Alternative Funding for an Equitable Park System

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for

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I. Introduction

This paper addresses the funding shortfall of the New York City Department of Parks and Recreation (NYC Parks), particularly with regard to operations and maintenance, and identifies promising revenue sources to solve this problem.[2] NYC Parks' funding problems are likely to worsen in coming years as it competes for funding with the City's aging subways, bridges, water supply and sewers. At the same time, its funding needs will grow: the City will increasingly rely on coastal parks to serve as buffers to climate change. New waterfront parks, like Governors Island, will require exponentially more care and maintenance than traditional upland parks. Other new parks, especially Freshkills Park on Staten Island, will add thousands of new acres to NYC Parks' jurisdiction.

A handful of nonprofit operators of flagship parks are solving the problem through private fundraising, real estate development partnerships and revenue generation from events and concessions.[3] These private efforts have successfully transformed a select few parks, which has created allegations of park inequity at a time when many neighborhood parks are overgrown and understaffed. New York City's public-private partnerships reflect a national debate about the proper role of the private sector in maintaining parks, highways, bridges and other essential civic infrastructure. But for most neighborhood parks in New York City the debate is irrelevant. They completely lack access to either adequate public funding or private revenue. One-time infusions of public capital dollars into the neediest parks cannot solve the ongoing operation and maintenance problem.

This paper identifies an array of alternative revenue strategies to solve this inequitable situation. It then addresses the challenge of adapting strategies developed in the City's highest income communities to resolving disparate park conditions in the City's other neighborhoods. While this paper focuses on New York City, the practices discussed are applicable throughout the State, including for state parks that have also suffered from funding shortfalls in the past decade.[4]

II. Alternative Revenue Options.

There is no substitute for adequate funding for parks from the City's general budget. This paper, however, focuses on five alternative, high-revenue options: (1) zoning incentives, (2) park improvement districts, (3) NYC Parks partnerships with public infrastructure agencies, (4) state public benefit corporations and (5) existing federal and state park funds that do not rely on new tax revenues. These options are readily permitted by law and are already in limited use in New York City. They therefore present the best options for getting more money into parks without wading into the political instability of Albany or Washington, or confronting the nation's antipathy to new taxes. The paper also briefly addresses eight other revenue strategies that may be useful on a more limited basis.

This paper does not address private philanthropy, which is highly desirable, but an unlikely source of reliable maintenance funds for most parks. The exclusion of private donations from this paper should not discourage NYC Parks and park advocates from pursuing private philanthropy in every way possible. The Central Park Conservancy and Friends of the High Line have been very successful in getting tens of millions of dollars in donations in the past few years, which have transformed these corporations and the parks they operate.[5]

This paper also does not evaluate the legality of private management of public parks. Despite criticism about the legality of private operation of parks, the arrangement is perfectly legal so long as it serves park purposes. In fact, conservancies operating flagship parks are on the whole successful. There is, however, room for reform. New Yorkers for Parks has conducted a study of public-private agreements and has issued recommendations for improvements that focus on public transparency and oversight of privately-run parks. Moreover, the options discussed in this paper will require strong partnerships between NYC Parks and the private sector. Rather than discourage creative, private management models, park advocates must embrace public-private partnerships if neighborhood parks are to flourish.

III. City and State Authority to Pursue Alternative Revenue Sources

The New York City Charter provides clear authority to the Commissioner to pursue alternative revenues and public-private partnerships,[6] and the State's highest court has repeatedly affirmed the City's authority to enter into private operation agreements for portions of public parks. For example, in 795 Fifth Avenue Corp. v. City of New York (1965) the Court of Appeals approved a high-profile restaurant concession in Central Park. In Union Square Park Community Coalition Inc. v. NYC Department of Parks and Recreation (2014) the Court of Appeals approved the creation of a new restaurant in Union Square's historic pavilion.[7] Courts have not yet addressed management agreements that allocate responsibility for an entire park to a private entity like the Central Park Conservancy. There is a legal challenge pending in the N.Y. County Supreme Court on this very issue.[8] It is very likely, however, that courts will dismiss these sorts of challenges and allow public-private partnerships so long as they genuinely enhance rather than diminish the public's overall use of a park.[9]

At the state level, the New York State Office of Parks Recreation and Historic Preservation has wide discretion to pursue public-private partnerships under state law.[10] It does so and raises about $100 million annually, providing over one half of its operating budget.[11] In fact, in 2009 the agency adopted its "Policy on Public/Private Partnerships in New York State Parks and Historic Sites" to promote public-private revenue streams.[12] New York City lacks a similar policy but should develop one.

