State Parks has a contractual basis for enforcement as well as an enforcement right pursuant to the statute governing the grant.

In those cases in which there is no State or Federal funding, the principles of the public trust doctrine may be enforced by the New York State Attorney General's Office. Should a municipality seek to sell, lease, or convey public parkland, or change or discontinue the use of parkland, without legislative authorization, the Attorney General has the power to bring an action to prevent such conveyance.[76]

> government making the grant or lease determines that the premises are no longer required for the public use to which the property is devoted and that it is to the interest of the government to grant or lease the property to the authority for the purposes of this chapter. Notwithstanding any other provisions of this section to the contrary, if the property is listed by the government as parkland in the office of the assessing authority of the government or such property is used as active or passive parkland or is parkland, then such property shall not be so granted, conveyed, leased or discontinued as parkland, without an act of the state legislature approving such grant, conveyance lease, or discontinuance.

[72] See Grayson v. Town of Huntington, 554 N.Y.S.2d 269 (2nd Dept. 1990) (Section of New York Public Housing Law was analogous to the General Municipal Law §503-a(4) and therefore municipalities did not need legislative approval to alienate parkland for public mission); *but see* Grayson v. Town of Huntington, 618 N.Y.S.2d 407 (2nd Dept. 1994) (Acknowledging amendment to New York Public Housing Law requiring municipalities to seek legislative approval to alienate parkland for public housing purposes).

[73] Williams v. Gallatin, 229 N.Y. 248, 254 (1920) (proposed museum on parkland did not serve park purpose and could not be built without legislative permission).

[74] Id. at 254.

[75] Id. at 253.

[76] *See, e.g.* Capruso v. Village of Kings Point, 912 N.Y.S.2d 244, 245 (App. Div. 2nd 2010).

- **Is there a Statute of Limitations on Municipal Parkland Alienations?**

If a municipality improperly alienates parkland, a challenge to that action is often brought in the New York State Supreme Court in the form of a "declaratory judgment" proceeding.[77] Such proceedings are often restricted by what is called a "statute of limitations" which requires that an action must be commenced within a certain period of time. However, a recent Appellate Division case has held there is *no* statute of limitations on actions asserting violations of the public trust doctrine. "A municipality's current and ongoing use of dedicated parkland for non-park purposes without the approval of the State Legislature in violation of the public trust doctrine is a continuing wrong that the municipality has the ability to control and abate."[78]

[77] N.Y. Civ. Prac. L. & R. 3001

[78] Capruso v. Village of Kings Point, 912 N.Y.S.2d 244, 245 (App. Div. 2nd 2010) (Action for use of parkland by Village for public works site for the past 60 years was not barred by the statute of limitations); *see also* Ackerman v. Steisel, 480 N.Y.S.2d 556 (App. Div. 2nd 1984), *aff'd* 489 N.E.2d 251 (1985)(City of New York ordered to remove trucks, equipment and other materials and physical improvements, including fences and buildings that had been on parkland for a significant period of time within 90 days); Jensen v. General Electric Co., 82 N.Y.2d 77, 90 (1993)(injunctive relief for nuisance or trespass continues to accrue irrespective of statute of limitations for money damages).

Chapter 2: The Alienation Process

This chapter illustrates the steps a municipality should take when considering the alienation of municipal parkland. It also provides citizens with a resource for understanding municipal actions concerning parkland. It is worth repeating that municipalities should seriously consider other options prior to alienating public parkland.

How long does an alienation take?

The enactment of municipal parkland alienation legislation can be complex and time consuming. For this reason it is advisable for a municipality to begin work on an alienation proposal as early as possible, even in the months before a legislative session starts. This will allow for all of the reviews to be completed, and for the appropriate bill language to be drafted. State Parks believes that at least one year should be allowed to complete the alienation process from start to finish, although some alienations may take more or less than one year.

It is crucial to note that if Federal *Land and Water Conservation Fund* dollars have been invested in the park a conversion must take place and more time must be allotted. Please refer to Chapter 3 for information on the conversion process. When both alienation and conversion apply to the same parcel, it is recommended that the provisions of both procedures be reviewed and take place in a coordinated fashion. The Office of Parks, Recreation and Historic Preservation is always available to review a proposal for the alienation of municipal parkland, whether or not legislation has been introduced.

What are the steps a municipality should take in considering a change of use of parkland or recreational areas?

Each of the following steps may not apply in all cases, and the steps need not be followed in the precise order.

1. Determine whether or not the proposed action is an alienation of parkland.

Based upon the information in Chapter 1 of this Handbook, municipalities should be able to determine if their proposed change of use fits the definition of an alienation. If there is any doubt as to whether or not a proposed change of use is an alienation, State Parks recommends that the municipality obtain legislation. If it chooses to forgo the alienation process, the municipality may find itself in the position of defending a lawsuit that it could have avoided by having obtained alienation legislation and/or expending substantial public resources to reverse the alienation or acquire replacement parkland.

2. Explore other options to avoid using parkland.

State Parks strongly encourages exploration of other alternatives prior to the sale, conveyance, lease, or use of parkland for any purpose other than recreation. Municipalities considering alienation should refer to Appendix 3 which contains a list of factors that should be evaluated and documented before pursuing parkland alienation legislation. Having the answers to these questions on hand will assist in obtaining alienation legislation, in completing the *State Environmental Quality Review Act* (SEQR) process,[79] and in answering any public inquiries or challenges that may arise.

3. Involve the public.

Involving the public early in the process is highly recommended. Public involvement is encouraged and often required when implementing the SEQR process,[80] and accomplishing this *early in the process* is encouraged under SEQR as well.

4. Notify the Office of Parks, Recreation and Historic Preservation.

Municipalities are encouraged to contact the State Parks Regional Grants Officer in their area early in the process so that State Parks can provide information and guidance.[81] It is much easier to assist at the beginning of the process than to try to remedy problems later in the process. If the municipality does not contact State Parks, the Office may become aware of a proposed or completed alienation or conversion in one of several ways:

- A legislator or municipal official may contact State Parks.
- A concerned resident may contact State Parks.
- A regional staff person may see news reports about a pending discontinuance or conveyance of municipal parkland.
- A regional staff person may notice an activity, which is not related to park or recreational activities, occurring in a municipal park.
- State Parks' Counsel's Office may find a parkland alienation bill as part of its daily review of the legislation that is being considered by the Senate and Assembly.

[79] Please see section entitled *Apply the State Environmental Quality Review Act* later in this chapter for a more in-depth discussion of SEQR.
[80] N.Y. Envtl. Conserv. Law § 8-0103(2)("Every citizen has a responsibility to contribute to the preservation and enhancement of the quality of the environment.")
[81] A list of Regional Grants Officers and their contact information is set forth in Appendix 1 of this Handbook.

5. Determine if State or Federal funding has been allocated to the park.

This is a crucial step in the process. Determining whether State or Federal funding was provided for acquisition or development – at any time in the park's history – will dictate whether the municipality is legally obligated to provide substitute lands pursuant to certain State requirements as discussed in Chapter 1, or whether the municipality is subject to the Conversion process discussed in Chapter 3. Learning of these obligations early in the process allows the municipality to weigh all of the pros and cons of pursuing an action involving municipal parkland.

6. Complete the Parkland Alienation Municipal Information Form.

The *Parkland Alienation Municipal Information Form* should be completed by the appropriate municipal official. This form, found in Appendix 4, asks for the following information:

- The history of the park, its size, and the proposed use of the lands being alienated.
- The location of the park lands, and their present use and condition.
- Whether or not any State or Federal grants were used towards the acquisition or development of the park.

Once this form is completed, it should be returned to the State Parks Regional Grants Officer and the other people specified on the form.[82]

7. Contact your local State legislative sponsor.

If the municipality determines that it wishes to proceed with the alienation process, it will need to contact its local State legislative representatives. A legislative sponsor will draft the legislation on behalf of the municipality, and introduce it into the Legislature. While there are several examples of bills in the Appendices of this Handbook, there is no substitute for the assistance of a legislator during bill drafting. In most instances, sponsors will be needed in *both* the Senate and the Assembly to pass the bill.

8. Draft legislation with the help of the legislative sponsor and State Parks Counsel's Office.

If alienation legislation is required, the primary bill drafter will be the legislative sponsor. State Parks' Counsel's Office will be happy to work with municipal officials and legislative staff to assure that the bill includes the necessary provisions.

[82] See Appendix 1 of this Handbook for contact information.

- **What should be in the legislation?**

- **Substitute Lands and Fair Market Value**

To prevent a net loss of parkland to the pubic, it is preferable that parkland alienation legislation include a provision requiring the acquisition and dedication of substitute parkland for the lands being alienated. Both the lands being discontinued and the replacement lands should be identified in the proposed legislation using a metes and bounds description.[83] The statutory substitution requirement *cannot* be waived by State Parks for any alienation of parkland for which the municipality received State funds under certain programs discussed in Chapter 1.[84] In addition, substitution is mandatory if a municipality received funding pursuant to a Federal program that requires the conversion process be followed, as will be discussed in Chapter 3.[85]

If the parkland to be alienated has received Federal Land and Water Conservation Fund dollars, the National Park Service has standards that must be met for substitute lands. State Parks recommends that the municipality contact State Parks' Grants Bureau in Albany as early as possible to discuss these requirements and ensure that proper replacement lands are identified and inserted in the alienation bill. If it is not possible to identify the replacement lands at the time the alienation legislation is introduced, State Parks recommends inserting a paragraph in the legislation that clearly states that adequate replacement lands must be identified and that the legislation will not have legal effect until the replacement provision is satisfied.[86]

In cases where there is no State or Federal funding and substitute lands have not been identified, but the municipality intends to replace the lost parkland, the Legislature has sometimes accepted alternative language in the alienation bill. In these instances, the legislation typically requires the municipality to set aside, for the purchase of additional parkland an amount equal to the appraised fair market value of the lands being discontinued.[87] Such bills have also included language to the effect that if the lands purchased as substitute lands are less in fair market value than the lands being alienated, the difference should be dedicated toward capital improvements to existing park and recreational facilities.[88] It is important to stress that State Parks strongly recommends that each municipal parkland alienation bill require the purchase and dedication of replacement lands, and that the replacement parcel(s) be clearly identified in the bill. The large majority of alienation bills enacted each year by the Legislature and Governor includes the

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[83] For a sample bill with this language, see §4 of 2010 N.Y. Laws 86 found in Appendix 6.
[84] See Chapter 1, *What if parklands have received State funding?*
[85] See Chapter 3, *All About Parkland Conversion.*
[86] Please see the section entitled *Existence of Federal Funding* on the next page.
[87] For a sample bill with this language, see §2 of 2008 N.Y. Laws 460 found in Appendix 8. Please note that fair market value is determined by an appraisal. If the municipal park has received Federal funding and a conversion must also take place, there are specific Federal appraisal standards that must be followed. The *Uniform Appraisal Standards for Federal Land Acquisitions* can be found on the United States Department of Justice's website: http://www.usdoj.gov/enrd/land-ack/ Please see Chapter 4, *Select substitute lands* in this Handbook.
[88] For a sample bill with this language, see §3 of 2008 N.Y. Laws 460 found in Appendix 8

identification of specific replacement lands, and State Parks strongly believes that this is the best approach.[89]

State Parks recognizes that, in very rare instances, there may be valid reasons to alienate particular parklands when the substitution of other lands is not possible or appropriate. In such cases, if substitution is not mandatory due to State or Federal funding requirements, an alternate requirement to the substitution directive can be applied. The bill should contain a statement calling for the net proceeds of any park sale to be used for acquisition of additional parklands if they can be found, or in the alternative, capital improvements to existing municipal park and recreational facilities.[90]

If a municipality is transferring land to another municipality for continued operation for park and recreational purposes, the bill should be specific on this point.[91]

- **Existence of Federal Funding**

As discussed above, if the parkland or recreational facility being alienated has received Federal funding pursuant to the *Land and Water Conservation Fund* ("LWCF"), language should be included in the bill that sets forth the requirement to follow the Federal conversion process before any transfer or discontinuance can take place.[92] Such language should likewise be included if the parkland or recreational facility being alienated has received Federal funding pursuant to the *Urban Park and Recreation Recovery Program*.[93]

If the municipality is uncertain if the park has received either of these sources of funding, State Parks recommends including the language as a precaution. If it turns out that the park is not the recipient of the funding, there is no requirement to fulfill the conversion process.

- **Utility Easements**

In legislation that permits an easement over parkland for utility purposes, language should be inserted that requires that the fair market value of the easement be determined and that

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[89] See Approval Memorandum No. 24 Chapter 460, 2008 N.Y. Laws 460 found in Appendix 8.
[90] For a sample bill with this language, see §2 of 2008 N.Y. Laws 85 found in Appendix 7.
[91] For a sample bill with this language, see §1(a) of 2010 N.Y. Laws 476 found in Appendix 9.
[92] The following language will satisfy the requirements:

> If the parkland that is the subject of this bill has received funding pursuant to the federal land and water conservation fund, the discontinuance of park land authorized by the provisions of this act shall not occur until the municipality has complied with the federal requirements pertaining to the conversion of park lands, including satisfying the secretary of the interior that the discontinuance with all conditions which the secretary of the interior deems necessary to assure the substitution of other lands shall be equivalent in fair market value and recreational usefulness to the lands being discontinued.

For sample bills with this or similar language, see §6 of 2010 N.Y. Laws 86 found in Appendix 6, §4 of 2008 N.Y. Laws 85 found in Appendix 7, §3 of 1998 N.Y. Laws 412 found in Appendix 10, §4 of 2010 N.Y. Laws 287 found in Appendix 11, and §5 of 2009 N.Y. Laws 67 found in Appendix 13.
[93] For a sample bill with this language, see §3 of 1998 N.Y. Laws 412 found in Appendix 10.

the value of the easement be dedicated toward the acquisition of additional parkland and/or the capital improvements of existing park and recreational facilities within that municipality.[94] Where legislation authorizes easements for the installation of utility facilities beneath public parkland, the bill should require the surface of the lands to be restored and to continue to be used for park and recreational purposes.[95]

- **Leases for Cellular Towers**

Municipalities are with increasing frequency seeking legislation to authorize easements for the installation of cellular towers in municipal parkland. Each such bill should contain several important elements to protect the public's ownership of the affected parkland. First, the bill should include language requiring that the fair market value of the lease be dedicated to capital improvements to existing park and recreational facilities and/or toward the purchase of additional parkland in that municipality. Second, the bill should specify the term of the lease, usually not to exceed 25 years. Finally, there should be language that requires that if the leased lands cease to be used for cellular tower purposes, the cellular tower infrastructure shall be removed, the surface of the land restored, and the land shall revert to the municipality for park and recreational purposes.[96]

State Parks is of the opinion that fee title to parkland should not be sold or conveyed for the purpose of the installation of cellular towers because a lease ensures that the lands will return to the public after the useful life of a cellular facility has passed.

- **Leases of public facilities to private operators**

In a case where a municipality intends to lease a public recreational facility to a private operator, the bill and the lease should contain the following provisions:

- The facility will be operated for public recreational purposes.[97]
- The lease will terminate should the public recreational purpose cease.[98]
- The net proceeds from the lease shall be used by the municipality for the acquisition of park facilities, or for capital improvements to other municipal parks, but should not be allocated into the municipality's general fund.[99]
- The lands will be available to the general public on an equitable basis. In addition, there should be language that sets forth a requirement that if the facilities are heavily used, an equitable system will be put in place to insure fair access by the general

[94] For sample bills with this language, see §2 of 2010 N.Y. Laws 287 found in Appendix 11 and §1.b. of 2009 N.Y. Laws 444 found in Appendix 11.
[95] For a sample bill with this language, see §1of 2010 N.Y. Laws 287 found in Appendix 11.
[96] For a sample bill with this language, see §1 and §3 of 2009 N.Y. Laws 444 in Appendix 12.
[97] For a sample bill with this language, see §1 of 2009 N.Y. Laws 67 found in Appendix 13.
[98] For a sample bill with this language, see §4 of 2009 N.Y. Laws 67 found in Appendix 13.
[99] For a sample bill with this language, see §2 of 2009 N.Y. Laws 67 found in Appendix 13.

public.[100] For example, the system may be "first-come, first-served," or a lottery system as discussed in Chapter 1.

