



**PARKS & TRAILS NEW YORK**  
**PARK ALIENATION POLICY STATEMENT**  
*October 2008*

PTNY is aware of efforts in New York to convert the recreational use of parkland to other uses, or to restrict public access to parkland. Some conversions are intended to provide a public benefit other than public recreation, while other conversions appear to be attempted without any regard for the public benefit of outdoor recreation. The purpose of this document is to provide a basic understanding of the alienation and conversion of municipal parkland, and to guide PTNY staff and the Board of Directors with developing positions related to individual efforts to alienate or convert parkland.

State-owned parks in New York are protected by statute from conversion to uses other than recreation. However, New York's municipal parklands are not protected by statute unless there has been an investment of state or federal funding. The public benefit of municipal parkland in New York is often threatened by developers, municipalities and special interest groups seeking to change the park's recreational use through a process called park alienation. The recreational use of municipal parkland is protected under the "public trust doctrine," and conversion to non-park use can only be done with explicit permission from the New York State Legislature.

Parkland acquired or improved with the aid of state funds under the Park and Recreational Land Acquisition Bond Acts of 1960 or 1965<sup>1</sup>, the Outdoor Recreation Development Bond Act of 1965<sup>2</sup>, the Environmental Quality Bond Act of 1986<sup>3</sup>, the State Environmental Protection Act of 1993<sup>4</sup>, or the Clean Water/Clean Air Bond Act of 1996<sup>5</sup> is protected by statute. Parkland acquired or improved with state funds may not be sold, disposed of, or used for non-park purposes without the authority of an act of the State Legislature, which shall provide for the "substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness."<sup>6</sup>

Likewise, parkland acquired or improved with the aid of federal funds is protected by section 6(f) of the Land, Water and Conservation Fund Act<sup>7</sup>. "No property acquired or developed with assistance under this section shall, without the approval of the Secretary, 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."

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<sup>1</sup> N.Y. Parks, Recreation & Historic Preservation Law § 15.09

<sup>2</sup> N.Y. Parks, Recreation & Historic Preservation Law § 17.09

<sup>3</sup> N.Y. Environmental Conservation Law § 52-0907

<sup>4</sup> N.Y. Environmental Conservation Law § 54-0909

<sup>5</sup> N.Y. Environmental Conservation Law § 56-0309

<sup>6</sup> N.Y. Environmental Conservation Law § § 52-0907, 54-0909(1), and 56-0309(12)

<sup>7</sup> 16 USC 4601-8(f) (3)

Unfortunately, municipal parks that have not received federal or state funding are not protected by statute. This parkland may be protected by the “public trust doctrine” which is founded in case law or common law and holds that parkland is subject to a public trust for the benefit of the public. Alienation of parkland that is not protected by statute is guided by case law and is subject to the uncertainties of the political process. Furthermore, mitigation of impacts caused by the alienation of parkland is guided by policy and the recommendations of the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) when the alienation does not involve parklands that have been subject to state or federal funding.

OPRHP reviews proposed park alienation actions and provides opinions to the State Legislature. OPRHP has prepared and published a “[Handbook](#) on the Alienation and Conversion of Municipal Parkland, April, 2005” that provides guidelines for the evaluation of park alienation activities and defines the alienation process. OPRHP encourages a “no net loss of parkland” policy. As stated in the Handbook, “It is the preference of State Parks that parkland alienation legislation includes a provision for substitute lands for the lands being alienated.”

PTNY recognizes that parkland may be negatively impacted by public projects or programs that serve an important public benefit and that park alienation may be warranted and may occur. PTNY believes it is necessary to establish the following basic policy regarding park alienation to guide the staff and Board in the evaluation of park alienation issues that are brought to PTNY’s attention.

#### POLICY STATEMENT ON THE ALIENATION AND CONVERSION OF PARKLAND IN NEW YORK STATE

1. PTNY opposes park alienation for public or private use that is not incidental to public recreation or does not provide a substantial public benefit.
2. PTNY opposes park alienation that is submitted to the State Legislature for approval that results in a net loss in the amount of parkland, aesthetic value or recreational opportunities for the same population that is served by the affected parkland. Furthermore, PTNY supports due consideration of a net gain in parkland or recreational opportunities as mitigation for the alienation.
3. PTNY supports a requirement that all parkland alienation bills contain a metes and bounds description of not only the parkland being alienated but also the replacement parkland that is being substituted. \*
4. PTNY supports a complete disclosure of a park alienation action and a proper and timely notification of the public before a park alienation can occur. The alienation proposal should be subjected to a thorough public review process, and a careful evaluation should be completed by an appropriate agency that has established that no feasible or prudent alternative exists for the action that causes the park alienation.
5. PTNY opposes any park alienation that decreases access to outdoor recreational opportunities by the public with the discontinuance of municipal parklands.

6. PTNY supports the position that the common and accepted use of municipal land by the public for recreational purposes constitutes implied dedicated parkland that is subject to the public trust doctrine.

*\*In situations where no substitute land is being provided, and there should be a compelling reason why there isn't, such as absolutely no land available, then the bill must include language stating that an amount equal to, or greater than, the fair market value of the alienated property must be dedicated for use to make improvements to existing parks in the municipality. If possible, the bill should require that the transfer of these funds must occur before the alienation takes place, or alternatively, the bill could require that the money in lieu of substitute parkland be allocated for specific projects in existing parks.*