IV. The funding shortfall

Quantifying funding shortfalls is beyond the scope of this paper. State and city capital funding for certain new parks has been robust. Most experts do agree, however, that NYC Parks has faced a steady decline in park maintenance funding over the past 40 years.[13] One senior parks official estimated that NYC Parks needs an additional $100 million annually to resolve maintenance shortfalls. This additional funding would raise NYC Park's annual operating budget from about $300 million to $400 million. This kind of additional revenue would allow the department to hire hundreds of new foresters, gardeners, park enforcement police and other maintenance crew. It is very unlikely, however, that these funds will come from the City's budget. Advocates had to lobby the mayor and councilmembers for months to add $16 million to the budget for the 2014-2015 fiscal year.[14] The alternative revenue options outlined in this paper, however, can generate these kinds of maintenance funds.

V. Zoning Incentives

Zoning incentives provide the most promise for raising significant funds for parks by allowing NYC Parks to tap directly into the real estate industry for capital and maintenance funds. State law authorizes municipalities to craft a variety of zoning incentives to preserve open space, and two are worth discussing in the context of maintaining existing parks. The first would involve transfers of development rights (TDR), whereby the City zones parks and sells the resulting development rights in exchange for payments into an endowment for a particular park. The second would involve incentive zoning whereby developers would pay into endowments for particular parks in exchange for the right to build bigger buildings nearby. Both tools are already in limited use in the City for preservation of landmarks and creation of affordable housing.

TDR

New York law allows municipalities to create zoning programs to transfer development rights from one site to another to advance a wide range of public purposes. They include efforts to "protect the natural, scenic or agricultural qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value and to enable and encourage flexibility of design and careful management of land in recognition as a basic and valuable natural resources."[15] The programs are simple: developers can acquire development rights from one site and use them on another. The sending site loses those development rights forever but the site's owner receives market-rate compensation. State law requires municipalities to implement TDR programs in accordance with a "well-considered plan" and subject them to environmental review under the State Environmental Quality Review Act—requirements that apply to all zoning.[16] A successful TDR program must therefore designate suitable receiving sites that (1) can accommodate additional bulk and (2) that are likely to attract the interest of developers.[17]

TDR programs are unquestionably suitable for preserving unprotected land in private hands. For example, Suffolk County has a very successful program whereby developers can "buy" development rights from owners of sensitive Pine Barren habitat and use the rights in designated receiving zones.[18] The owners receive compensation for giving up development rights on their land, and growth is directed to locations near existing transit, schools and other amenities. Developers can build denser developments in receiving zones than would otherwise be allowed.[19]

The City has a few special zoning districts with TDR programs that are mostly intended to preserve historic buildings.[20] It has a limited TDR program intended to benefit an existing open space, the High Line, a 1.45 mile-long park constructed on an elevated former freight rail line. Under the 2005 Special West Chelsea District regulations, owners of development sites under the High Line can buy 1.0 FAR (floor area ratio) of development rights by making a $50 per square foot contribution to the High Line Improvement Fund.[21] The hybrid TDR/incentive scheme is limited: the transferred floor area is restricted to commercial development and can only be used after the site owner has sold its existing development rights to eligible receiving lots in the Special West Chelsea District. Developers have therefore only used the program five or six times to date. The Hudson River Park Trust is also exploring a more traditional TDR program to sell development rights from its decaying Pier 40 to potential development sites on the other side of an adjacent highway.[22]

Except for the limited TDR program for the High Line, New York municipalities have not used the programs to generate funds for existing parks or protected open spaces. Admittedly, there are two complications to be overcome. First, state law requires sending zones to thereafter be protected through a conservation easement, which is a preservation tool generally used on privately owned land.[23] Second, most city parks are not zoned and thus do not have any development rights to sell.[24]

The first problem is resolvable because parks are already protected under various state and city laws, which provide far stronger protections than a conservation easement. Moreover, there is no bar to the City's creating a conservation easement to protect existing parkland, supplementing the protections of the public trust doctrine. Municipalities regularly give or sell easements to utility companies for gas and electric lines through parks.[25]

The second problem is resolvable because the City can zone parks. In fact, some parks are zoned. For example:

- Governors Island is zoned R3-2 (.5 FAR)
- Forthcoming Pier 42 Park is zoned M1-4 (2.0 FAR)
- Portions of Lemon Creek Park are zoned C3 (.5 FAR)
- Mount Loretto State Preserve is zoned R1-1 (.5 FAR)
- Shooters Island is zoned M3-1 (2.0 FAR)
- Brooklyn Bridge Park is zoned M2-1 (2.0 FAR)
- Hudson River Park is zoned M2-3 (2.0 FAR)[26]

These zoning classifications are relics of the prior uses of these parks. But an innovative TDR zoning scheme could place zoning classifications on existing parkland in order to create development rights to be sold by the City. With 28,000 acres of city-owned parkland, there are potentially billions of dollars in development rights at stake.