The Legislature generally requires a significant investment in the public facility by the party leasing the parkland, and the term of the lease as a rule does not exceed 25 years.[101]

- **Language to Avoid**

State Parks strongly recommends that language to the effect of "notwithstanding any law to the contrary" [102] not be included in parkland alienation bills. Such language is unnecessarily broad and could have the effect of nullifying important statutory protections of the State's investment in municipal parks. If a contrary law must be addressed in an alienation bill, only that specific law should be addressed.[103]

9. Conduct a review pursuant to *State Environmental Quality Review Act.*

The *State Environmental Quality Review Act* ("SEQR")[104] was enacted in 1975 and is a comprehensive statute that requires municipalities and State agencies to consider, in advance, the potential significant adverse environmental impacts of their actions, to weigh alternatives to those actions, and to minimize or mitigate any environmental damage potentially caused by those actions.

The legislative authorization to proceed with an alienation that is provided to a municipality in the form of a parkland alienation bill does not eliminate the municipality's SEQR responsibilities. The act of selling, leasing, conveying, or changing the use of the parkland is subject to SEQR. In addition, the planned use of the land being discontinued will more than likely require local or State permits that also trigger SEQR review.

The SEQR regulations provide that actions "occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space" may be "Type I" actions.[105] Type I actions are those that are more likely to have a significant adverse impact on the environment and require an *Environmental Impact Statement* or "EIS."[106]

SEQR compliance should be commenced as early as possible in the decision making process.[107] The New York State Department of Environmental Conservation (DEC) has released an opinion that a municipal resolution requesting parkland alienation legislation is

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[100] For a sample bill with this language, see §4 of 2009 N.Y. Laws 67 found in Appendix 13.
[101] For a sample bill with this language, see §1 of 2009 N.Y. Laws 67 found in Appendix 13.
[102] *See, e.g.* , §1 of 1998 N.Y. Laws 412 found in Appendix 10.
[103] For sample legislation that properly uses the "notwithstanding" language, see § 1 of 2009 N.Y. Laws 67 in Appendix 13.
[104] N.Y. Envtl. Conserv. Law §§ 8-0101 through 8-0117.
[105] 6 N.Y.C.R.R. 617.4(b)(10).
[106] 6 N.Y.C.R.R. 617.4(a).
[107] 6 N.Y.C.R.R. § 617.1(c)("The basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decision making processes of the state, regional and local government agencies at the earliest possible time.")

considered an action under SEQR, and, accordingly, a SEQR review should be completed prior to requesting the legislation.[108] State Parks concurs and suggests that a municipality vote on the SEQR resolutions prior to voting on the alienation resolution and on the resolution for the Municipal Home Rule Request (see below). If an EIS is required, then the alternatives analyzed could be included in the package of information that is sent to the Legislature.[109] In addition, performing a SEQR review early on ensures that citizens are afforded multiple opportunities to express their views in writing or at a public hearing.

An excellent source of information regarding SEQR is the DEC's website.[110] There, you will find both an easy to understand introductory guide known as the *SEQR Cookbook*,[111] and the more detailed *SEQR Handbook*.[112]

Municipalities involved in parkland *conversion* under the Federal Land and Water Conservation Fund should be aware that the National Park Service requires an environmental review and accompanying documentation pursuant to the *National Environmental Policy Act* ("NEPA")[113] which may require information in addition to the SEQR documents.[114] Therefore, municipalities completing both an alienation and conversion should familiarize themselves with the NPS Proposal Description and Environmental Screening Form.[115]

10. Pass a *Municipal Home Rule Request.*

Because parkland legislation has a direct effect on local government property, the affected local government must formally request enactment of a parkland alienation bill before it can be acted on by the State Legislature. This is known as a "Municipal Home Rule Request" and requires the vote of the local municipal legislative body.[116] At least two-thirds of the local legislative body must vote in favor of the request, or in the alternative, a majority of the body must vote for it and the chief executive officer of the municipality must concur.[117]

Under the rules of the Senate and the Assembly, a parkland alienation bill cannot be sent to the floor for a vote until the Municipal Home Rule Request is received.[118] In addition, if the

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[108] *See* Appendix 14, letter dated November 30, 2007 from Alison H. Crocker, Deputy Commissioner and General Counsel.

[109] Pursuant to SEQR, the entity performing the undertaking is required to consider reasonable alternatives to the action it is contemplating. See N.Y. Envtl. Conserv. Law §§ 8-0109(2)(d) and 8-0109(4).

[110] http://www.dec.ny.gov/

[111] http://www.dec.ny.gov/docs/permits_ej_operations_pdf/cookbook1.pdf

[112] http://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf

[113] 42 U.S.C. §§ 4321 through 4370(f).

[114] N.Y. Envtl. Conserv. Law §§ 8-0101 through 8-0117.

[115] http://www.nps.gov/ncrc/programs/lwcf/forms/PD_ESF.doc. Additional information regarding the National Environmental Policy Act can be found on the United States Environmental Protection Agency's website: http://www.epa.gov/

[116] N.Y. Mun. Home Rule Law § 40. For a sample Municipal Home Rule Request, see Appendix 15 (special thanks to William L. Gibson, Jr., Esq. of Broome County for providing this sample).

[117] Id.

[118] See Rules of the New York State Senate, Rule VII, § 5(c)("Where a 'home rule' request is required as provided in any section of Article IX of the [New York State] Constitution, such request, certificate or

bill is amended during the session, a new Municipal Home Rule Request will be required. For additional information on the legislative process for these bills, contact your Senator or Assembly Member.

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message must be filed with the Journal Clerk of the Senate before final passage of such bill.") The Rules of the Senate are available on the Senate's website: http://www.senate.state.ny.us/ See, also, Rules of the New York State Assembly, Rule IV, § 6(*l*)("Where a 'home rule request . . . is required as provided in any section of Article IX . . . of the [New York State] Constitution, such . . . message must be filed with the Office of Journal Operations before such bill can be reported by a committee.") The Rules of the Assembly are available on the Assembly's website: http://assembly.state.ny.us/Rules/

Chapter 3: All About Parkland Conversion

This chapter concerns parkland conversions and only applies to those municipal park and recreational facilities that have received Federal funding under either the *Land and Water Conservation Fund* or the *Urban Park and Recreation Recovery Program* programs. If the municipal park in question has not received this type of Federal funding, the contents of this chapter do *not* apply.

1. What is the legal basis for parkland conversion?

Since 1965, over $215 million in federal funds have been awarded to municipalities in New York State for the acquisition of lands to be used for public parks, and for the development of outdoor park and recreational facilities. This money was made available by the Department of the Interior, through the National Park Service (NPS), under the *Land and Water Conservation Fund Act* of 1965.[119]

The Office of Parks, Recreation and Historic Preservation has been designated by the Legislature to serve as the liaison with the Federal government for purposes of administering the *Land and Water Conservation Fund* ("LWCF") program.[120] The responsibilities of administering the program include distributing funds and monitoring compliance with LWCF requirements.[121]

One of the pillars of the LWCF Act is a prohibition against the "conversion" of property acquired or developed with LWCF assistance.[122] A conversion occurs when lands that have received LWCF funding are used for other than public outdoor recreation purposes.[123] The LWCF Act provides:

> No property acquired or developed with assistance under this section shall, without the approval of the Secretary [of the Interior], be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.[124]

This provision was found in section 6(f) of the original act. Therefore, conversions of LWCF funded property are often referred to as "6(f) conversions." The term "Secretary" refers to the Secretary of the Interior who oversees the National Park Service. Similar restrictions exist under the *Urban Park and Recreation Recovery Program.*[125]

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[119] Land and Water Conservation Fund, 16 U.S.C. §§ 460*l*-4 through 11.
[120] N.Y. Parks, Rec. & Hist. Preserv. Law § 13.23.
[121] N.Y. Parks, Rec. & Hist. Preserv. Law § 13.23(b), 36 C.F.R. § 59.1, and 9 N.Y.C.R.R. § 437.2.
[122] 16 U.S.C. § 460*l*-8(f)(3).
[123] Id.
[124] Id.
[125] See 16 USC § 2509 which provides:

2. To what type of lands do the principles of conversion apply?

When LWCF funding is obtained by a municipality, the recreational facility or park that received the funding is "mapped." This map is often referred to as the "6(f) map" and park officials often say that the park has been "6f'd" or "mapped." The map is created by the municipality and, ultimately, mutually agreed upon by the municipality and State Parks.[126] The 6(f) map is then kept on file with State Parks, and all parkland and recreation facilities included in the boundaries of the map are subject to 6(f) restrictions.[127] A conversion requires an amendment to the original LWCF project agreement and the maps associated with that agreement.[128]

Many times, the map boundaries include the entire park or recreation facility *even if the area exceeds that which received funding.*[129] This is often done "to assure the protection of a viable recreation entity."[130] No property shown as a park or recreational facility on a 6(f) map on file with State Parks may be conveyed or used for other than outdoor recreational purposes without the approval of the National Park Service.[131]

3. What is, what is not, and what may be a conversion.

Because conversions are based upon rules and regulations set forth by the National Park Service ("NPS"), State Parks relies on the Federal *Land and Water Conservation Fund Grants Manual* to determine which municipal actions affecting parkland are conversions.[132]

- **Conversions**

The following scenarios have been determined by the NPS to trigger the conversion process:

- The property interests are conveyed for non-public outdoor recreation uses.[133]
- Public or private non-outdoor recreation uses are made of the project area, or of a portion of that area.[134] Examples include: use as a commuter parking lot or composting facility.

No property improved or developed with assistance under this title shall, without the approval of the Secretary, [of the Interior] be converted to other than public recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the current local park and recreation recovery action program and only upon such conditions as he deems necessary to assure the provision of adequate recreation properties and opportunities of reasonable equivalent location and usefulness.

[126] 36 C.F.R. § 59.1
[127] Id.
[128] 36 C.F.R. § 59.3(c).
[129] 36 C.F.R. § 59.1
[130] Id.
[131] 36 C.F.R. § 59.3(c) and 16 U.S.C. § 460*l*-8(f)(3).
[132] The *Land and Water Conservation Fund Grants Manual* can be found on the National Park Service's website at: http://www.nps.gov/lwcf/manual/lwcf.pdf
[133] *Land and Water Conservation Fund Grants Manual*, Ch. 8(E)(1)(a) at page 8-4.
[134] *Land and Water Conservation Fund Grants Manual*, Ch. 8(E)(1)(b) at page 8-4.

- Non-eligible *indoor* recreation facilities are developed within the project area without NPS approval.[135] Examples include: indoor tennis courts or skating rinks, meeting rooms, auditoriums, libraries, restaurants, lodges, motels, luxury cabins, kitchens, and equipment sales areas.[136]

- Public outdoor recreational uses of the property are terminated.[137]

• **Non-conversions**

The following scenarios do not trigger the conversion process:

- The granting of underground utility easements that do not have significant impacts upon the recreational utility of the project site.[138] Note that this is different from alienations; underground utility easements generally require State parkland alienation legislation.

- The construction of public facilities, or the sheltering or enclosure of LWCF funded facilities, where it can be shown that an increase in public recreation will be gained.[139] Such projects require review by the NPS.[140]

- Discontinuing the operation of a particular recreation area or facility when it has fulfilled its useful life, that is, when it is determined to be "obsolete."[141] Such areas, however, must continue to be used for public outdoor recreation. State Parks and/or NPS must approve all such changes in the recreational use of a facility.

• **Possible Conversions**

The NPS requires an LWCF funded project to be operated and maintained in accordance with its rules. Failure to follow the NPS's rules, or obtain NPS approval, may result in the NPS asserting that a conversion is taking place. Examples include:

- Restricting use to local residents or giving preferential treatment to residents for reservations,[142] including imposing a fee structure that charges non-residents more than twice the amount charged to residents.[143]

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[135] *Land and Water Conservation Fund Grants Manual*, Ch. 8(E)(1)(c) at page 8-4.
[136] *Land and Water Conservation Fund Grants Manual*, Ch. 3(B)(9)(h) at page 3-6.
[137] *Land and Water Conservation Fund Grants Manual*, Ch. 8(E)(1)(d) at page 8-4
[138] *Land and Water Conservation Fund Grants Manual*, Ch. 8(E)(2)(a) at page 8-4.
[139] *Land and Water Conservation Fund Grants Manual*, Ch. 8(E)(2)(b) at page 8-4 and 8(E)(2)(d) at page 8-5.
[140] The NPS sets forth certain restrictions on the construction of public facilities and enclosure. See *Land and Water Conservation Fund Grants Manual*, Ch. 8(H) at page 8-12 and Ch. 3(C)(7) at page 3-16.
[141] *Land and Water Conservation Fund Grants Manual*, Ch. 8(H) at page 8-15.
[142] 16 U.S.C. § 460*l*-8(f)(8), 36 C.F.R. § 59.4(b), and *Land and Water Conservation Fund Grants Manual*, Ch. 8(C) at pages 8-1 and 8-2.
[143] 16 U.S.C. § 460*l*-8(f)(8), 36 C.F.R. § 59.4(c), and *Land and Water Conservation Fund Grants Manual*, Ch. Ch. 8(C)(2) at page 8-2.

- Inadequate maintenance and repair of structures and physical improvements.[144]
- When the use of the project is significantly changed from the original project description, resulting in increased or decreased use by the public.[145]
- Inadequate availability of the facility, such as a failure to open park facilities to the general public during reasonable hours or times of the year.[146]

4. When a municipality wishes to convert 6(f) mapped lands.

As discussed earlier in the Introduction, almost all changes in use that result in a conversion also trigger the alienation process in New York State.[147] Therefore, in most cases, a municipality must obtain alienation legislation *prior to* obtaining a conversion. The next chapter discusses the conversion process.

[144] *Land and Water Conservation Fund Grants Manual*, Ch. 8(H) at page 8-15.
[145] *Land and Water Conservation Fund Grants Manual*, 8(L) at page 8-15.
[146] *Land and Water Conservation Fund Grants Manual*, Ch. 8(B)(5) at page 8-1.
[147] One example of a conversion that may not be an alienation is when a municipality wishes to construct an indoor recreational facility in a park. This triggers the conversion process, but will most likely *not* trigger the alienation process. State Parks' Regional Grants Officers are available to discuss different scenarios and assist in determining if a proposed action is an alienation, a conversion, or both.

Chapter 4: The Conversion Process

When a municipality in New York State is considering the conversion of Federally mapped parkland and recreational facilities, it must work through State Parks, which directs such requests in writing to the National Park Service Regional Director.[148] Ultimately, State Parks acts as the liaison between the municipality and the National Park Service ("NPS"). State Parks guides the municipality by providing information to assist in creating a complete package that details the action the municipality wishes to take. Once the package is created, State Parks reviews it to make certain that it meets all of the NPS criteria. State Parks, on behalf of the municipality, then submits the package with comments and a recommendation to the NPS for final approval.

Below is a list of issues that must be considered and addressed by the municipality before a conversion package is deemed complete. In addition to the guidance set forth below, municipalities are encouraged to review the *Land and Water Conservation Fund Grants Manual* for further assistance in creating a conversion package.[149]

How long does a conversion take?

Since the conversion process requires extensive documentation by the municipality, and then a detailed review process by both State Parks and NPS, it is complex and time-consuming. Taking into account the *alienation* legislative component of a conversion, a proposed conversion may take as many as three years to complete. However, once the alienation legislation has been enacted, the process is most often completed within one year.

What are the steps in preparing a complete conversion package?

The following is a list of the items that will need to be completed for a conversion. Following this list, each item will be discussed in more detail.

1. Complete an environmental review with documentation pursuant to the *National Environmental Policy Act.*
2. Determine the effect of the conversion on historic resources pursuant to the *National Historic Preservation Act*.
3. Select substitute lands and submit appraisals.
4. Ensure that replacement lands and remaining lands meet eligibility requirements.
5. Coordinate review with other Federal Agencies.
6. Prepare survey maps.
7. Submit the package to the National Park Service.

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[148] 36 C.F.R. § 59.3(b).

[149] The *Land and Water Conservation Fund Grants Manual* can be found on the National Park Service's website at: http://www.nps.gov/lwcf/manual/lwcf.pdf Chapter 8 addresses conversions directly.