<u>Incentive Zoning</u>

Incentive zoning schemes avoid the awkwardness of the TDR option described above. New York law allows municipalities to create zoning "incentives or bonuses" to advance physical, cultural or social policies.[27] Developers that agree to pay into a public improvement fund or construct public amenities may earn the right to bypass various zoning limitations. For example, New York City has an "inclusionary housing" bonus that allows 20% more floor area in exchange for constructing affordable housing in certain high-density residential zoning districts.[28] There is no bar to creating a similar scheme for a developer's making financing contributions to the maintenance of nearby parkland in return for added bulk on their buildings.[29]

As with any zoning scheme, incentive zoning must be developed in accordance with a well-considered plan and subject to an environmental review.[30] Key review issues include the impact of building shadows, transportation capacity and neighborhood character. The municipality must also consider the impact of incentive zoning on affordable housing, as it would with TDR.

Structured properly, zoning incentives for park funding should increase the amount of affordable housing while simultaneously benefitting parks, thus advancing Mayor Bill DeBlasio's goal of creating or preserving 180,000 units of affordable housing.[31]

Finally, TDR and incentive zoning programs must be structured to require NYC Parks to spend funds near the location at which they are generated. First, it will encourage a community to accept slightly higher building densities in exchange for much better park conditions. Second, it will help overcome community opposition to high building densities associated with the City's affordable housing plans. Third, it will encourage more developer participation because new building near great parks are far more valuable.

VI. Infrastructure and Public-Public Partnerships

Direct state and federal funding for parks is likely to be very constrained over the next decade. There will, however, be money available for (1) stormwater control and climate resiliency, (2) transportation, (3) affordable housing and (4) public health. NYC Parks needs to strategize about creating partnerships with public agencies receiving these funds to benefit parks. The facts are as follows:

- Parks are vitally important to controlling stormwater runoff and providing first-line defense from coastal storms. NYC Parks should continue to partner with the NYC Department of Environmental Protection and Mayor's Office of Storm Recovery (and federal and state counterparts) to retrofit parks to address climate change. This process is well underway, but it should be expanded to seeking funds to maintain these coastal parks.

- Almost all the City's flagship parks host major highways or arterial roads that have adverse impacts on the parkland around them. NYC Parks can partner with the NYC and NYS Department of Transportation to obtain more federal transportation dollars to improve roadways within parks and the parkland they impact.

- Many of the City's largest parks are near development sites where affordable housing would be suitable. NYC Parks can partner with the Department of City Planning and Department of Housing Preservation and Development to develop incentive zoning to address both housing and park goals.

- The correlation between access to open space and health is well-established. NYC Parks can partner with the Department of Health and Mental Hygiene, as well as city research institutions to capitalize on healthcare funding that may benefit both parks and public health initiatives, such as "learn to swim" programs.

Barring these public-public partnerships, there is little federal and state funding available directly for parks.

Climate Change and Stormwater Management

Hurricane Sandy had a devastating impact on coastal parks. The City is using federal funds to create more resilient coastlines, particularly on the Rockaway Peninsula and Staten Island. Congress allocated $61 billion to Hurricane Sandy relief in the tri-state region and at least $13 billion to New York City.[32] HUD, which received $16 billion in Community Development Block Grants (CDBGs), has already allocated $3.2. billion directly to New York City.[33] The State received even more monies from the federal government to be used through areas impacted by Sandy, including the City.

The City is vigorously planning to use these funds for rebuilding and improving its coastal parks and the State is doing the same with its share.[34] They are up against a clock: Congress requires the relief funds to be expended by September 30, 2017,[35] and HUD requires its funds to be expended within two years of allocation.[36] The very complicated coastal barriers, dunes, reefs, rehabilitated wetlands and other ecosystem infrastructure under the jurisdiction of NYC Parks created with these disaster relief funds can be built quickly, but will require maintenance throughout their usable life. HUD regulations generally limit use of CDBG funds to initial improvements, not long-term maintenance. [37] However, a fund or endowment could be established with CDBG monies for future capital improvements to storm-related infrastructure in parks. There are compelling policy reasons to do so, as long-term maintenance would reduce or eliminate the need for more federal funding after future disasters. A specific determination should be sought from HUD on this topic.

Transportation

The U.S. Department of Transportation is another viable source of funding for transportation projects involving parks. Federal transportation funds have been available to parks through multi-year funding bills like the Intermodal Surface Transportation and Efficiency Act (ISTEA) of 1991, the Transportation Enhancement Act for the 21st Century (TEA 21) of 1998 and the Moving Ahead for Progress in the 21st Century Act (MAP-21) of 2012.[38] Eligible projects have included biking, hiking and pedestrian improvement projects in parks. [39] New York State received at least $67 million in 2014 for these sorts of projects.[40]

These funds are dwarfed by the federal monies made available for traditional highway work. New York State, for example, received $1.3 billion from the Federal Transportation Administration for fiscal year 2014.[41] It could be possible to tap traditional transportation funds for maintenance and restoration of parks immediately adjacent to highways. All of New York City's flagship parks are adjacent to or bisected by highways that damage the nearby open space and increase the costs of their maintenance, cause polluted run-off to water bodies and create pedestrian and wildlife barriers. Conversely, those parks serve essential transportation purposes by serving as a buffer between highways and residential communities. Joint NYC Parks and NYC DOT planning should recognize this relationship and tap into federal funds for regular restoration of parkland adjacent to highways. For example:

- Van Cortlandt Park is bisected by the New York State Thruway, Henry Hudson Parkway and Mosholu Parkway
- Flushing Meadows Corona Park is bisected by the Grand Central Parkway, the Van Wyck Expressway and the Long Island Expressway
- Freshkills Park is bisected by the West Shore Expressway

- Inwood Hill Park is Bisected by the Henry Hudson Parkway
- East River Park is flanked by the FDR Drive
- Jamaica Bay is sliced into sections by the Belt Parkway

This is hardly a complete list of major roads that cut through these and similar parks.

Ecosystem Services

Many of the ecosystem services that parks provide are hard to quantify and monetize. For example, parks filter air pollution, cool temperatures in the urban heat island and provide wildlife habitat. But at least one habitat providing ecosystem services – wetlands on NYC Parks property – can be monetized to the benefit of parks through the creation of wetlands mitigation banks.

Under the U.S. Clean Water Act and New York Tidal Wetlands Act, the destruction of tidal wetlands requires a permit from the U.S. Army Corps of Engineers and N.Y.S. Department of Environmental Conservation.[42] Although not required by the statutes, these agencies generally require mitigation as a condition for allowing destruction of wetlands.[43] Mitigation usually takes the form of permanent protection of wetlands or restoration of degraded wetlands. Developers and some government agencies, such as the Port Authority of New York and New Jersey, often seek to buy mitigation credits, but there are few such banks supplying credits in the New York metropolitan area.

Restoring degraded wetlands is incredibly expensive, and NYC Parks has little money available for this purpose. A 2012 City wetlands report therefore recommends creating a wetlands mitigation bank operated on city property. It states:

> The City will develop a mitigation banking or in-lieu fee mechanism for public projects. These are strategies for undertaking restoration projects that can then provide "credits" to multiple projects that require mitigation, at one or more locations carefully chosen and approved in advance by regulators. Both mechanisms provide numerous benefits over the current system by consolidating funding into larger projects that produce economies and ecologies of scale. [44]

In late 2013, the New York City Economic Development issued a request for expressions of interest (RFEI) for a private partner to develop a wetlands mitigation bank on 68 acres near Saw Mill Creek on Staten Island.[45] The creek flows into the Arthur Kill and has been degraded by highways, landfills and pollution. The private partner would, presumably, fund all or most of the cost of restoring the wetlands in return for the right to sell those credits to developers and agencies that need Clean Water Act, Section 404 permits from the U.S. Army Corp of Engineers. The City reportedly received a poor response to the RFEI. It should try again in light of the successful wetlands mitigation banks being developed in other states.

Given the costs that a private partner would incur to restore wetlands in order to create saleable credits, it is very unlikely that the City would profit from the program. It would, however, find a private source of revenue for restoring the hundreds of degraded wetlands under NYC Parks' jurisdiction. The City may also be able to cooperate with the National Park Service for the creation of such a program in Gateway National Recreation Area, which includes almost 10,000 acres of federally owned wetlands that are vitally important to buffering Brooklyn, Queens and Staten Island from coastal storms and sea level rise.

VII. State authorities and public benefit corporations

New state-created entities might be used to restore existing parks. State entities already play a major role in the City's most important parks. They include state-controlled public benefit corporations like the Battery Park City Authority, Hudson River Park Trust and Roosevelt Island Operating Corporation and city-controlled (but state-created) public benefit corporations like Brooklyn Bridge Park Corporation and the Trust for Governors Island.[46]

Because the state corporations can override local land-use controls,[47] do not pay local property taxes[48] and are not subject to local politics, they can be nimble tools for turning around deteriorated neighborhoods and their parks. As noted above, these state-city partnerships are already in use for parks in New York City. The state parks mentioned above face daunting and unresolved capital costs, yet they are generally well maintained with a steady revenue stream from adjacent real estate. Moreover, the state entities are held directly accountable for the conditions of the public amenities they operate. The result is a higher level of care and maintenance than is provided to most city-run parks.

The creation of a new state entity to operate parks in a distressed community might work as follows. The city would identify a park or group of nearby parks that are (1) in need and (2) near substantial development sites that are under public control or could be acquired through eminent domain. The Urban Development Corporation, doing business as the Empire State Development Corporation, is the state agency responsible with the most logical role to play because of its economic development mission and ability to create subsidiaries with all of its statutory powers.[49] It would create a new subsidiary with the mission acquire and develop the land, carry out public improvements and maintain existing parks.[50] To attract developers, the state entity would fund some initial public improvements with state and city appropriations and bond issuances. It would then offer publicly owned or controlled land to developers at a reduced cost. Rather than pay property taxes, developers of this public land would make "payments in lieu of taxes" directly to the state entity to be used exclusively for repaying bonds, maintaining public improvements and restoring parks.[51] This method of development and revenue generation is already used by the state entities mentioned above.