1. Complete an environmental review with documentation pursuant to the *National Environmental Policy Act.*

The National Park Service will not consider a conversion unless "[a]ll practical alternatives to the proposed conversion have been evaluated."[150] Part of meeting this requirement is proving that the municipality has completed an adequate environmental review.[151] Because the LWCF is a Federal program, environmental review must be completed pursuant to the *National Environmental Policy Act* ("NEPA")[152] which, while similar, is *not* identical to New York's *State Environmental Quality Review Act* ("SEQR").[153] Therefore, while a SEQR review may have been completed during the alienation process and may provide a *basis* for an LWCF package, municipalities are encouraged to coordinate with State Parks, as early as possible, to create a package that satisfies NEPA for submission to the National Park Service.

Municipalities must submit environmental information on *both* the property to be converted and the substitute parcel (discussed later). Pursuant to NEPA, an *Environmental Assessment* or a more detailed *Environmental Impact Statement* for both properties must be submitted with the conversion package. Within the NEPA documentation, municipalities should be prepared to provide:

- **A complete project description:** This section must include a complete description of the proposal. This includes the purpose and need for the project, a description of what the project is designed to accomplish, and who is proposing the project.
- **A discussion of alternatives:** The package must also include a section on alternatives, including a statement that demonstrates all alternatives to the conversion have been evaluated and rejected on a sound basis.[154] It is important to note that a range of alternatives must be considered, and a description of the pros and cons of each alternative should be defined and included. Ultimately, the basis for the choice between the alternatives must be set forth. The amount of information must be sufficient to allow the NPS to identify the alternative which minimizes or avoids adverse environmental impacts to the maximum extent practicable and still meets the project's objectives.
- **A discussion of environmental setting:** This section must include a description of the existing environmental setting, condition and use of both the parcel to be converted and the replacement property. At minimum, the municipality should include a map which shows the entire park, the boundaries of the parcel to be converted, and the location of the replacement parcel. The section should also include a description of the replacement property and its environmental value relative to the conversion parcel.

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[150] 36 C.F.R. § 59.3(b)(1).
[151] 36 C.F.R. § 59.3(b)(7).
[152] 42 U.S.C. §§ 4321 through 4370(f).
[153] N.Y. Envtl. Conserv. Law §§ 8-0101 through 8-0117.
[154] 36 C.F.R. § 59.3(b)(1).

- **Environmental impacts and mitigation:** This section addresses the environmental impacts, including impacts to historic and archeological resources, which are anticipated as a result of implementing the proposed action. This submission should discuss the potential impacts on both the parcel proposed for conversion and the substitute parcel. A discussion of the beneficial and adverse impacts of the project on the parkland remaining after the conversion should also be included. Cumulative impacts, future phases, or other related actions should also be discussed. Any mitigation measures designed to minimize environmental harm, such as erosion controls or energy conservation, should also be described in this section.
- **Public consultation and coordination:** A section that provides a list of agencies and persons consulted should be attached. Information on public outreach and public comments and concerns should be included.

The *Land and Water Conservation Fund Grants Manual* sets forth a much more detailed description of what must be completed to satisfy NEPA, and municipalities are encouraged to review this publication prior to commencing their environmental review.[155] A framework for completing this review can be found in Appendix 5 of this Handbook.

2. Determine the effect of the conversion on historic resources pursuant to the *National Historic Preservation Act.*

Pursuant to the *National Historic Preservation Act*, Federal agencies must evaluate, minimize and mitigate the effects of their actions on historic and archeological resources.[156] Municipalities that have received Federal funding through the LWCF program must therefore consider how their actions affect historic properties. This is referred to as an "historic preservation" review, or a "Section 106" review.[157] The Section 106 process requires Federal agencies and project sponsors to explore prudent and feasible alternatives that would avoid or reduce the conversion's impacts to historic resources. The review encompasses potential effects on historic resources on both the parcel to be converted and the proposed replacement parcel, which, together, comprise the "project area." The municipality will be expected to coordinate with the State Historic Preservation Office ("SHPO") to complete this review, and to obtain a "determination."[158] A determination is a

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[155] *Land and Water Conservation Fund Grants Manual*, Ch. 4.
[156] 16 U.S.C. § 470(f).
[157] 16 U.S.C. § 470(f). For a detailed description of the National Historic Preservation Act and the Section 106 process, please visit the Advisory Council on Historic Preservation's website at: http://www.achp.gov/work106.html
[158] In New York State, the State Historic Preservation Officer is the State Parks Commissioner. The State Historic Preservation Office can be reached by calling (518) 237-8643. Detailed information can be found on the web at http://nysparks.com/shpo/. Written correspondence regarding the Section 106 review process should be directed to:

Bureau Director, Field Services Bureau
Office of Parks, Recreation and Historic Preservation
Peebles Island State Park, Box 189
Waterford, NY 12188

written statement from the SHPO that details potential effects on historic resources, if any, and how to minimize those impacts. Where adverse effects cannot be avoided by relocating or redesigning the project, the municipality must work with the SHPO to develop a "Memorandum of Agreement" ("MOA") incorporating measures to mitigate those effects by giving something back, *from an historic preservation perspective*, to the affected historic resource, district, or community.

The municipality should provide the SHPO with a United States Geological Survey ("USGS") map[159] of the project location, as well as photographs of any buildings, sites, or structures 50 years or older within, or adjacent to, the project area. If the SHPO determines that any of the buildings, sites, or structures are listed on, or eligible for listing on, the National Register of Historic Places, the municipality will have to provide the SHPO with plans and specifications for any planned work and the project impacts will be evaluated. Ultimately, the package to be submitted to the NPS must include review determinations, including an MOA, if required, from the SHPO.

3. Select substitute lands and submit appraisals.

The substitution of replacement parkland is *always* required in a conversion.[160] This is one area where conversions differ from alienations: in *every* conversion, substitute lands *must* be provided. The substitute or "swap" property must be at least equal to the lands being converted. "Equality" is based upon the specific standards below:

- The fair market value of the lands proposed for substitution must be of equal or greater value than the lands being converted.
- The recreational usefulness of the lands proposed for substitution must be reasonably equivalent to the lands being converted.
- The location of the lands proposed for substitution must be comparable to the lands being converted.[161]

Thus, the fair market value of *both* the proposed substitute lands *and* the land to be converted must be determined and submitted. In determining fair market value, the National Park Service requires that strict Federal appraisal rules be followed, specifically, the *Uniform Appraisal Standards for Federal Land Acquisitions.*[162] It is important to note that a fair market value determination for an *alienation* may not meet the requirements of an LWCF conversion. Therefore, if a municipality is seeking to both *alienate* and *convert* parkland, the municipality should apply the *Uniform Appraisal Standards for Federal Land Acquisitions* at the beginning of the process when obtaining alienation legislation.

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[159] The preparation of the USGS map is also required for all conversions as discussed the section entitled *Prepare survey maps* in this Chapter. For information on United States Geological Survey maps, see their website at: http://www.usgs.gov/

[160] 16 U.S.C. § 460*l*-8(f)(3).

[161] 16 U.S.C. § 460*l*-8(f)(3).

[162] 36 C.F.R. § 59.3(b)(2). The *Uniform Appraisal Standards for Federal Land Acquisitions* can be found on the United States Department of Justice's website: http://www.justice.gov/enrd/land-ack/Uniform-Appraisal-Standards.pdf

The municipality must submit a statement demonstrating that the property proposed for substitution is of equivalent recreational usefulness and location. However, it is important to note that substitute property need *not* be the same size, nor located adjacent or close to the converted site.[163] Similarly, it is not necessary for the substitute property to provide the *identical* recreational experience or resources.[164] However, the recreational resources it does provide must meet public outdoor recreation needs as indicated in the *Statewide Comprehensive Outdoor Recreation Plan* ("SCORP").[165]

It is important to note that the substitute lands become part of the amended LWCF agreement and, as a result, become part of the 6(f) map for that project.[166]

- **Wetlands**

Wetlands can be used, and are often accepted by the NPS, as possible substitute lands.[167] The regulations provide: "Wetland areas and interests therein which have been identified in the wetlands provisions of the *Statewide Comprehensive Outdoor Recreation Plan* shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion regardless of the nature of the property proposed for conversion."[168] The statement submitted by the municipality demonstrating that the proposed substitute lands are of equivalent recreational usefulness and location should specify if any of the proposed substitute lands consist of wetlands.

- **Lands in Public Ownership**

In addition to the fair market value and recreational usefulness criteria, there are additional factors that must be considered when a municipality selects substitute lands that are already in public ownership.

- The land must *not* have been acquired by the municipality for recreational purposes.[169]

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[163] 36 C.F.R. § 59.3(b)(3)(ii). The implementing regulations provide that allowing alternate sites that are not adjacent to or close by the converted property allows for "administrative flexibility to determine the location recognizing that the property should meet existing public outdoor recreation needs." Id. The regulations encourage the alternate site to be located within the same community, but recognize there may be some circumstances where that may not be possible. Id.

[164] 36 C.F.R. § 59.3(b)(3).

[165] 36 C.F.R. § 59.3(b)(9). The Statewide Comprehensive Outdoor Recreation Plan, commonly referred to as "SCORP," is prepared periodically by New York State Parks, Recreation and Historic Preservation to provide statewide policy direction and to fulfill State Parks' recreation and preservation mandate. Originally created to satisfy eligibility requirements for LWCF funding for New York State, it has evolved well beyond that original purpose. The New York State SCORP can be found on State Parks' website: http://nysparks.com/recreation/trails/statewide-plans.aspx

[166] 36 C.F.R. § 59.3(c).

[167] 36 C.F.R. § 59.3(b)(3)(i).

[168] Id.

[169] 36 C.F.R. § 59.3(b)(4)(i).

- The land must not have been dedicated or managed for recreational purposes while in public ownership.[170]
- The land must not have been acquired with Federal assistance unless the funding was provided pursuant to a program authorized to match or supplement LWCF assistance.[171]

These criteria are designed to avoid a net loss of parkland within a community.

4. Ensure that replacement lands *and* remaining lands meet eligibility requirements.

The municipality submitting the conversion package must make certain that the substitute property meets the eligibility requirements for LWCF assistance.[172] As part of the package submitted to the National Park Service, the municipality must submit a statement that sets forth evidence that the replacement parcel constitutes, or will be a part of, a "viable recreation area," and will have legal public access.[173] In other words, the land that is being proposed for substitution must provide outdoor recreational opportunities. In addition, the statement must explain how the public will be able to access the new parkland safely and legally through a right-of-way or through publicly held land.

It is important to note that if the proposal will convert only a *portion* of the original LWCF project lands, the remaining lands must also meet the LWCF requirements for providing outdoor recreational opportunities for the public. In these instances, the statement discussed above must include evidence that the remaining unconverted land will remain a viable recreational resource.[174] If the remaining parcel does not remain a viable recreational resource, it must be replaced as well.[175]

5. Coordinate review with other Federal Agencies.

The municipality must coordinate the conversion with any other Federal reviews with other agencies that may be involved. The NPS also expects a statement that demonstrates that such coordination with other Federal agencies has been satisfactorily accomplished.[176] A municipality may have to coordinate with:

- The United States Department of Transportation ("DOT")

  If the conversion proposal involves a DOT project, the NPS will require documentation of compliance with section 4(f) of the *Federal Department of Transportation Act* of 1966.[177]

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[170] 36 C.F.R. § 59.3(b)(4)(ii).
[171] 36 C.F.R. § 59.3(b)(4)(iii).
[172] 36 C.F.R. § 59.3(b)(4). See, generally, the *Land and Water Conservation Fund Grants Manual*, Ch. 3.
[173] 36 C.F.R. § 59.3(b)(4).
[174] 36 C.F.R. § 59.3(b)(5).
[175] Id.
[176] 36 C.F.R. § 59.3(b)(6).
[177] Section 4(f) was discussed in Chapter 1 under the section *Other alienation issues*. Section 4(f) is entitled "Preservation of Parklands" and is codified at 23 U.S.C.A. § 13. The implementing regulations can be found at

- The United States Fish and Wildlife Service

  If the conversion proposal may effect endangered species, wildlife management areas, or watershed projects, the NPS will require documentation that the Fish and Wildlife Service has been involved in the review.[178]

6. Prepare survey maps.

The municipality must prepare and submit clearly marked survey maps indicating:

- The original LWCF area.
- The area to be converted.
- The area remaining, if any.
- The substitute lands.

These maps will serve as the new "6(f)" map for the State Parks LWCF file.[179] The maps must include a land surveyor's stamp and signature, and must be signed and dated by a government official.

7. Submit the package to the National Park Service.

State Parks will provide guidance to a municipality in preparing all of the documentation needed for review by the National Park Service. Once the package is completed, State Parks, acting on behalf of the municipality, will submit the package to the NPS. The NPS will then review the documentation, and make a decision regarding the conversion. The NPS will notify State Parks about the decision, and State Parks will pass this information on to the municipality.

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23 C.F.R. 771.135. See also the Federal Highway Administration's website at http://environment.fhwa.dot.gov/4f/index.asp

[178] For more information about the United States Fish and Wildlife Service, visit their website at: http://www.fws.gov/

[179] 36 C.F.R. § 59.3(c).

Appendix 1 - Regional Grants Representatives

Region and Contact	Counties
Allegany Region Lynn LeFeber Allegany State Park, ASP Rte. #1 Salamanca, New York 14779 Lynn.LeFeber@oprhp.state.ny.us (716) 354-9101 ext. 235 (716) 354-2255 fax	Allegany, Cattaraugus, Chautaugua
Central Region Jean Egenhofer Clark Reservation 6105 East Seneca Turnpike Jamesville, New York 13078 Jean.Egenhofer@oprhp.state.ny.us (315) 492-1756 (315) 492-3277 fax	Oswego, Oneida, Onondaga, Cortland Chenango, Otsego, Madison, Broome, Herkimer
Finger Lakes Region Laurie Moore 2221 Taughannock Park Road Trumansburg, New York 14886 Laurie.Moore@oprhp.state.ny.us (607) 387-7041 ext. 103 (607) 387-3390 fax	Wayne, Ontario, Yates, Steuben, Seneca, Cayuga, Schuyler, Tioga, Tompkins, Chemung
Genesee Region Karen Ferguson Letchworth State Park Castile, New York 14427 Karen.Feguson@oprhp.state.ny.us (585) 493-3600 (585) 493-5272 fax	Orleans, Monroe, Genesee Wyoming, Livingston
Long Island Traci Christian Carole Friedman Belmont Lake State Park P. O. Box 247 Babylon, New York 11702-0247 Traci.Christian@oprhp.state.ny.us Carole.Friedman@oprhp.state.ny.us (631) 321-3571 (631) 321-3721 fax	Nassau, Suffolk

New York City Region
Merrill Hesch
NYS OPRHP – Grants Office
163 West 125th Street, 17th Floor
New York, NY 10027
Merrill.Hesch@oprhp.state.ny.us
(212) 866-2599
(212) 866-3186 fax

Bronx, New York, Kings, Queens
Richmond

Niagara Region
Noelle Kardos
Niagara Reservation State Park
P. O. Box 1132
Niagara Falls, New York 14303
Noelle.Kardos@ophrp.state.ny.us
(716) 278-1761
(716) 278-1744 fax

Erie, Niagara

Palisades and Taconic Region
Erin O'Neil
9 Old Post Road, P. O. Box 308
Staatsburg, New York 12580
Erin.O'Neil@oprhp.state.ny.us
(845) 889-3866
(845) 889-8321 fax

(Palisades) Orange, Rockland, Sullivan
Ulster
(Taconic) Columbia, Dutchess,
Putnam, Westchester

Saratoga / Capital District Region
Cathy Jepson
Saratoga Spa State Park
19 Roosevelt Drive
Saratoga Springs, New York 12866
Catherine.Jepson@oprhp.state.ny.us
(518) 584-2000
(518) 584-5694 fax

Albany, Fulton, Greene, Essex,
Montgomery, Rensselaer, Saratoga
Schenectady, Schoharie, Warren,
Washington

Thousand Island Region
Gayle Underhill-Plumb
Keewaydin State Park
Alexandria Bay, New York 13607
Gayle.Underhill-Plumb@oprhp.state.ny.us
(315) 482-2593
(315) 482-9413 fax

Hamilton, Jefferson, Lewis
St. Lawrence, Franklin, Clinton

Appendix 2 – Friends of Van Cortlandt Park

95 N.Y.2d 623, 750 N.E.2d 1050, 727 N.Y.S.2d 2

Court of Appeals of New York.
FRIENDS OF VAN CORTLANDT PARK et al., Appellants,
STATE of New York, Intervenor-Appellant, et al., Plaintiff, et al., Intervenor,
v.
CITY OF NEW YORK et al., Respondents.