The technique could be paired with affordable housing requirements. For example, the City and Urban Development Corporation partnered in 1968 to develop Roosevelt Island with parks, streets, new schools and thousands of units of affordable housing.[52] The Roosevelt Island

Operating Corporation ("RIOC") enforces affordable housing requirements through its ground leases with private developers, and has thus created thousands of affordable housing units. With the revenue from the leases, the corporation maintains various public services on the Island, including parks. Without this state-city partnership, Roosevelt Island's excellent parks would otherwise not exist. Besides having greater budget authority, the state public benefit corporations like RIOC also have greater planning autonomy, eminent domain authority and the ability to override local land-use controls.

New York City is in far better shape today than in 1968 when there was little development interest in most neighborhoods. Still, many City neighborhoods did not see much benefit from the City's real estate booms in the late 1980s, 1990s and early 2000s. They include the South Bronx, northwest Bronx, the north shore of Staten Island, Rockaway Peninsula, Inwood and Jamaica. These neighborhoods have good public transportation, vacant or underutilized land and deteriorated parks. They need a government entity to comprehensively address these issues in the way that state-created corporations are now developing Hudson River Park, Brooklyn Bridge Park and Governors Island.

VIII. BIDs and PIDs

New York State law allows any municipality to establish a business improvement district (BID) to restore or promote business activity by building and maintaining improvements, including parks, landscaping and transportation.[53] Under the BID law, municipalities can create nonprofit corporations to receive a supplement property tax, sometimes called an "assessment," that is exclusively used for the public services outlined above. New York City has over sixty BIDs that largely focus on maintenance of streets, sidewalks and public plazas.[54]

BIDs have the potential to raise millions of dollars for the maintenance of parks with few adverse effects on nearby property owners. In fact, BIDs are specifically geared towards maintenance and are therefore uniquely suited to addressing the maintenance shortfall plaguing urban parks. In New York City there are two BIDs operating as Park Improvement Districts ("PIDs"). The Bryant Park Corporation collects about $1 million annually from nearby property owners, which makes up a small portion of its annual $12 million budget for Bryant Park.[55] The Union Square Partnership raises about $1.5 million annually.[56] Both districts are narrowly drawn to include only large commercial properties very close to the parks.

There is nothing in New York State law, however, that prohibits the creation of much larger districts that can raise millions annually for the parks they surround. Four misconceptions have probably limited their use for parks to date.

- **Misconception 1**: Residents must approve the creation of the district.

  Partially incorrect: The City Council votes on the creation of a district subject to review and recommendations by community boards and the City Planning Commission. Only if at least 51% of property owners file petitions in opposition does state or city law prohibit the council from establishing the district.[57] In practice, the Council seeks community consensus.

- **Misconception 2**: Residential properties cannot be taxed.

  Incorrect: The BID law anticipates that both commercial and residential property owners will be taxed.[58]

- **Misconception 3**: BIDs cannot primarily benefit parks.

  Partially incorrect: The law calls for the creation and maintenance of improvements to "restore or promote business activity in the district."[59] Given the clear link between well-maintained parks and property values, this link is easy to establish. Moreover, park concessions already generate tens of millions of dollars for the City.

- **Misconception 4**: BIDs cannot raise enough money to meaningfully maintain parks.

> **Incorrect**: BIDS can raise money to completely transform the maintenance of large parks. For example, at least 40,000 people live within census tracts immediately bordering Van Cortlandt Park.[60] Assuming an average household size of 2.6 persons, there are about 15,000 housing units near the park. With an average supplemental property tax per household of $100, a PID for Van Corlandt Park would raise $1.5 million annually. This is enough to hire two dozen new staff members dedicated solely to maintenance of this park.

Remarkably, BIDs can also include cooperation by two municipalities. The law would allow, for example, New York City and Yonkers to jointly fund and operate Van Corltandt Park for the benefit of both municipalities.[61] The creation of BIDs for existing parks will not be easy, as shown by the failed proposals from the Hudson River Park Trust and Friends of the High Line.[62] For large, flagship parks, however, these districts are the best alternative revenue source for maintenance that does not require new legislation.

Some park advocates propose a citywide park tax as an alternative to park-specifics PIDs. Chicago has had a Chicago Park Tax District since 1934.[63] It is operated by a distinct municipal corporation that imposes property taxes separately from the city, the city's school district and the county. It is entirely responsible for funding the city's parks, comprising 8,000 acres in 585 parks. Most of its revenues come from the property tax with the rest coming from bonds, permit fees and concession fees. The system works well and is commended by independent authorities. For example, the Trust for Public Land gives Chicago a decent rating in its online "Park Score" system.[64]

Seattle voters approved the creation of a city-wide park district in the August 2014 elections. The system will work a little differently from Chicago's district, as the City of Seattle will continue to fund parks at pre-existing levels from the general budget. The Seattle Park District will provide supplemental revenue through a new property tax of $.33 per $1,000 of assessed value, which translates to about $149 annually for a $450,000 home. It is expected to raise $47.9 million per year.[65]

A city-wide park tax district would be challenging in New York City. First, like any new tax it would require approval of the New York State Legislature, which is currently hostile to the creation of any new tax. Second, to actually have net benefit for parks, the City Council and Mayor would need to commit to maintain current levels of budget support. Third, community support for a new citywide tax is likely to be very weak. The existing BID law is preferable because it has the potential to create real community buy-in: it would be a small new tax structured to directly benefit those paying it.