Argued Jan. 3, 2001.
Decided Feb. 8, 2001.

In an action involving proposed construction of a water treatment plant in a city park, the United States Court of Appeals for the Second Circuit, 232 F.3d 324, certified a question. The Court of Appeals, Kaye, Chief Judge, answered that proposed construction of plant in city park required state legislative approval, though there would be no alienation of parkland and though the plant would be substantially underground.

Question answered.

West Headnotes

[1] Municipal Corporations 268 721(3)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k721 Parks and Public Squares and Places
268k721(3) k. Grants of Rights to Use Public Property. Most Cited Cases

Proposed construction of water treatment plant in city park required state legislative approval, though there would be no alienation of parkland and though the plant would be substantially underground, with park surfaces restored, where the public would be deprived of valued park uses for at least five years.

[2] Municipal Corporations 268 721(3)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k721 Parks and Public Squares and Places
268k721(3) k. Grants of Rights to Use Public Property. Most Cited Cases

Legislative approval is required when there is a substantial intrusion on parkland for non-park purposes, regardless of whether there has been an outright conveyance of title and regardless of whether the parkland is ultimately to be restored.

[3] Municipal Corporations 268 721(3)

268 Municipal Corporations
268XI Use and Regulation of Public Places, Property, and Works
268XI(C) Public Buildings, Parks, and Other Public Places and Property
268k721 Parks and Public Squares and Places
268k721(3) k. Grants of Rights to Use Public Property. Most Cited Cases

Dedicated park areas are impressed with a public trust for the benefit of the people of the State, and their use for other than park purposes, either for a period of years or permanently, requires the direct and specific approval of the State Legislature, plainly conferred.

*****2 **1050 *623** Schulte Roth & Zabel, L.L. P., New York City (Howard B. Epstein, Theodore A. Keyes and Peter C. Trimarchi of counsel), for Friends of Van Cortlandt Park and another, appellants.

***624** Jack L. Lester, New York City, for Norwood Community Action and others, appellants.

Eliot Spitzer, Attorney General, New York City (Gordon J. Johnson, Norman Spiegel and Peter G. Crary of counsel), for intervenor-appellant.

***625** Michael D. Hess, Corporation Counsel of New York City (Ronald E. Sternberg, Leonard Koerner and Inga Van Eysden of counsel), for respondents.

Andrew Brick, Albany, for New York State Conference of Mayors and Municipal Officials, amicus curiae.

***626 OPINION OF THE COURT**

KAYE, Chief J.

The Croton Watershed-a series of interconnected reservoirs and lakes located *****3 **1051** primarily in Westchester, Dutchess and Putnam counties-is one of New York City's three principal drinking water sources, supplying between 10 and 30% of the City's requirements. In 1992, after preparing a report concluding that filtration would be necessary to ensure the safety of water from the Croton Watershed, the City entered into a stipulation with the New York State Department of Health, acknowledging that State and Federal law required it to build a filtration plant. The City agreed to complete design of a water treatment plant by July 1995, and complete construction by July 1999.

In 1993, the United States Environmental Protection Agency determined that the Surface Water Treatment Rule (40 CFR 141.70-141.75) required the City to filter and disinfect its Croton water supply. Without challenging the EPA's determination, the City began designing a water treatment plant. Impatient with the City's lack of progress, in 1997 the Federal government brought suit in the District Court for the Eastern District of New York against the City and its Department of Environmental Protection for violation of Federal law. The State intervened as a plaintiff, alleging noncompliance with the State Sanitary Code.

Recognizing that the public interest would be best served by resolving the litigation, the parties, in 1998, executed a consent decree requiring filtration and disinfection of the Croton water. The decree establishes 26 “milestones,” or deadlines, for stages of the water treatment plant, including a final Environmental Impact Statement and approvals under the City's Uniform Land Use and Review Procedure by July 31, 1999; construction completion by September 1, 2006; and operation by March 1, ***627** 2007. Milestone 14 provides that by July 31, 1999 “in the event that use of the selected site for the [plant] requires state legislation, the City shall request state legislation and home rule message from the City Council.” Milestone 15 further specifies that any such legislation must be obtained by February 1, 2000. Failure to comply, under the consent decree, subjects the City to substantial penalties.

As designed, the water treatment plant is to be a 473,000 square foot industrial facility covering 23 acres, with a raw water pumping station, finished water pumping station and tunnel linking the plant to a distribution system near another reservoir. It will operate around the clock, seven days a week, filtering 290 million gallons of water and producing up to 61 tons of “dewatered sludge cake” daily. Once the plant is operational, the Croton water will be transported there for treatment, fluoridation, chlorination and distribution.

After considering several locations, in December 1998 the City announced that its preferred site was the Mosholu Golf Course in Van Cortlandt Park, the City's third largest park, dedicated as parkland by an act of the Legislature in 1884 (see, L 1884, ch 522).[FN1] The Mosholu Golf Course is a year-round, nine-hole course and driving range regularly used by the public (in 1997, for example, approximately 33,000 rounds of golf

were played there) as well as by schools and youth programs. It is the only City golf course directly accessible by subway.

> FN1. The Legislature authorized the City, through the Department of Public Parks, to take parcels of land designated as Van Cortlandt Park "for public use" as a park (L. 1884, ch. 522, §§ 1, 2).

According to the Environmental Impact Statement, construction at the Mosholu site is scheduled to last more than five years, during which time 28 acres of parkland*****4 **1052** -including the golf course and driving range-will be closed to the public, and will become an active construction site. Construction will require demolition of the clubhouse, roads and parking areas, which will later be restored. The driving range, however, will be rebuilt on the roof of the plant, above a layer of dirt. The Environmental Impact Statement further discloses that hundreds of trees and associated vegetation rare to New York City-whose "loss would represent a potential significant adverse impact"-are threatened by the construction, and a million cubic yards of soil and rock will be removed from the park. During peak construction, more than a thousand workers will be at the site, and hundreds of vehicles will deliver construction materials and remove soil.

***628** The plant will, moreover, change the gradient of the park. Though the plant is to be built underground in the sense that it will be below "finished grade," its roof will be between five and 30 feet above existing ground elevation. Additionally, vents and air intake louvers placed in berms surrounding the facility will extend above finished grade.

In January 1999, shortly after site selection, the State Attorney General advised the City that, in his view, legislative approval was necessary before parkland could be used for this project. Citizen groups opposed the project, arguing it was not authorized by the State Legislature; 33 State legislators similarly urged that the City did not have authority to build the plant in Van Cortlandt Park without legislative permission.

On July 21, 1999, the City Council approved the application for plant construction at the Mosholu site. By letter dated July 30, 1999, the Attorney General reiterated that use of the proposed site without first obtaining legislative approval would violate State law, advising:

> "construction of the Plant at the selected site in Van Cortlandt Park, a process which will include the closing of the golf course for six years, requires state legislation for the reasons we have discussed with counsel for the City beginning in January, 1999. We expect that the City will comply with [milestones 14 and 15] and request legislation and a home rule message from the City Council on or before July 31, 1999."

The City has not sought legislative approval for the project.

Pursuant to the consent decree dispute resolution provision, the State sought relief in the District Court, claiming the City violated its commitment by failing to seek legislative approval for construction and operation of the water treatment plant. Concerned citizens and community groups, similarly, commenced two lawsuits in State Supreme Court-*Friends of Van Cortlandt Park v. City of New York* and *Norwood Community Action v. Department of Envtl. Protection*-seeking, among other things, to enjoin development and construction of the water treatment plant in Van Cortlandt Park on the ground that the City impermissibly sought to convert a considerable area of parkland from public use without an act of the State Legislature. Without objection, the two citizen suits were removed to the Eastern District, which had continuing jurisdiction under ***629** the consent decree. All of the parties sought summary judgment.

The District Court granted the City's motions, concluding that legislative approval was unnecessary. As the court explained, there being "no transfer of an interest in land to another entity * * * [and] no diminution of parkland available for public use after the plant is built, underground use of the parkland [was] not an alienation in the sense of diversion of parkland for non-park purposes" *****5**1053**(*United States v. City of New York*, 96 F Supp 2d 195, 204).

[1] Plaintiffs' appeals were consolidated. On June 30, 2000, plaintiffs State of New York and Friends of

Van Cortlandt Park moved to certify to this Court the question whether State legislative approval is required for the proposed use of the Mosholu site. Mindful on the one hand of the desirability that this State law issue be resolved by the State Court of Appeals, and on the other hand of the burden certification of a time-sensitive issue would impose on us, on November 15, 2000 the Second Circuit granted plaintiffs' motion, so long as this Court concluded it could expeditiously resolve the issue (232 F.3d 324). On November 21, 2000 we accepted certification (95 N.Y.2d 916, 722 N.Y.S.2d 464, 745 N.E.2d 383), and now answer in the affirmative the following question: "Does any aspect of the proposed [water treatment plant] require state legislative approval?" FN2

> FN2. The Second Circuit added that the certified question might subsume two questions: "Is state legislative approval required for the City to place the proposed [water treatment plant] underneath Van Cortlandt Park, and, if not, is state legislative approval required before the City may withdraw from parkland use the amount of parkland that will be interfered with by construction of the proposed [plant] for the time currently estimated to restore the parkland to park use?" (232 F.3d, at 327.) Our response makes it unnecessary to address these subsidiary questions.

We begin analysis with two points of agreement by the parties: that this water treatment plant is a non-park use, and that *Williams v. Gallatin* (229 N.Y. 248, 128 N.E. 121) is controlling precedent.

In *Williams*, a taxpayer sought to enjoin the New York City Commissioner of Parks from leasing the Central Park Arsenal Building to the Safety Institute of America, arguing the transaction was "foreign to park purposes" (*id.*, at 250, 128 N.E. 121). The lease was for a 10-year term, cancellable if the City needed the property for park use. In prohibiting the lease, this Court explained that a park is a recreational pleasure area set aside to promote public health and welfare, and as such:

> "no objects, however worthy, * * * which have no ***630** connection with park purposes, should be permitted to encroach upon [parkland] without legislative authority plainly conferred." * * *
>
> "The legislative will is that Central Park should be kept open as a public park ought to be and not be turned over by the commissioner of parks to other uses. It must be kept free from intrusion of every kind which would interfere in any degree with its complete use for this end" (*id.*, at 253-254, 128 N.E. 121).

In the 80 years since *Williams*, our courts have time and again reaffirmed the principle that parkland is impressed with a public trust,FN3 requiring legislative approval before it can be alienated or used for an extended period for non-park purposes (*see, Miller v. City of New York*, 15 N.Y.2d 34, 37, 255 N.Y.S.2d 78, 203 N.E.2d 478 [20-year lease]; *Incorporated Vil. of Lloyd Harbor v. Town of Huntington*, 4 N.Y.2d 182, 190, 173 N.Y.S.2d 553, 149 N.E.2d 851; *Matter of Ackerman v. Steisel*, 104 A.D.2d 940, 480 N.Y.S.2d 556 [2d Dept.] [storage of sanitation vehicles and equipment], *affd.* 66 N.Y.2d 833, 498 N.Y.S.2d 364, 489 N.E.2d 251; *Stephenson v. County of Monroe*, 43 A.D.2d 897 [4, 351 N.Y.S.2d 232th Dept]; *****6**1054***Aldrich v. City of New York*, 208 Misc. 930, 145 N.Y.S.2d 732, 939 [Sup. Ct., Queens County], *affd.* 2 A.D.2d 760, 154 N.Y.S.2d 427 [2d Dept.]; *Matter of Central Parkway*, 140 Misc. 727, 251 N.Y.S. 577, 729 [Sup. Ct., Schenectady County]; *contrast, 795 Fifth Ave. Corp. v. City of New York*, 15 N.Y.2d 221, 225, 257 N.Y.S.2d 921, 205 N.E.2d 850 [Park Commissioner properly determined that a café and restaurant could be constructed in Central Park where the project furthered park purposes]).

> FN3. While the parties' focus is on *Williams*, the public trust doctrine is rooted in much earlier history (*see, Brooklyn Park Commrs. v. Armstrong*, 45 N.Y. 234, 243; *see also*, 11 Powell, Real Property § 79.02 [3], at 79-10-79-11; David C. Slade *et al., Putting the Public Trust Doctrine to Work*, at 3-4 [1990]).

Where the parties disagree is as to application of these long-standing precedents to the present facts. The City argues that, even under *Williams*, legislative approval is not required, first, because there will be no alienation of parkland and second, because the plant will be substantially underground, with park surfaces fully restored, and therefore the proposed use is not inconsistent with park purposes. Both arguments lack merit.

[2] *Williams* makes clear that legislative approval is required when there is a substantial intrusion on parkland for non-park purposes, regardless of whether there has been an outright conveyance of title and regardless of whether the parkland is ultimately to be restored. Indeed, in *Williams* itself there was no divestiture of ownership-there was a 10-year lease cancellable***631** by the City-and upon expiration of the lease the property could return to park use. Nonetheless, without legislative approval the lease was prohibited.

Bates v. Holbrook (171 N.Y. 460, 465-468, 64 N.E. 181)-which predated *Williams*-is also instructive. There, the City Department of Parks permitted construction of storage buildings on parkland in connection with a subway project. Because the Legislature allowed the Department to grant "temporary privileges" for use of park property to facilitate construction, defendants urged that the structures were authorized. This Court disagreed, concluding no "direct legislative authority" warranted invasion of the park (*id.*, at 467, 64 N.E. 181). Structures could not be considered "temporary" when "authorized to remain until the completion of the work" on a project that would take at least three years (*id.*, at 468, 64 N.E. 181).

Here, the public will be deprived of valued park uses for at least five years, as plant construction proceeds. While there may be "de minimis" exceptions from the public trust doctrine, the magnitude of the proposed project does not call upon us to draw such lines in this case.

For much the same reason, we also need not resolve the interrelated question whether an underground installation that in no way intrudes on park use requires legislative approval. That an appreciable area of the park will be closed for more than five years, and that some future uses of the land will be inhibited by the presence of the underground structure, render that issue hypothetical. Those factors also set apart *Wigand v. City of New York* (N.Y.L.J., Sept. 25, 1967, at 21, col. 5), a 1967 unreported Richmond County Supreme Court decision, on which the City and the District Court rely. In *Wigand*, the trial court authorized use of parkland to facilitate installation of two underground water tanks, after which the area was to be completely restored "with beautification greater than that which originally existed" and 27 acres of parkland added. While *Wigand* is distinguishable on several grounds, to the extent it is inconsistent with our decision today, it should not be followed.

[3] Though the water treatment plant plainly serves an important public purpose-indeed, even the State Attorney General believes it should be built at the *****7 **1055** site selected (*see, United States v. City of New York, supra*, 96 F Supp 2d, at 203)-our law is well settled: dedicated park areas in New York are impressed with a public trust for the benefit of the people of the State. ***632** Their "use for other than park purposes, either for a period of years or permanently, requires the direct and specific approval of the State Legislature, plainly conferred" (*Ackerman v. Steisel, supra*, 104 A.D.2d, at 941, 480 N.Y.S.2d 556, *affd.* 66 N.Y.2d 833, 498 N.Y.S.2d 364, 489 N.E.2d 251; *see also, Potter v. Collis*, 156 N.Y. 16, 30, 50 N.E. 413 [where a municipality holds title to land for public use "the power to regulate those uses (is) vested solely in the legislature"]). That proposition is reflected both in our case law and in our statutes (*see, e.g.*, L. 1989, ch. 533 [easements over parkland for construction, operation and maintenance of water treatment facility]; L. 1998, ch. 209 [easements in Webster Park for construction, operation and maintenance of sanitary sewer system facilities]; L. 1994, ch. 341 [parkland in Town of Waverly necessary for sewer district]; L. 1994, ch. 534 [easements in Towns of Fleming and Owasco for water mains]).

Finally, we reach this conclusion as a matter of common law, without the need to address General City Law § 20(2).

Accordingly, the certified question should be answered in the affirmative.

Judges SMITH, LEVINE, CIPARICK, WESLEY, ROSENBLATT and GRAFFEO concur.