IX. Dedicated Park Funds.

One of the biggest lost opportunities for park funding is the State's annual failure to finance the Environmental Protection Fund (EPF).[66] The State Legislature created the fund in 1993 to pay for solid waste management, parks, historic preservation and open space.[67] It is funded almost entirely through the State's real estate transfer tax,[68] which generates over $700 million per year. The fund is dependent, however, on legislative appropriations: the State's governors and legislators have traditionally allocated less than $200 million to the fund, using the remainder to balance the state budget.

Although the state real estate transfer tax is well known to home-owning New York state residents, the public is largely unaware that the tax was intended to directly benefit parks and the environment. Park advocates have so far been unable to tell the story. Based on its share of the State's population, New York City could secure $200 million from the fund each year. The City should therefore mount an extensive public relations campaign to end Albany's practice of raiding the EPF to balance the state budget. Some states like New Jersey have amended their constitutions to prohibit the legislatures from using dedicated environmental taxes for other purposes.[69] Advocates for the EPF should consider the same for New York.

Congress has similarly used the U.S. Land and Water Conservation Fund (LWCF) to balance the federal budget since its creation in 1964. The federal government funds the LWCF primarily through fees for mineral, oil and gas extraction licenses on the outer continental shelf. All license fees are deposited in the fund. The law allows Congress to allocate up to $900 million to federal, state and local park projects each year until the fund's expiration in 2015. [70]

Revenues from offshore oil and gas drilling have risen sharply in the past decade and now generate almost $10 billion annually.[71] Congress, however, has appropriated an average of only $300 million to the LWCF annually.[72] The rest of the money is swept into the nation's $3.5 trillion budget. Nationwide park advocates like the City Parks Alliance and the Land & Water Conservation Fund Coalition are lobbying Congress to provide the full $900 million to park projects each year and permanently reauthorize the LWCF.[73] New York City should join this advocacy campaign as it is positioned to receive millions each year from the LWCF. The $900 million cap should be annually raised, the law should be permanently reauthorized and Congressional appropriations to the fund should be mandatory.

X. Other funding sources in brief and their political obstacles

The purpose of this paper is to identify the most promising alternative revenue options for parks. However, there are several other promising revenue options that may work for some parks.

<u>Concessions</u>. Despite some high-profile citizen lawsuits challenging revenue-generating concessions in parks, there is little doubt about their legality so long as they serve park users. New York City currently generates about $110 million from park concessions.[74] There is room for growth in many flagship parks that lack restaurants and other amusements. The problem for NYC

Parks is that the New York City Charter requires it to surrender any revenue it generates to the general city fund.[75] NYC Parks then must rely on the City Council and Mayor to return the monies in the annual budget.

There are two ways around the "general fund" problem. First, for parks maintained by conservancies, the City can authorize the conservancy to directly collect concession revenues and use them to maintain the park. For example, Lincoln Center for the Performing Arts keeps revenues from events held in Damrosch Park but must utilize the revenues solely for operation of the park. Second, the City can require concessionaires to be responsible for maintenance and improvements to designated areas. For example, the City's pending contract with a horse stable operator in Van Cortlandt Park will require maintenance of landscaping surrounding the stables.

<u>Sponsorships</u>. In 2012, New York City unsuccessfully issued an RFP for corporate sponsorships of certain park amenities like dog runs and basketball courts. The RFP failed to generate substantial interest in part because the sponsorship opportunities were so modest. Sponsorships can work, however, if NYC Parks provides adequate publicity in return. In 2004, NYC Parks won $10 million from Carl Icahn for the construction of Icahn Stadium on Randalls Island.[76] In 2013, the Prospect Park Alliance won $10 million from the Lefrak family to build the Lefrak Center at Lakeside.[77] High-profile capital projects such as these are likely to attract sponsors. Although some park advocates will claim that corporate sponsorships and naming contribute to the over-commercialization of parks, sponsorships and naming rights raise no legal issues.

<u>Community Benefit Agreements (CBAs)</u>. CBAs are usually private agreements between developers and community groups to provide support for schools, parks, jobs and social services. They have no legal status in the City's land-use review process.[78] Developers often use them to

win support for a project, and elected officials sometimes unofficially link their support for a project to a developer's willingness to enter into a CBA. While legal experts have raised some objections to CBAs because they create a shadow land-use process, CBAs can provide large, once-in-a-lifetime park funds. Their use for creation of operating endowments for parks is particularly promising since long-term park maintenance is in any developer's best interest.