Following certification of a question by the United States Court of Appeals for the Second Circuit and acceptance of the question by this Court pursuant to section 500.17 of the Rules of the Court of Appeals (22 NYCRR 500.17), and after hearing argument by counsel for the parties and consideration of the briefs and the record submitted, certified question answered in the affirmative.

Appendix 3 - Checklist For Municipalities Considering Parkland Alienation

1. What are the existing uses of the property being considered for alienation?

    - What is the character of the land? What types of natural or manmade resources are present on or adjacent to the parcel? For example: lakes, streams, forests, wetlands, scenic vistas, historic structures such as buildings or bridges, and archeological resources.

    - What kind of recreational opportunities exist on the parcel? For example: ball fields, picnic benches, pavilions, swimming pools, boat launches and docks, etc.

2. What are the current uses of the parkland? How much is the public relying on the parkland for recreational activities?

3. Are there adequate recreational opportunities within the municipality currently? If the parkland in question is alienated?

4. Are substitute lands being proposed if the parkland in question is diverted to another use?

    - If so, what is the location of the substitute parcel?

    - Will it accommodate the current users of the parkland being alienated?

5. Is this parkland alienation being considered as part of a larger plan on a local, regional, or statewide level?

6. What are the factors that led to the municipality considering the alienation of parklands?

7. What is the proposed use of the parkland being considered for alienation?

    - Will this proposed use increase demand for recreational activities in the area? For example, will the proposed use result in an increase in the

population of the area adding more individuals who would then seek recreational opportunities?

8. Are there other locations that could accommodate that proposed use?

9. Have the residents of the community had an opportunity to voice their opinion regarding the decision to alienate the parkland?

10. What is the appraised value of the parkland being considered for alienation? The substitute parcel?

- If the parkland has received Federal funding, do the appraisals meet the Federal *Uniform Appraisal Standards for Federal Land Acquisitions?*

Appendix 4 - Parkland Alienation Form: Municipality Information

Revised, December 2004

The following form should be completed by the Municipality that is seeking to alienate parkland. Copies should be provided to the Members of the Senate and Assembly who will be sponsoring the legislation authorizing the alienation and to the Regional Grants Representative of the Office of Parks, Recreation and Historic Preservation.

Name of Municipality:
_____

Name of Park: _____

MUNICIPAL INFORMATION FORM

Lands Being Alienated or Discontinued

1. Has the alienation been reviewed under the State Environmental Quality Review Act or a comparable statute?

   If so, and if the review documents provide the answers to the following questions, you may substitute the review documents for this questionnaire.

2. How did the Municipality acquire the parklands being alienated?

3. When were the parklands acquired?

4. What is, in acres, the size of the park in which the lands being alienated are located?

5. What is its name (if not given above)? Has the park ever been called something else?

6. What is the size, in acres, of the specific parcel being alienated?

7. Were State or federal funds used in the acquisition or development of any portion of the park in which the lands being alienated are located? If the answer is "Yes" please provide some details about the amount of the grant, its source, date of award and for what purpose it was used.

8. How are the lands to be alienated currently used?

9. Are there any structures 50 years old or older on the property? Are any of the structures listed on the State or National Register of Historic Places? Does the property contain archeological resources?

10. Does the property contain wetlands, streams, significant habitats, or other similar features?

11. What is the reason the lands are being alienated?

12. Describe any alternatives which would make the alienation unnecessary and why they were rejected.

13. How will any remaining parklands be affected by the alienation?

14. What impacts, including aesthetic, historic, environmental, social, cultural and recreational impacts, will the alienation of these parklands have on the surrounding neighborhood?

15. What public facility will provide residents of the community with park resources and recreational facilities to take the place of those being alienated?

16. Will other lands be dedicated for park purposes to replace those being alienated? If so, please answer the questions on the next page.

Date:_____ Signed:_____.

Title:_____.
For the Municipality

Please provide a survey map of the property being alienated and a map, such as a tax map or street map, showing its general location in the community.
In addition, you are invited to include with this questionnaire any photos or other documents which will better enable us to understand this proposal. Kindly send this information to the Office of Parks, Recreation and Historic Preservation's Regional Grant Representative for your area.

Send a copy of this form to the Members of the Senate and the Assembly who will sponsor the parkland alienation legislation.

In addition, please send a copy of the form to: Counsel's Office, 19th Floor, Office of Parks, Recreation and Historic Preservation, Agency Bldg. #1, Empire State Plaza, Albany, NY 12238

Lands Proposed As Replacement
(If applicable)

1. Describe the location and setting of the lands proposed as replacement in relation to the lands being alienated.

2. Give their approximate size.

3. How are the lands currently used? Who owns the lands? Describe any facilities located on the lands.

4. Have they ever been used for park and/or recreational purposes?

5. What facilities and/or uses does the Municipality plan for the lands?

6. Describe any natural or cultural resources on the lands in question (streams, wetlands, significant habitats, historic or archeological resources).

7. As a best guess, are the lands approximately equivalent in fair market value and potential for recreational usefulness to those being alienated or converted?

Appendix 5 – Format and Outline of NEPA Environmental Assessment for Conversion Proposals

Conversion proposals must be reviewed and approved by the National Park Service (NPS) in accordance with Section 6(f) of the Land and Water Conservation Fund Act (L&WCF) and 36 CFR Part 59. The national policy concerning the assessment of environmental impacts of federal and federally funded actions is contained in the National Environmental Policy Act of 1969 (NEPA). Environmental review documents must address both the conversion and replacement (substitute) properties. These documents are required in order for NPS to complete their review under NEPA. At a minimum, preparation of an Environmental Assessment is required for all conversion projects.

An Environmental Assessment should be concise. The length of an EA will be dependent on the complexity of the proposal. However, an environmental assessment must contain sufficient information for the reviewer to understand the project, its impacts and mitigation. An EA also should contain figures or other attachments felt to be pertinent to the understanding of the proposal.

Note: An Environmental Assessment is prepared to assist NPS in their determination of significance. This means either a decision to prepare an EIS or issue a Finding of No Significant Impact (FONSI). With complex and controversial projects, it is recommended that the sponsor give significant consideration to the preparation of an EIS. Environmental Assessments addressing complex or controversial projects often are essentially equivalent in both form and content to an EIS. Moving to the preparation of an EIS early in the process can significantly facilitate review and full compliance with public participation requirements. Decisions regarding the preparation of an EIS should be made in consultation with OPRHP.

The following is an outline for a NEPA Environmental Assessment:

- Title Page
  [Includes name of conversion, names of person(s) who prepared EA, date, contact information]

- Table of Contents

- Introduction

- Proposed Action
  [This section includes a complete description of the proposal. The purpose and need for the project, a description of what the project is designed to accomplish and who is proposing the project.]

- Environmental Setting
  [This section describes the environmental setting of the project. It includes a description of existing conditions and use. At a minimum is should include a map which shows the entire park, the boundaries of the parcel to be converted and the location of the replacement parcel. Include other maps of the existing conditions as well as any proposed improvements, as needed. The section should also include a description of the replacement property, including its environmental value relative to the conversion parcel. This section should also describe the "legal" setting as well (e.g., easements, historical documents, title considerations).]

- Alternatives Considered
  [A description of all reasonable alternatives considered in developing the proposal. A range of alternatives needs to be considered. The issues should be defined and a discussion of their pros and cons included. Discuss the basis for the choice between the alternatives. The amount of information must be sufficient to allow NPS and the public to identify the alternative which maximizes or avoids adverse environmental impacts to the maximum extent practicable and still meets the project's objectives.]

- Environmental Impacts and Mitigation
  [This section is a comparison of the exiting conditions and the direct or indirect changes, whether beneficial or adverse, which are anticipated as a result of implementing the proposed action. This section should discuss impacts on both the park affected by the project and the replacement parcel. Discuss the beneficial and adverse impacts of the project on the parkland remaining after the conversion as well. Cumulative impacts of future phases or other related actions should also be discussed. Any mitigation measures designed to minimize environmental harm, such as erosion controls, energy conservation measures, etc. should be described in this section. Discuss anticipated impacts on the following elements: Land use (project site and surrounding area), fish and wildlife, vegetation, geology and soils, mineral resources, air and water quality, water resources/hydrology/wetlands, historic/archeological resources, transportation/access, consumption of energy resources, and socio-economic effects.]

- Consultation and Coordination
  [Include a listing of agencies and persons consulted. Include information on public outreach and public comments, and concerns.]

- References
  [Provide all references cited in the EA in a consistent format.]

Contact regarding Environmental Assessment:
Tom Lyons
Director, Environmental Management Bureau
(518) 474-0409

Appendix 6 – Sample Legislation: Provision for Substitute Parkland

LAWS OF NEW YORK, 2010
CHAPTER 86

AN ACT in relation to the alienation of certain parklands in the town of Kent in the county of Putnam.

Became a law May 18, 2010, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subject to the provisions of this act, the county of Putnam, acting by and through its county legislature, is hereby authorized to discontinue as parklands and alienate, the lands described in section three of this act, for the purpose of constructing a senior citizen center in the town of Kent.

§ 2. The authorization contained in section one of this act shall take effect only upon the condition that the county of Putnam shall dedicate the lands of equal or greater fair market value described in section four of this act as additional parklands of the county.

§ 3. The lands authorized by section one of this act to be discontinued as parklands are as follows:

All that tract or parcel of land situate in the town of Kent, Putnam county, New York state and being bounded and described as follows:

Beginning at a point on the westerly side of Ludingtonville Road at the southeasterly corner of the parcel herein described and which point is distant N 10-30-00 W 193.38 from a point on the westerly side of Ludingtonville Road where the same is intersected by the southeasterly corner of lands now or formerly Jackson, et al. as described in Liber 774 cp 542 and the southerly line of lands now or formerly Midhills Land Corp. as established by a boundary line agreement as recorded in Liber 255 cp 371; thence from said point of beginning through lands now or formerly Jackson, et al. as described in Liber 774 cp 542 on a curve to the right (Radial Bearing N 61-07-47 W) having a radius of 52.40, a central angle of 49-00-53 and a length of 44.83 to a point on a curve of the right; thence along said curve to the right (Radial Bearing N 12-58-04 E) having a radius of 105.00, a central angle of 46-07-46 and a length of 84.54 to a point; thence continuing through lands now or formerly Jackson, et al. as described in Liber 774 cp 542 N 30-54-10 W 39.80, N 32-53-26 W 9.23 and N 9-02-14 E 16.80 to a point on a curve to the left; thence along said curve to the left having a radius of 43.00, a central angle of 42-46-56 and a length of 32.11 to a point; thence continuing through lands now or formerly Jackson, et al. as described in Liber 774 cp 542 N 74-05-48 W 5.76, N 55-29-01 W 57.12 and N 16-37-55 W 21.66 to a point on a non tangent curve to the right; thence along said non-tangent curve to the right (Radial Bearing N 9-28-12 E) having a radius of 14.58, a central angle of 94-55-31 and a length of 24.16 to a point, thence N 21-37-26 W 15.20 and N 82-5-09 W 11.53 to a point on a non-tangent curve to the right; thence along said non-tangent curve to the right (Radial Bearing N 21-33-58 E) having a radius of 87.90, a central angle of 17-46-55 and a length of 27.28 to a point: thence continuing through lands now or formerly Jackson, et al. as described in Liber 774 cp 542 S 81-14-09 W 7.44, N-57-18-13 W 15.38, N 27-58-42 E 24.76, N 33-21-18 E 46.23, N 33-21-50 E 295.39 and S 54-42-41 E 44.67 to a point on a non tangent curve to the left; thence along said non-tangent curve to the left (Radial Bearing N 59-27-18 E) having a radius of 249.73, a central angle of 20-38-25 and a length of 89.96 to a point; thence still continuing through lands now or formerly Jackson, et al. as described in Liber 774 cp 542 S 0-06-42 W 34.40 S 22-46-11 W 71.18 and S 43-54-34 E 5.48 to a point on the westerly side of Ludingtonville Road; thence along the westerly side of Ludingtonville Road on a curve to the left (Radial Bearing S 67-15-43 E) having a radius of 418.10, a central angle of 33-14-18 and a length of 242.55 to a point; thence continuing along the westerly side of Ludingtonville Road S 10-30-00 E 94.26 to the point and place of beginning. Containing within said bounds 1.884 acres more or less.

§ 4. Prior to the discontinuance and alienation of the parkland described in section three of this act, the county of Putnam, acting through its county legislature, shall dedicate replacement lands for use as parkland for public park purposes, with such replacement lands, being of equal or greater fair market value, as follows: All that tract or parcel of land situate in the town of Patterson, Putnam County, New York State and being bounded and described as follows:

Beginning at a point on the northerly side of N.Y. Route 311 and the southwest corner of now or formally Merritt C. Ryder thence South 82 degrees 23' 29" West 102.44 feet to the easterly side of Interstate 503 (NY 84); running thence along said easterly side of Interstate 503 the following course and

distance; North 28 degrees 41' 39' West 508.26 feet, thence through the lands of now or formerly Douglas Holly North 64 degrees 51' 05" East 149.30 feet to the lands of now or formally Matthews and Doris Ann Kutch, thence South 35 degrees 30' 45" East 192.20 feet to a point in the line now or formerly of Edward and Gertrude Wolf; running thence along said lands South 64 degrees 51' 05" West 25.28, South 42 degrees 48' 14" East 160.00 feet and North 64 Degrees 39' 23" East 86.00 feet to a point in the line of lands now or formerly of Warren and Gloria Weigel; running thence along said lands South 42 degrees 56' 55" East 111.20 feet to a point in the line of lands now or formerly of William and Patrick Kelley; running thence along said lands South 45 degrees 08' 48" East 110.00 feet, North 64 degrees 52' 33" East 152.03 feet to a point in the line of lands now or formerly of Gustav Werner; running thence along said lands South 39 degrees 05'34" East 89.66 feet to a point in the line of lands now or formerly of Merritt C. Ryder, running thence along said lands South 66 degrees 21' 44" West 357.64 feet and South 14 degrees 02' 41" East 96.47 feet to the point and place of beginning containing within said bounds 3.564 acres more or less.

§ 5. In the event that the parklands to be dedicated by the county of Putnam pursuant to this act are not equal to or greater than the fair market value of the parkland to be discontinued, the county of Putnam shall dedicate the difference of the fair market value of the lands to be alienated and the lands to be dedicated for the acquisition of additional parklands and/or for capital improvements to existing park and recreational facilities.

§ 6. In the event that the county of Putnam received any funding support or assistance from the federal government for the purchase, maintenance or improvement of the parklands set forth in section three of this act, the discontinuance and alienation of such parkland authorized by the provisions of section three of this act shall not occur until the county of Putnam has complied with any federal requirements pertaining to the alienation or conversion of such parklands, including satisfying the secretary of the interior that the alienation or conversion complies with all conditions which the secretary of the interior deems necessary to assure the substitution of other lands shall be equivalent in fair market and usefulness to the lands being alienated or converted.

§ 7. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss: Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

MALCOLM A. SMITH	SHELDON SILVER
Temporary President of the Senate	Speaker of the Assembly

Appendix 7 – Sample Legislation: Allocation of Sum Equal to Fair Market Value for Acquisition of Additional Parkland and/or Capital Improvements to Existing Park Facilities

LAWS OF NEW YORK, 2008
CHAPTER 85

AN ACT to authorize the county of Erie, to discontinue use of certain lands as parklands and sell such lands, and dedicate certain other lands as parklands.

Became a law May 21, 2008, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The county of Erie is hereby authorized to discontinue use of certain parklands within Como Lake Park more particularly described in section three of this act, and sell and convey in fee simple for its fair market value and upon such terms and conditions as it deems appropriate such lands which are no longer useful for park and recreation purposes.

§ 2. The authorization provided for in section one of this act shall be subject to the requirement that upon the alienation of the lands more particularly described in section three of this act, the county of Erie shall dedicate all proceeds from the sale of such lands for the acquisition of land of equal or greater fair market value that shall be dedicated as parkland. In the alternative, if an appropriate parcel cannot be identified after a diligent search, the county of Erie shall use all the proceeds for capital improvements to existing park facilities in the county of Erie.

§ 3. The lands authorized by section one of this act to be discontinued as parklands, and to be sold and conveyed are as follows:

ALL that tract or parcel of land, situate in the Village and Town of Lancaster, County of Erie and State of New York, being part of Lot 11, Section 7, Township 11, Range 6 of the Holland Land Company's Survey and being further bounded and described as follows:

COMMENCING at a point in the easterly line of Lombardy Street (60.0 feet wide) at a distance of 516.25 feet southerly from the intersection of the easterly line of Lombardy Street and the southerly line of Pardee Avenue (60.0 feet wide) formerly Union Avenue; thence southerly along the easterly line of Lombardy Street 29.46 feet to the Point of Beginning; thence continuing southerly along the easterly line of Lombardy Street a distance of 97.92 feet to a point; thence southeasterly at an interior angle of 117° 12' 00", a distance of 137.11 feet to a point; thence northwesterly at an interior angle of 25° 35' 16", a distance of 201.64 feet to the point or place of beginning. Containing 0.137 acres of land more or less.

§ 4. The discontinuance and conveyance of park land authorized by the provisions of this act shall not occur until the county of Erie has complied with any federal requirements pertaining to the alienation or conversion of park lands, including satisfying the secretary of the interior that the alienation or conversion complies with all conditions which the secretary of the interior deems necessary to assure the substitution of other lands shall be equivalent in fair market value and recreational usefulness to the lands being alienated or converted.

§ 5. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss: Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

Appendix 8 – Sample Legislation: Net Proceeds Set Aside for Acquisition of Replacement Parkland

LAWS OF NEW YORK, 2008
CHAPTER 460

AN ACT to authorize the village of North Syracuse in the county of Onondaga, to discontinue use of certain lands as parklands and convert such lands for senior housing.

Became a law August 5, 2008, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subject to the provisions of this act but notwithstanding any provision of law to the contrary,* the village of North Syracuse, county of Onondaga, is hereby authorized, acting by and through the village board of trustees and upon such terms and conditions as determined by such board, to discontinue the use of the municipally owned parkland commonly known as Toll Road Park, and more particularly described in section four of this act, which is no longer needed for park purposes, and to utilize said parklands for senior housing purposes.

§ 2. The authorization contained in section one of this act shall take effect only upon the condition that the village of North Syracuse dedicate additional parkland of equal or greater fair market value than the value of the property being alienated by this act.

§ 3. In the event that the replacement parklands to be dedicated by the village of North Syracuse pursuant to this act are not equal to or greater than the fair market value of the parklands to be discontinued, the village of North Syracuse shall dedicate the difference of the fair market value of the lands to be alienated and the lands dedicated for the acquisition of additional parklands and/or for capital improvements to its existing park and recreational facilities.

§ 4. The lands referred to in section one of this act are located, bounded and described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the Village of North Syracuse, County of Onondaga, State of New York, being parts of Farm Lot 79 in the Town of Clay and Farm Lot 80 in the Town of Cicero, being part of the Single Tract as shown on a map, filed 8-17-1927 in the Onondaga County Clerk's Office, more particularly described as follows: Beginning at a point in the center line of the Brewerton Plank Road, known as RTE. 11, at the intersection of the northerly line of Singleton Ave. as shown on map, thence S. 18~ 36' W. 50.88' along center of Brewerton Plank Road to the point of intersection of the southerly line of Singleton Ave. with the centerline of the Brewerton Plank Road, thence westerly 272.72' along the southerly line of Singleton Ave. to the northwest corner of Lot No. 43 as shown on map, thence southerly along the westerly line of Lot No. 43, 147.39' to the southwest corner of Lot No. 43 thence westerly along the southerly lien of Lot No. 44, approx. 12' to a point, said point being in the northwest corner of premises conveyed by Howard Rulison et al to Leon D. Strobeck and Lila G. Strobeck, his wife, by Deed recorded in the Onondaga County Clerk's Office on October 16, 1928, in Book of Deeds No. 599 at page 118&c.; thence southerly along the west line of premises conveyed to said Strobeck by said Deed to the northwest corner of premises conveyed by Herman Single and Elizabeth L. Single his wife to Fred Renk by Deed recorded in the Onondaga County Clerk's Office on September 10, 1926, in Book of Deeds No. 554 page 416; thence southerly along the west line of said Fred Rank 100± feet to a point; thence S 4~ 21' W 15.84' to a point thence N 74~ 05' W 159.39' to a point; thence S 4~ 13' W 291.39' to a point in the center line of Chestnut St, thence westerly along the center line of Chestnut St. 4' to a point, thence N 4~ 01' E 207.32' to a point, thence N 85~ 12' W 161.0' to the Westerly line of Single Tract and the Easterly line of the Cerio Tract, as shown as per map file No. 3223, filed 12-6-1950; thence in a northerly direction 123.78 feet to a point, said point being the southeast corner of a parcel of land designated, "reserved" as shown on the aforementioned map; thence N 81~ 45' 0" W along the southerly line of said "reserved" parcel a distance of 264.0" to a point in the easterly line

* Please note that this language is not preferred because it is too general. If a specific law needs to be excepted, it should be listed.

of Lot No. 25, said point also being the southwest corner of a parcel of land designated "reserved" as shown on the above mentioned map; thence northeasterly on a line along the easterly line of Lots 19 through 25 for a distance of 440.24' to the southwesterly corner of Lot No. 14; thence easterly along the southerly line of Lots 14 through 17 of the above mentioned filed map to a point in the easterly line of the Cerio Tract and the westerly line of the Single Tract; thence in a northerly direction along the easterly line of said Cerio Tract and the westerly line of said Single Tract a distance of 41.46' to the northwest corner of Lot No. 39 as shown as per above Single Tract map, thence southeasterly 553.92' along the northerly line of the following lots: 39, 38, 37, 36, 35, 34, 33, 32, 31 and part of 28 as shown on Single Tract map to a point 41.42' easterly from the north east corner of lot No. 31, thence southwesterly 147.39 to a point on the northerly line of Singleton Ave., which is 69.26' easterly from the southeast corner of lot 31, thence easterly along the northerly line of Singleton Av., 130.74' to a point where the northerly line of Singleton Ave. intersects the center line of the Brewerton Plank Road to the point and place of beginning. Toll Road Park, as described pursuant to this section, contains approximately eight acres.

§ 5. The discontinuance of parkland authorized by the provisions of this act shall not occur until the village of North Syracuse has complied with any federal requirement pertaining to the alienation or conversion of parklands, including satisfying the secretary of the interior that the alienation or conversion complies with all conditions which the secretary of the interior deems necessary to assure the substitution of other lands shall be equivalent in fair market value and recreational usefulness to the lands being alienated or converted.

§ 6. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss: Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

APPROVAL MEMORANDUM - No. 24 Chapter 460

MEMORANDUM filed with Senate Bill Number 7546-A, entitled:

"AN ACT to authorize the village of North Syracuse in the county of Onondaga, to discontinue use of certain lands as parklands and convert such lands for senior housing"

APPROVED

This bill is intended to authorize the Village of North Syracuse Village) to: (1) discontinue using an eight-acre park known as "Toll Road Park" as municipal parkland; and (2) sell the park property to enable senior citizen housing to be constructed on the property. The authorization takes effect only upon the condition that the Village dedicate other lands of equal or greater fair market value for use as replacement parkland. In the event that the fair market value of the replacement land is less than the value of the parkland that is alienated, the bill requires the Village to dedicate money in an amount equal to the difference in value for the acquisition of additional parkland and/or capital improvements to existing parkland or recreational facilities.

Generally, once a municipality dedicates land to serve as municipal parkland, the parkland becomes subject to the "public trust doctrine," meaning that the parkland may not be alienated without the Legislature's authorization. This requirement reflects the fact that municipal parkland is a valuable public asset deserving of special protection. This fact is also why alienation bills typically not only condition the authority to alienate parkland on the dedication of appropriate replacement lands, but also contain a legal description of the replacement lands that will be dedicated as parkland. This approach also allows the public to scrutinize proposed replacement lands before an alienation bill is passed.

Unfortunately, while this bill conditions the Legislature's authorization for the alienation on, among other things, the dedication by the Village of replacement lands of equal or greater fair market value, it does not identify the replacement lands. While I am signing this bill, I urge the Legislature to structure future legislation authorizing the alienation of other than insignificant amounts of municipal parkland to include a description of the replacement lands that will be dedicated as parkland.

The bill is approved. (signed) DAVID A. PATERSON

Appendix 9 – Sample Legislation: Transfer of Parkland to Another Municipality for Park Purposes

LAWS OF NEW YORK, 2010
CHAPTER 476

AN ACT authorizing the county of Erie to transfer and convey Beeman Creek Park to the town of Clarence, county of Erie.

Became a law August 30, 2010, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. (a) The county of Erie acting through its legislative body, is hereby authorized to discontinue the use of Beeman Creek Park, described in section two of this act, and to enter into a contract to convey its interest in the real property to the town of Clarence, county of Erie upon terms agreed upon by the county of Erie and the town of Clarence, for use by the town of Clarence for continued park and recreational purposes provided, however, that the town of Clarence shall continue to provide access to such parklands and/or recreational facilities to all residents of the county of Erie.

(b) Any revenues received by such county from such town from the transfer of the property described in section two of this act shall be used for capital improvements of existing park and recreational facilities and/or for the acquisition of additional park and recreational facilities.

§ 2. The real property authorized to be conveyed by the county of Erie pursuant to section one of this act shall be bounded and described as follows:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Clarence, County of Erie and State of New York, being part of Lot Number fifty-six (56), Township thirteen (13), Range six (6) of the Holland Land Company's Survey, bounded as follows:

West by a line parallel with the west bounds of said lot and distant thirty-seven and sixty one hundredths (37.61) chains east therefrom, fifty-eight (58) chains; north by Lot Number fifty-seven (57), twenty-three and thirty hundredths (23.30) chains; east by Lot Number fifty-four (54), fifty-nine (59) chains and south by the twelfth (12th) Township, twenty-three and seventy-seven hundredths (23.77) chains. Excepting therefrom a certain piece of land in the Lot No. 56, Township 13 and Range 6 of said Holland Land Company's Survey, which exception is bounded and described as follows:

BEGINNING at the southeast corner of Lot No. 56, which is also the southeast corner of the above described premises; thence north along the east line of Lot No. 56 and the east line of the above described premises, a distance of 600 feet; thence west and parallel to the south line of the above described premises, which is also the south line of Lot No. 56, a distance of 210 feet; thence south and parallel to the east line of Lot No. 56 and the east line of the above premises, a distance of 252.50 feet to a point; thence generally southerly in a straight line a distance of 350.51 feet and to a point in the south line of the above described premises which is 166 feet west of the point of beginning as measured along said south line of the above described premises; thence east and along the south line of the above described premises and the south line of Lot No. 56, a distance of 166 feet to the point and place of beginning.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Clarence, County of Erie and State of New York, being the southwest part of Lot No. fifty-four (54), Township thirteen (13), Range six (6) of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point which is the southwest corner of said Lot No. 54, said point being in the center line of Lapp Road; running thence north along the west line of said Lot No. 54 a distance of 1107.76 feet to a point; running thence easterly a distance of 33 chains to a point which is the northeast corner of premises formerly owned by Samuel Kroll conveyed to him by deed recorded in Erie County Clerk's Office in Liber 239 of Deeds at page 489; running thence south along a line parallel with the west line of said Lot No. 54, a distance of 808.0 feet to a point in said line which is 300 feet north of the center line of Lapp Road, as measured along said parallel line as extended; running thence west along a line parallel with the said center line of Lapp Road, a distance of 1,493.41 feet to a point; running thence south, parallel with the west line of said Lot No. 54, a distance of 300 feet to the center line of Lapp Road;

running thence west along the said center line of Lapp Road which is also the south line of said Lot No. 54, a distance of 689.95 feet to the place or point of beginning.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Clarence, County of Erie and State of New York, being the middle part of Lot Number fifty-four (54), Township thirteen (13), Range six (6) of the Holland Land Company's Survey bounded and described as follows:

COMMENCING at a point on the west line of said lot, fifteen and fifty-four hundredths (15.54) chains, south of the northwest corner of said lot and running thence east on a line parallel with the north line of said lot, forty-four and sixteen hundredths (44.16) chains to the center of the highway; thence southerly along the center of said highway to a point, twenty and two hundredths (20.02) chains south of the north line of said lot; thence west on a line parallel with the north line of said lot, thirteen and thirty-one hundredths (13.31) chains; thence south on a line parallel to the west line of said lot, twenty and forty hundredths (20.40) chains to a point, sixteen and sixty-seven hundredths (16.67) chains north of the south line of said lot; thence west on a line parallel to the south line of said lot, thirty-three (33) chains to the west line of said lot; thence north along the west line of said lot, twenty-six and ninety-hundredths (26.90) chains to the place of beginning.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Clarence, County of Erie and State of New York, being the middle part of Lot Number fifty-four (54), Township thirteen (13), Range six (6) of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point on the west line of said lot, eight and ninety-three hundredths (8.93) chains south of the northwest corner of said lot; thence easterly forty-three and fifty-six hundredths (43.56) chains to the center of the highway to a point, nine and twenty-nine hundredths (9.29) chains south from the north line of said lot; thence southerly along the center of said highway to a point fifteen and fifty-four hundredths (15.54) chains south from the north line of said lot; thence west on a line parallel with the north line of said Lot forty-four and sixteen hundredths (44.16) chains to the west line of said lot; thence north on the said west line, six and sixty-one hundredths (6.61) chains to the place of beginning.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Clarence, County of Erie and State of New York, being the northwest part of Lot Number fifty-four (54), Township thirteen (13), Range six (6) of the Holland Land Company's Survey, bounded and described as follows:

COMMENCING at the northwest corner of said lot; thence easterly forty-three and thirty hundredths (43.30) chains to the center of the highway at a point, one and twenty hundredths (1.20) chains south of the north line of said lot; thence southerly along the center of the highway to a point nine and twenty-nine hundredths (9.29) chains directly south from the north line of said lot; thence westerly forty and fifty-six hundredths (40.56) chains to the west line of said lot to a point eight and ninety-three hundredths (8.93) chains south of the northwest corner of said lot; thence north on the west line of said lot, eight and ninety-three hundredths (8.93) chains to the place of beginning.

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Clarence, County of Erie and State of New York, being part of Lot Number fifty-four (54), Township thirteen (13), Range six (6) of the Holland Land Company's Survey, bounded as follows:

BEGINNING at a point in the south line of said Lot Number fifty-four (54), distant thirty-three (33) chains east of the southwest corner of said Lot Number fifty-four (54); thence northerly parallel with the west line of Lot Number fifty-four (54), sixteen (16) chains sixty-seven (67) links; thence easterly parallel with the south line of Lot Number fifty-four (54), six (6) chains; thence southerly parallel with the west line of Lot Number fifty-four (54), sixteen (16) chains sixty-seven (67) links to the south line of Lot Number fifty-four (54); thence westerly along the south line of Lot Number fifty-four (54), six (6) chains to the point or place of beginning.

EXCEPTING and Reserving therefrom all that tract or parcel of land, situate in the Town of Clarence, County of Erie and State of New York, being part of Lot No. 54, Township 13, Range 6 of the Holland Land Company's Survey bounded and described as follows:

BEGINNING at a point in the south line of said Lot No. 54, distant 33 chains east of the southwest corner of said Lot No. 54; thence northerly and parallel with the west line of Lot No. 54 a distance of 400 feet to a point; thence easterly and parallel to the center line of Lapp Road, which center line is also the south line of said Lot No. 54, a distance 327.75 feet to a point; thence southerly and parallel to said first mentioned course a distance 400 feet to the said center line of Lapp Road; thence westerly along the said center line of Lapp Road 327.75 feet to the place of beginning.

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Clarence, County of Erie and State of New York, being part of Lot Number fifty-four (54), Township thirteen (13), Range six (6) of the Holland Land Company's Survey, bounded as follows;

COMMENCING at a point thirty-three (33) chains east of the west line of Lot Number fifty-four (54) and sixteen (16) chains sixty-seven (67) links north of the south line of Lot Number fifty-four (54), said point of beginning being the northwest corner of lands conveyed to Joseph Karicar by deed recorded in Erie County Clerk's Office in Liber 182 of Deeds at page 375, June 26, 1857; thence northerly four (4) chains on a line parallel to the west line of Lot Number fifty-four (54); thence easterly parallel to the south line of Lot Number 54, (11) chains 53 ½ inks to a stake; thence southerly on a line parallel to the west line of Lot Number 54, (13) chains (74) links to a stake; thence westerly on a line parallel to the south line of Lot Number 54, five (5) chains fifty-three and one half (53 1/2) links to a stake; thence northerly on a line parallel to the west line of Lot Number fifty-four (54), nine (9) chains seventy-four (74) links; thence westerly parallel to the south line of lot Number fifty-four (54), six (6) chains to the point or place of beginning.