"Capitalizing" maintenance costs. Federal, state and city legislative appropriations are rarely available for operation and maintenance. Additionally, state law prohibits the issuance of bonds to cover general government operating expenses.[79] It is possible, however, that NYC Parks could build future costs to renovate capital improvements into a legislative appropriation or bond issuance as a capital rather than a maintenance expense. The money would be set aside in an endowment to cover future maintenance costs. The City should consult with the comptroller's office, which would need to sign off on any approach of this type.

Selective alienation. The public trust doctrine prohibits the sale or lease of parkland for any purpose without state legislative approval.[80] The practice of selling, leasing or otherwise using parkland for nonpark purposes (referred to as "alienation") is highly controversial and often litigated.[81] Nonetheless, New York City has occasionally sought legislative approval for the creation of public infrastructure in a park, like the controversial water filtration plant in Van Cortland Park. The State Legislature traditionally requires replacement parkland or financial mitigation in return for parkland alienation.

A few large parks with inaccessible areas, especially former solid waste landfills, may be suitable for revenue generation from non-park uses like solar panel arrays, wind turbines or stormwater management infrastructure. Moreover, long-term leases for certain private, revenue-generating uses like catering halls or golf courses may be appropriate in some locations. The test for any such alienation action should be whether it would directly contribute to the long-term maintenance of the impacted park and have minimal impacts on public recreation and the environment.

General Obligation Bonds. Some states make good use of state-wide, voter-approved bond acts to provide open space funding. New York State, by contrast, has a limited ability to issue new bonds. The State Comptroller reported in 2013 that the State can only borrow another $500 million before reaching its constitutional debt limit.[82] State-wide bond initiatives that have previously funded parks and open space, like the highly successful Clean Water/Clean Air Bond Act of 1996, will therefore be difficult to implement.

New York City is in slightly better standing with regard to bonds. Its overall debt is quite high, at about $52 billion out of a total debt limit of close to $76 billion. It can thus borrow another $24 billion.[83] New York City has not traditionally issued bonds to pay for parks and it may be unwise to do so in light of looming capital needs for transit, bridges, schools and coastal climate resiliency. The issuance of bonds to pay for joint park and infrastructure projects would, however, be a smart idea.

Capital Budget Reform. For the 2013 to 2014 fiscal year, the City's budget gave NYC Parks a discretionary capital fund of about 80 million dollars in addition to its operating budget of 300 million dollars for the first time.[84] This discretionary fund is essential to allowing the department to address capital projects without being beholden to specific appropriations from elected officials. The current administration has continued the practice slightly increasing this discretionary capital budget.

NYC Parks' process for designing projects and awarding contracts also needs to be reformed. It is slow, and often awards to unqualified bidders simply because they submit the lowest bid. At the same time, the agency should maximize private conservancies' abilities to carry out their own capital projects without going through NYC Parks' internal design and RFP processes.

Tax Increment Finance (TIF). Tax increment finance is a method of financing public improvements based on projected future property tax revenues. A government entity identifies public street, sidewalk, utility or open space improvements that it believes will encourage nearby real estate development. It sells bonds to fund those improvements and commits to using new property tax revenues to repaying bondholders. The technique requires a certain faith on the part of bondholders, who will only be repaid to the extent that the public improvements actually increase property tax revenue. Outside New York State, the technique works: states like Illinois and California have issued billions in TIF bonds to fund public improvements.

New York State law allows state or local agencies to issue TIF bonds too,[85] but they have almost never done so. In 2005, New York City considered selling TIF bonds to fund the Hudson Yards project, which involved large public investments in a deck above rail yards that would facilitate new development, parks and roads. Concerns about revenue led to a hybrid approach wherein the City remains responsible for paying back bondholders from general city revenues.

A 2002 report by the New York City Independent Budget Office summed up the City's concerns about TIF bonds as follows:

> Actual TIF revenues may fall short of the projections made when the TIF bonds were sold. Unlike a municipality with a variety of revenue sources to draw upon for debt service obligations, a TIF district generally has only one source: incremental property taxes. A shortfall risks default or a bailout using other municipal revenues, undermining the reason for using TIF in the first place. A revenue shortfall can occur for a variety of reasons. The projected level of development might not be reached—or might be reached with significant delay.[86]

These concerns can be addressed by issuing TIF bonds only where nearby development is likely. Moreover, revenue calculations must remain conservative. If these two issues are addressed, TIF can become a vital tool for generating major capital funds where they otherwise do not exist.

Other Federal Funds. Congress created the Urban Park and Recreation Recovery Act (UPARR) in 1978 to provide matching grants to distressed cities for park projects.[87] Unlike the EPF and the LWCF, it is funded out of the general budget rather than specific taxes. The argument for full funding of UPARR is therefore slightly less compelling. Congress has not funded the program at all since 2002. Nonetheless, because of its focus on distressed communities, any funding would help New York City address park equity concerns.