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Clarence, County of Erie and State of New York, being part of Lot Number fifty-four (54), Township thirteen (13), Range six (6) of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point in the center of the Salt Road seven and twenty-eight hundredths (7.28) chains northerly from the south bounds of said Lot Number fifty-four (54), measured along the center of said Salt Road; thence northerly along the center of the said Salt Road, fourteen and thirty-eight hundredths (14.38) chains; thence west five and ninety-four and one-half hundredths (5.94 1/2) chains; thence south thirteen and seventy-four hundredths (13.74) chains; thence east nine and forty-eight and one-half hundredths (9.48 1/2) chains to the place of beginning.

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Clarence, County of Erie and State of New York, being part of Lot Number fifty-four (54), Township thirteen (13), Range six (6) of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point thirty-nine (39) chains east of the west line of said lot; thence east on the south line of said lot, seventeen and forty-seven hundredths (17.47) chains; thence north on the center of the Salt Road, seven and twenty-eight hundredths (7.28) chains; thence west on a line parallel to the south line, fifteen and three hundredths (15.03) chains; thence south six and ninety-three hundredths (6.93) chains to the place of beginning.

EXCEPTING THEREFROM that part conveyed to George Fix, Jr. and Martha R. Fix his wife by deed recorded in the Erie County Clerk's Office in Liber 6987 of Deeds at page 486.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Clarence, County of Erie and State of New York, being part of Lot Number fifty-four (54), Township thirteen (13), Range six (6) of the Holland Land Company's Survey, bounded and described as follows;

BEGINNING on the south by a line parallel with the north line of said Lot Number fifty-four (54) and twenty-eight and seventy-eight hundredths (28.78) chains south therefrom fourteen and fourteen hundredths (14.14) chains; on the west by a line parallel to the west line of said lot and distant thirty-three (33) chains east therefrom, five (5) chains; on the north by a line parallel to the north line of said lot and distant twenty-three and seventy-eight hundredths (23.78) chains south therefrom thirteen and eighty-six hundredths (13.86) chains and on the east by the center of the highway.

EXCEPTING THEREFROM, ALL THAT TRACT OR PARCEL OF LAND conveyed by two certain deeds recorded in the Erie County Clerk's Office respectively in Liber 6013 of Deeds at page 454 and Liber 6335 of Deeds at page 551.

AND EXCEPTING THEREFROM, ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Clarence, County of Erie and State of New York, being part of Lot Number fifty-four (54), Township thirteen (13), Range six (6) of the Holland Land Company's Survey, bounded and described as follows:

COMMENCING at a point which is the southeast corner of the lands conveyed to Robert M. Huebert and Mary A. Huebert, his wife, by deed recorded in the Erie County Clerk's Office in Liber 3891 of Deeds at page 20, on the 13th day of May, 1946; running thence westerly along the south line of the lands so conveyed as aforesaid a distance of two hundred fifty-seven and eighty-four hundredths (257.84) feet to a point; running thence northerly, parallel with the center line of Salt Road a distance of one hundred thirty-eight and five tenths (138.5) feet to the southwest corner of lands conveyed by Robert M. Huebert and Mary A., his wife, to Joseph G. Schwartzkopf, and Marylou, his wife, by deed

recorded in the Erie County Clerk's Office, in Liber 6335 of Deeds at page 551, on the 11th day of September, 1958; thence easterly parallel with the first described course herein a distance of two hundred fifty-seven and eighty-four hundredths (257.84) feet to said center line of Salt Road; thence southerly along the said center line of Salt Road a distance of one hundred fifty-eight and six tenths (158.6) feet to the point of beginning.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Clarence, County of Erie and State of New York, being part of Lot Number fifty-four (54), Township thirteen (13), Range six (6) of the Holland Land Company's Survey, bounded and described as follows:

COMMENCING at a point in the center line of Salt Road, distant one thousand five hundred sixty-nine and forty-eight hundredths (1569.48) feet southerly from the north line of said Lot Number fifty-four (54), as measured along the center line of Salt Road, which point of beginning is the northeast corner of land now or formerly owned by Godfried Aderman; running thence westerly on a line parallel with the north line of said Lot Number fifty-four (54), a distance of nine hundred one and forty hundredths (901.40) feet to a point; thence northerly on a line parallel with the west line of said lot, two hundred forty-eight and sixteen hundredths (248.16) feet to a point; thence easterly eight hundred fifty-one (851) feet to a point in the center line of Salt Road, distant two hundred sixty-one (261) feet northerly from the point of beginning; thence southerly along the center line of Salt Road, two hundred sixty-one (261) feet to the point or place of beginning.

EXCEPTING THEREFROM, ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Clarence, County of Erie and State of New York, being part of Lot number fifty-four (54), Township thirteen (13), Range six (6) of the Holland Land Company's Survey, bounded and described as follows:

COMMENCING at the southeast corner of lands conveyed to Lawrence Duewiger and Dorothy T. Duewiger, his wife, by a certain deed recorded in Erie County Clerk's Office in Liber 6985 of Deeds at page 57; running thence westerly along the southerly line of lands so conveyed as afore said a distance of two hundred fifty-seven and eighty-four hundredths (257.84) feet; running thence northwesterly parallel with the center line of Salt Road a distance of two hundred sixty-one (261) feet to the north line of the lands conveyed as aforesaid; running thence easterly along the north line of said lands, a distance of two hundred fifty-seven and eighty-four hundredths (257.84) feet to the center line of Salt Road; running thence southerly along the said center line of Salt Road two hundred sixty-one (261) feet to the point of beginning.

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Clarence, County of Erie and State of New York, being part of Lot No. 54, Township 13, Range 6 of the Holland Land Company's Survey, bounded and described as follows: Commencing at a point in the center line of Salt Road, 1444 feet northerly from the south line of said Lot No. 54, as measured along the center line of Salt Road; thence westerly on a line parallel with the south line of said lot, 1090 feet to a point; thence northerly on a line parallel with the west line of said Lot No. 54, a distance of 445.50 feet to a point; thence easterly 970 feet to a point in the center line of Salt Road, distant 456.72 feet northerly from the point of beginning; thence southerly along the center line of Salt Road, 456.72 feet to the point or place of beginning. Excepting therefrom, all that tract or parcel of land situate in the Town of Clarence, County of Erie and State of New York, being part of Lot No. 54, township 13, Range 6 of the Holland Land Company's Survey, bounded and described as follows: Commencing at the southeast corner of lands conveyed to Norman Wiltberger, by deed recorded in the Erie County Clerk's Office in Liber 6050 of Deeds at page 278, on September 4, 1956; running thence westerly along the lands so conveyed as aforesaid a distance of 257.45 feet to a point; running thence northerly parallel with the center line of Salt Road, a distance of 457.85 feet to the north line of the lands so conveyed to Norman Wiltberger as aforesaid; running thence easterly along the said north line of Wiltberger's lands, a distance of 257.84 feet to the center line of Salt Road; running thence southerly along the center line of Salt Road, a distance of 456.72 feet to the point or place of beginning (391 acres). Reference is also made to map entitled Beeman Creek Park filed in the Erie County Clerk's Office as Map Number 299 in Highway File Box No. 17 on April 12, 1966.

§ 3. The land to be transferred pursuant to this act, and all structures and facilities situated on such land, shall be maintained, owned and operated by the town of Clarence.

§ 4. The use of such parkland and facilities shall be available to the general public. Where the availability of such facilities are limited, the use of such facilities must be determined by an equitable method which provides priority use to the general public based on a reservation policy for free or nominal charge.

§ 5. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss: Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

MALCOLM A. SMITH	SHELDON SILVER
Temporary President of the Senate	Speaker of the Assembly

Appendix 10 – Sample Legislation: Parkland Funded by Urban Park and Recreation Recovery Program (UPARR) Monies

LAWS OF NEW YORK, 1998
CHAPTER 412

AN ACT to authorize the city of Utica, in the county of Oneida, to sell certain parklands

Became a law July 22, 1998, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Notwithstanding the provisions of any general, special or local law to the contrary,* the city of Utica, in the county of Oneida is hereby authorized and empowered acting by and through its city council and upon such terms and conditions as determined by such council, to discontinue the use of parklands and to sell and convey at fair market value the lands described in section two of this act, which are no longer needed for park purposes to Bull Brothers, Inc. or its successors in interest. All proceeds and consideration received from the sale of the lands described in section two of this act shall be used for the acquisition of additional parklands of equal or greater fair market value, and/or capital improvements to existing parklands and recreational purposes within such city.

§ 2. The lands authorized to be discontinued, sold and conveyed pursuant to section one of this act are more particularly described as follows: ALL THAT TRACT OR PARCEL OF LAND, situate in the city of Utica, in the county of Oneida, and the State of New York, bounded and described as follows:

Beginning at a point were the northerly boundary line of Oriskany Street west intersects with the westerly boundary line of Platt Street, thence N. 68¬ 59' W. along said northerly boundary line of Oriskany Street West a distance of 776.85+/- lineal feet to a point, thence N. 27¬ 59' E. a distance of 249.11 +/- lineal feet to a point, thence S. 76¬ 11' E. along the southerly boundary line of lands now or owned by the New York Central and Hudson River Railroad company a distance of 179.28+/- lineal feet to a point: thence S 76¬ 08' 30" E. along the southerly boundary line of lands now or owned by the New York Central and Hudson River Railroad Company a distance of 444.14+/- lineal feet to a point; thence S 76¬11'E along the southerly boundary line of lands now or formally owned by the New York Central and Hudson Railroad Company, a distance of 120.63+/- lineal feet to a point, said point also being located on the westerly street boundary line of Platt Street; thence S 19¬40' W along the westerly street boundary line of Platt Street a distance of 340.10 +/- lineal feet to the point of beginning. Said parcel containing 221,823 square feet, or 5.09 acres. Excepting and

* Please note that this language is not preferred because it is too general. If a specific law needs to be excepted, it should be listed.

reserving that portion of land to be retained by the City of Utica, said portion of land described as follows; beginning at a point located on the westerly street boundary line of Platt Street, said point being located 275 lineal feet northerly of the intersection of the westerly street boundary line of Platt street and the northerly street boundary line of Oriskany Street West; thence N 70¬ 20' W. a distance of 10 lineal feet to a point; thence N 19¬40' E. a distance of 47 lineal feet to a point; thence S 70¬20' E. a distance of 10 lineal feet to a point, said point also being located on the westerly street boundary line of Platt street; thence S 19¬40' W. along the westerly street boundary line of Platt Street, a distance of 47 lineal feet to the point of beginning. Said parcel containing 470 square feet or 0.01 acres.

§ 3. The discontinuance of parkland authorized by this act shall not occur until the city of Utica has complied with any federal requirements pertaining to the alienation or conversion of the parklands, including satisfying the Secretary of the Interior that the conversion complies with all conditions which the Secretary of the Interior deems necessary to assure the provision of adequate recreation properties and opportunities of reasonably equivalent location and usefulness.

§ 4. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

Appendix 11 – Sample Legislation: Utility Easements

LAWS OF NEW YORK, 2010
CHAPTER 287

AN ACT to authorize the county of Nassau to convey to the Manhasset-Lakeville water district, a special district of the town of North Hempstead, an easement through land located in the county's Leeds Pond Preserve to be used to install an underground water main, to extend and improve the existing public water supply system.

Became a law July 30, 2010, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The county of Nassau, acting by and through its county legislature, is hereby authorized to convey by appropriate instruments to the board of commissioners of the Manhasset-Lakeville water district, an easement in Leeds Pond Preserve described in section three of this act, for the purpose of enabling such water district to construct, and repair when necessary, a transmission main which will extend the existing public water supply system. Upon completion of construction, the county of Nassau shall restore the surface of the lands and the lands shall continue to be used for park purposes.

§ 2. The authorization provided in section one of this act shall be effective only upon the condition that the county of Nassau dedicate an amount equal to or greater than the fair market value of the easement interest being alienated pursuant to section one of this act to the acquisition of new parklands and/or capital improvements to existing park and recreational facilities.

§ 3. The easement to be conveyed by the county of Nassau pursuant to the provisions of this act is described as follows:

All that certain plot, piece or parcel of land with buildings and improvements thereon erected, situate, lying and being located at Manhasset, Town of North Hempstead, County of Nassau and State of New York being more particularly bounded and described as follows:

Beginning at a point on the widened Easterly side of Plandome Road, said point being the Southwest corner of Lot 151 as shown on the Map of Plandome Wood, Section 1, filed August 1, 1956 as case number 6728. Said point of beginning being South 01 Degrees 50 Minutes 30 Seconds West, 297.70 feet from the intersection of the Easterly side of Plandome Road with the Southerly side of Elm Sea Lane. Thence partly along the southerly line of the Map of Plandome Wood Section 1, South 74 Degrees 24 Minutes 22 Seconds East a distance of 339.63 feet; Thence along the Southerly line of the Map of Plandome Wood Section 1 and the Map of Plandome Wood Section 2, North 70 Degrees 54 Minutes 13 Seconds East a distance of 1140.27 feet to the Westerly line of the Map of Manhasset Estates; Thence along the Westerly line of Manhasset Estates, South 19 Degrees 03 Minutes 57 Seconds East a distance of 161.94 feet to the Northerly line of the Map of Plandome Mill Amended Map Number 2; Thence along the Northerly line of the Map of Plandome Mill, Amended Map Number 2, South 63 Degrees 30 Minutes 53 Seconds West a distance of 15.13 feet; Thence North 19 Degrees 03 Minutes 57 Seconds West a distance of 148.88 feet; Thence South 70 Degrees 54 Minutes 13 Seconds West a distance of 1129.95 feet; Thence North 74 Degrees 24 Minutes 22 Seconds West a distance of 368.45 feet to the Southerly line of Plandome Road; Thence North 15 Degrees 35 Minutes 38 Seconds East, 15.00 feet; Thence South 74 Degrees 24 Minutes 22 Seconds East a distance of 24.14 feet to the point or place of BEGINNING. The described property having an area of 24,849.46 square feet or 0.57 acres.

§ 4. The conveyance of the easement authorized by the provisions of this act shall not occur until the county of Nassau has complied with any federal requirements pertaining to the alienation or conversion of parklands, including satisfying the secretary of the interior that the alienation or conversion complies with all conditions which the secretary of the interior deems necessary to assure that the substitution of other lands be equivalent in fair market value and recreational usefulness to the lands being alienated or converted.

§ 5. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss: Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

MALCOLM A. SMITH
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

Appendix 12 – Sample Legislation: Cellular Towers

LAWS OF NEW YORK, 2009 CHAPTER 444

AN ACT in relation to authorizing the town of Smithtown in the county of Suffolk, to discontinue the use of certain park land and lease such land for use of a wireless communications facility

Became a law September 16, 2009, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. a. The town of Smithtown, located in the county of Suffolk, is hereby authorized, acting by and through its town board and upon such terms and conditions as determined by such board, to discontinue the use of certain municipally owned park land, and to lease at fair market value to Site Tech Wireless, LLC, for a term not to exceed twenty-five years, said park land as described in section two of this act for the purpose of erecting, maintaining and operating a wireless communications facility.

b. All proceeds from such lease shall be used for the acquisition of additional park lands and/or for capital improvements to existing park and recreation facilities.

§ 2. The park lands authorized by section one of this act are more particularly described as follows:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON ERECTED, SITUATE, LYING AND BEING IN SMITHTOWN IN THE TOWN OF SMITHTOWN, COUNTY OF SUFFOLK AND THE STATE OF NEW YORK KNOWN AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS. BEGINNING AT A POINT BEING THE FOLLOWING (1) COURSE AND DISTANCE FROM THE NORTH WESTERLY CORNER OF SAID PROPERTY RUNNING SOUTH 74 DEGREES 06 MINUTES 47 SECONDS EAST 1,716.80' TO THE POINT OR PLACE OF BEGINNING AT THE NORTH WESTERLY CORNER OF LEASE AREA RUNNING THENCE NORTH 85 DEGREES 49 MINUTES 15 SECONDS EAST 55.00 FEET RUNNING THENCE SOUTH 04 DEGREES 10 MINUTES 45 SECONDS EAST 55.00 FEET RUNNING THENCE SOUTH 85 DEGREES 49 MINUTES 15 SECONDS WEST 55.00 FEET RUNNING THENCE NORTH 04 DEGREES 10 MINUTES 45 SECONDS WEST 55.00 FEET TO THE POINT OR PLACE OF BEGINNING

CONTAINING 0.069 acres (3,025 square feet) of land.

§ 3. Should the leased lands described in section two of this act cease to be used for the purposes described in section one of this act, the lease shall terminate and those lands shall revert to the town of Smithtown for public park and recreational purposes. At the time of such reversion, the removal of such wireless communications facility shall take place and the property shall be returned to its previous state, consistent with parks and recreational purposes.

§ 4. This act shall take effect immediately.

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

MALCOLM A. SMITH	SHELDON SILVER
Temporary President of the Senate	Speaker of the Assembly

Appendix 13 – Sample Legislation: Lease for Recreational Purposes

LAWS OF NEW YORK, 2009
CHAPTER 67

AN ACT to authorize the city of Watertown, county of Jefferson, to lease certain parklands.

Became a law June 9, 2009, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subject to the provisions of this act but notwithstanding chapter 308 of the laws of 1998, the city of Watertown, county of Jefferson, is hereby authorized, acting by and through its city council, to lease to the Watertown Family YMCA, Inc. for a term not to exceed twenty-five years, the municipally owned parkland more particularly described in section three of this act, consisting of a public indoor sports facility with indoor athletic fields, exercise/weight training areas, concession facilities and related facilities.

§ 2. The authorization provided in section one of this act shall be effective only upon the condition that the city of Watertown, county of Jefferson, dedicate an amount equal to the fair market value of those interests being transferred by this act, for the acquisition of additional parklands and/or for capital improvements to existing park and recreational facilities.

§ 3. The lands referred to in section one of this act are located, bounded and described as follows:

BEGINNING at a 3/4" iron pipe found in the westerly margin of Rand Drive, said iron pipe also marking the most northeasterly corner of P.N. 829103, said iron pipe being situate N 34°-50'-00" E a direct tie distance of 414.00± feet from the northerly margin of Coffeen Street; THENCE N 54°-47'-00" W along the northerly property line of P.N. 829103 passing through a 3/4" iron pipe found at 450.00± feet and continuing on the same bearing a total distance of 516.00± feet to a 3/4" iron pipe set in the easterly property line of P.N. 829101.2; THENCE N 34°-50-00" E along the easterly property line of P.N. 829101.2 a distance of 205.67± feet to a railroad spike set at the point of intersection of the easterly property line of P.N. 829101.2 and the easterly property line of the Western Outfall Trunk Sewer (W.O.T.S.) P.N. 829102; THENCE N 42°-01'-24" E along the easterly property line of the W.O.T.S. P.N. 829102 a distance of 224.41± feet to a railroad spike set; THENCE S 54°47'-00" E along the newly created lease dividing line a distance of 487.91± feet to a 3/4" iron pipe set; THENCE S 34°-50'-00" W along a prolongation line of the westerly margin line of Rand Drive, passing through a 3/4" iron pipe found at 123.41± feet and continuing on the same bearing along the actual westerly margin line of Rand Drive, a total distance of 428.50± feet to the point and place of beginning. CONTAINING 217,971.71± square feet (5.00 acres) of land more or less. SUBJECT to and including any and all rights or restrictions of record.

§ 4. Should the interests described in section three of this act cease to be operated as a public indoor sports facility, such interests shall revert to the city of Watertown, county of Jefferson, for public park and recreational purposes. Such public indoor sports facility shall be made available to the general public on an equitable basis. Where availability of public facilities are limited, the use of such facilities must be determined by a reservation policy which provides priority use to the general public.

§ 5. If the parkland that is the subject of this act has received funding pursuant to the federal land and water conservation fund, the discontinuance of parkland authorized by the provisions of this act shall not occur until the municipality has complied with the federal requirements pertaining to the conversion of parklands, including satisfying the secretary of the interior that the discontinuance will include all conditions which the secretary of the interior deems necessary to assure the substitution of other lands shall be equivalent in fair market value and recreational usefulness to the lands being discontinued.

§ 6. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss: Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

MALCOLM A. SMITH
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

Appendix 14 - New York State Department of Environmental Conservation Opinion Letter on Timing of the State Environmental Quality Review Act (SEQRA)

New York State Department of Environmental Conservation
Deputy Commissioner & General Counsel
Office of General Counsel, 14th Floor
625 Broadway, Albany, New York 12233-1500
Phone: (518) 402-9185 • FAX: (518) 402-9018
Website: www.dec.ny.gov

Alexander B. Grannis
Commissioner

NOV 30 2007

Christian DiPalermo
Executive Director
New Yorkers for Parks
355 Lexington Avenue
New York, NY 10017

RE: Petition of New Yorkers for Parks for a Declaratory Ruling or Advisory Opinion with respect to SEQRA and Alienation of Municipal Parkland

Dear Mr. DiPalermo:

This letter replies to your petition dated September 11, 2007 for a declaratory ruling or advisory opinion on the applicability of the State Environmental Quality Review Act ("SEQRA")[1] to alienation of municipal parkland. Specifically, you asked the following question:

> Whether a change in the use of parkland to a nonpark use or the adoption of a plan to make such a change including, but not limited to, a home rule resolution adopted by a municipality requesting State Legislative authority to alienate parkland, is an action that is subject to SEQRA and, if so, [what] is the proper timing for environmental review?

I must decline your request for a declaratory ruling based on the legal criteria for issuance of such rulings. The Department's legal authority for issuance of declaratory rulings is set out in Section 204 of the State Administrative Procedure Act ("SAPA") and 6 NYCRR §619.3(a). SAPA §204 provides:

> On petition of any person, an agency may issue a declaratory ruling with respect to (I) the applicability to any person, property, or state of facts of any rule or statute enforceable by it, or (ii) whether any action by it should be taken pursuant to a rule.

Under 6 NYCRR §619.3(a), the Department may decline to issue a declaratory ruling if the petition does not raise a question of the applicability of any regulation or statute enforceable by the Department. While the Department is charged with issuing regulations

[1] SEQRA is codified at Article 8 of the Environmental Conservation Law ("ECL"), which is implemented by Part 617 of Title 6 of the Official Compilation of Rules and Regulations of the State of New York (NYCRR).

implementing the SEQRA statute, the Department has no authority to review the application of SEQRA by other agencies. The Department previously determined that there are several aspects of SEQRA that are enforceable by it, and, hence, upon which it will issue declaratory rulings. *DEC Declaratory Ruling* 8-01 (1984). Specifically, the Legislature gave the Commissioner specific authority to: 1) resolve lead agency disputes [ECL §8-0111(6)]; 2) determine 'ungrandfathering' petitions [ECL §8-0111(5)(a)(I)]; and 3) determine fees on appeal [ECL §8-0113(2)(k)]. The application of SEQRA to the alienation of municipal parkland does not fall within one of these authorities. Accordingly, the following is an advisory opinion only.

In response to your questions, the Department's view is that a municipal resolution requesting legislation to alienate parkland falls within the definition of an action under SEQRA. Further, any reviews under SEQRA should be complete prior to the adoption of the resolution requesting legislation authorizing the alienation of parkland.

The Department's SEQRA regulations set out at 6 NYCRR §617.3(a) provide that: "[n]o agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR. . .". The term "agency" means: ". . . a state or local agency." 6 NYCRR 617.2©. A local agency includes: ". . . any local agency, board, authority, district, commission or governing body, including any city, county and other political subdivision of the state." 6 NYCRR §617.2(v). The term "action" includes, *inter alia*, ". . . (3) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment . . ." 6 NYCRR §617.2(b). The term "approval" is defined under the regulations to mean "a discretionary decision by an agency to issue a permit, certificate, license, lease or other entitlement or to otherwise authorize a proposed project or activity." 6 NYCRR §617.2(e).

The municipal alienation process is formally initiated through a resolution adopted by the municipal governing board (county legislature, city council, town board or village board of trustees) pursuant to Municipal Home Rule Law (MHRL) §40, through which it requests the Legislature to enact special legislation authorizing the alienation of parkland.[2] The reason for the State legislative approval requirement is that, as explained by the Court of Appeals in *Friends of Van Cortlandt Park, et al. v. City of New York* (95 N.Y.2d 623), ". . . parkland is impressed with a public trust, requiring legislative approval before it can be alienated or used for an extended period for non-park purposes [citations omitted]." *Id.* at 630. The Office of Parks, Recreation and Historic Preservation, in its manual on parkland alienation, recommends that parkland alienation legislation identify parkland to be substituted for the parkland that is proposed to be alienated. *See Office of Parks, Recreation and Historic Preservation, Handbook on the Alienation and Conversion of Municipal Parkland*, p. 20 (2005). Identification of substitute parkland is important in determining the environmental significance of the action. Typically, most such legislation either identifies substitute parkland or spells out the requirement that alienated parkland must be replaced with parkland of equivalent or greater value.

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[2] Actions of the State legislature are exempt from SEQRA. 6 NYCRR §617.5(c)(37).

Parkland alienation clearly affects the environment. Over eighty years ago in *Williams v. Gallatin* (229 N.Y. 248, 253), the Court of Appeals explained "[a] park is a pleasure ground set aside for the recreation of the public, to promote its health and enjoyment." It needs no citation to say that parks such as Central Park in Manhattan, Prospect Park in Brooklyn, Washington Park in Albany and many others are State and national treasures. They are the breathing space of New York's metropolitan areas. Smaller neighborhood parks, as do larger parks, provide essential playground and recreational space for young families, small children and senior citizens. "Municipally owned parkland and open space are nonrenewable resources which are carefully preserved in all communities. Once lost to another use, open space is difficult to recover." *Handbook on the Alienation and Conversion of Municipal Parkland, supra*, p. 3 (2005).

Based on the foregoing, I conclude that a municipal resolution requesting the State legislature's permission to alienate parkland falls within the definition of an "action" under SEQRA since municipalities, including counties, cities, towns and villages, are "agencies," as defined by SEQRA, and the MHRL §40 resolution is discretionary and it affects the environment. *See Chatham Green, Inc. v. Bloomberg*, 1 Misc.3d 434 (Sup. Ct. NY Co. 2003).

The timing question is more complex than the question of whether a decision to alienate parkland is an action because there are several steps in the alienation process, beginning with the municipal home rule resolution and ending in the actual alienation of parkland. This is typical of many actions that involve SEQRA. Indeed, the SEQRA regulations recognize that "[a]ctions commonly consist of a set of activities or steps." 6 NYCRR §617.3(g). SEQRA contains several statements that strongly suggest that the process must be complete *prior* to the municipal home rule resolution requesting authority to alienate parkland. The SEQRA regulations state that, "[n]o agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR. . ." 6 NYCRR §617.3(a); and, "[t]he basic purpose of SEQRA is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies *at the earliest possible time*." 6 NYCRR §617.1©; emphasis supplied. The phrase "at the earliest possible time" means the point in time when SEQRA can still play a meaningful role in the decision-making process. *See Tri-County Taxpayers Ass'n, Inc. v. Town Board of Queensbury*, 55 N.Y.2d 41, 46-47 (1982).

In *Tri-County, supra*, the Court of Appeals held that town board resolutions to create a sewer district constituted an "action" requiring the preparation of environmental impact statement prior to the board's adoption of its initiating resolutions. Somewhat akin to the alienation process, the formation of the sewer district in *Tri-County* involved a series of steps that, in relevant part, began with the adoption of a resolution affirming that the formation of the district was in the public interest. The resolution to create the district was subject to both voter and State Comptroller approval. Once both of these approvals were obtained the town board voted to issue the bonds to finance the district. With respect the question of timing, the Court stated:

> . . . an environmental impact statement should have been prepared and made available to the members of the town board and the public prior to the adoption of the resolutions of authorization in July, 1979. It is accurate to say, of course, that by actions of rescission later adopted the town board could have reversed the action authorizing the establishment of the sewer district. As a practical matter, for several reasons, however, the dynamics and freedom of decision-making with respect to a proposal to rescind a prior action are significantly more constrained than when the action is first under consideration for adoption. Thus, although not legally conclusive the initiatory action by the town board might well have been practically determinative. In effect the purpose of SEQRA is to assure the preparation and availability of an environmental impact statement at the time any significant authorization is granted for a specific proposal. . . [*Tri-County, supra*, at 46-47.]

In keeping with the Court of Appeals rationale in *Tri-County* and SEQRA's policy declarations discussed above, I conclude that a municipality must complete SEQRA before adopting its resolution pursuant to Municipal Home Rule Law §40 to alienate parkland. Additionally, I stated above that parkland alienation legislation typically identifies the substituted parkland or spells out that parkland of equivalent value must be substituted for the proposed alienated parkland. SEQRA's timing policies are enhanced by having the SEQRA process completed at the municipal resolution stage as it helps to ensure that offsetting or mitigation measures for the lost parkland will be incorporated into the State legislation.

Sincerely,

Alison H. Crocker
Deputy Commissioner
and General Counsel

cc: S. Gruskin
M. Lenane
A. Reynolds
J. Sama
M. Crew

Appendix 15 - Sample Municipal Home Rule Request

Intro No. 23
Date 1/19/06
Reviewed by Co. Attorney
Date 12/25/05

RESOLUTION
BROOME COUNTY LEGISLATURE
BINGHAMTON, NEW YORK

Permanent No. 06-23
Date Adopted 1/19/06
Effective Date 1/23/06

INTRODUCED BY: Education, Culture and Recreation and Finance Committees

SECONDED BY: Hon. Brian Brunza

RESOLUTION REQUESTING THE NEW YORK STATE LEGISLATURE FOR THE AUTHORITY TO EXCHANGE A PORTION OF HAWKINS POND NATURE AREA LAND FOR AN ADJOINING PARCEL OF LAND IN THE TOWN OF WINDSOR

WHEREAS, the Commissioner of Parks and Recreation and the Director of Real Property Tax Service request authorization to exchange a parcel of land in the Town of Windsor adjoining the Hawkins Pond Nature Area for an equally sized portion of park land as illustrated in the attached Exhibit "A", and

WHEREAS, the portion of said park to be exchanged contains a dwelling for which the Department of Parks and Recreation has no further use, and

WHEREAS, the parcel of property owned by the County is vacant land more suitable for use as park land, and

WHEREAS, once the exchange is made, the Commissioner of Parks and Recreation and the Director of Real Property Tax Services can dispose of the property and dwelling in conformity with the procedures established by this County Legislature and in accordance with all applicable laws, and

WHEREAS, such an exchange requires parkland alienation legislation by the New York State Legislature, compliance with the state Environmental Quality Review Act, and appraisals and surveys of both parcels, now, therefore, be it

RESOLVED, this County Legislature requests that New York State Legislature adopt legislation authorizing the exchange of a portion of Hawkins Pond Nature Area land with an adjoining equally sized parcel of land in the Town of Windsor as illustrated in the attached Exhibit "A", and be it

FURTHER RESOLVED, that the County Executive or her duly authorized representative is hereby empowered to execute any such agreements, documents, or papers, approved as to form by the Department of Law, as may be necessary to implement the intent and purpose of this Resolution, and be it

FURTHER RESOLVED, that the Clerk of this Legislature in conjunction with the Commissioner of Planning and Economic Development and the Commissioner of Parks and Recreation is hereby directed to send a copy of this Resolution and all supporting documentation to the New York State Senate and Assembly home rule offices, Senator Thomas W. Libous, Assemblywoman Donna Lupardo, Assemblyman Clifford W. Crouch and Assemblyman Gary D. Finch.

COUNTY OF BROOME } ss.:
STATE OF NEW YORK }

I, the undersigned, Clerk of the Legislature of the County of Broome, DO HEREBY CERTIFY that the above is an original resolution of such Legislature duly adopted on the 19th day of January, 20 06, by a majority of the members elected to the Legislature of said County at a regular meeting of said Legislature.

I FURTHER CERTIFY that at the time said resolution was adopted said Legislature was comprised of nineteen members.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Legislature this 20th day of January, 20 06

Date sent to County Executive January 20, 2006

Approved Barbara D. Fiala
County Executive

Date 1/23, 2006

Clerk, County Legislature
County of Broome