XI. Summary of Best Practices

This paper has identified five core ways to raise park funding for both maintenance and capital improvements without new federal, state or city legislation. They include the following: (1) Tapping into real estate dollars using existing zoning tools (e.g., TDRs, zoning incentives); (2) Using the existing Business Improvement District law to maintain parks; (3) Demanding full state and federal funding for existing park funds; (4) Creating public-public partnerships to tap into existing infrastructure funds for capital and maintenance work in parks; and (5) Pursuing proven management models using state agencies and private conservancies. These approaches have the most promise for creating new and reliable sources of both capital and maintenance funds. There is no one-size-fits-all solution, however, given the variety of parks, income levels and neighborhoods in New York City. Most important, community support will be essential to the success of any park funding venture. Residents are likely to react poorly to financing schemes that diminish the public's use of a park or are simply viewed as new citywide taxes. Public support depends on keeping new revenues and their benefits local, visible and accounted for.

**Appendix A includes a short outline of each of the proposals addressed in this paper.*

Appendix A: Summary of Alternative Revenue Options

1. Transfers of Development Rights and Zoning Incentives

2. Public-Public Partnerships for Climate Change, Transportation, Affordable Housing and Public Health.

3. Park Improvement Districts

4. State-Created Public Benefit Corporations

5. Full Funding for the U.S. Land and Water Conservation Fund and N.Y.S. Environmental Protection Fund

6. Concessions

7. Sponsorships and Naming Rights

8. Capitalizing Maintenance Costs

9. Selective Alienation of Parks

10. General Obligation Bonds

11. Capital Budget Reform

12. Tax Increment Finance

13. Urban Park and Recreation Recovery Program

ENDNOTES

[1] Christopher Rizzo is counsel at Carter Ledyard & Milburn LLP and a member of its litigation department and environmental and land-use practice group.

[2] The New York League of Conservation Voters and New Yorkers for Parks, led by executive directors Marcia Bystryn and Tupper Thomas (respectively), jointly commissioned this paper. The viewpoints in this paper are those of the author, not either organization.

[3] Some of the City's most successful private park operators include Central Park Conservancy, Bryant Park Corporation, Friends of the Highline and Prospect Park Alliance. Some parks are successfully operated by public benefit corporations including the Battery Park City Authority, Brooklyn Bridge Park Corporation, Hudson River Park Trust, Trust for Governors Island and Roosevelt Island Operating Corporation.

[4] Parks and Trails New York and the Alliance for New York State Parks published a report in 2010, Protect Their Future, New York State's Parks in Crisis, which details the maintenance backlog in state parks. It is available at http://www.ptny.org/pdfs/advocacy/parkreport2011.pdf. According to the Trust for Public Land, New York ranks 22nd nationally in state spending for land conservation (per capita). When considering federal, state and local spending, New York ranks worse—29th. This information is taken from the Trust's draft April 2011 report, "Conservation Finance Feasibility Study, State of New York," which is on file with the author.

[5] Lisa W. Foderaro, "New York Parks In Less Affluent Areas Lack Big Gifts," N.Y. Times, February 17, 2013.

[6] New York City Charter § 533.

[7] 795 Fifth Avenue Corporation v. NYC Department of Parks and Recreation, 15 N.Y.2d 221 (1965); Union Square Park Community Coalition, Inc. v. NYC Department of Parks and Recreation, 22 N.Y.3d 648 (2014).

[8] N.Y.C. Park Advocates et al. v. New York City Department of Parks and Recreation, the City of New York and Lincoln Center for the Performing Arts, N.Y. County Supreme Court, Index No. 154625/2013. The parties' motions for summary judgment are fully briefed and pending before the judge. The author of this report represents one of the defendants, Lincoln Center for the Performing Arts.

[9] Union Square, 22 N.Y.3d at 655 ("Commissioner is vested by law with broad powers for the maintenance and improvement of the city's parks and that judicial interference would be 'justified only when a total lack of power is shown….'") (citations omitted)

[10] N.Y.S. Parks, Recreation and Historic Pres. L. § 3.09.

[11] Alliance for Parks, "Protect Their Future, New York State's Parks in Crisis," November 2010, p. 5.

[12] N.Y.S. Office of Parks, Recreation and Historic Preservation, "Policy on Public/Private Partnerships in New York State Parks and Historic Sites," signed by Commissioner Carol Ash on March 12, 2009.

[13] Lisa W. Foderaro, "Focusing on Lesser-Known Open Spaces in New York," N.Y. Times, May 6, 2014.

[14] New Yorkers for Parks, "NY4P Statement on $16.25 Million Parks Budget Increase," June 19, 2014.

[15] N.Y. General City L. § 20-f(2).

[16] N.Y. General City L. § 20-f(2)(a).

[17] The law adds one additional environmental review requirement beyond that normally required by SEQRA—evaluation of the impact of TDR on potential development of low and moderate income housing in sending districts. N.Y. General City L. § 20-f(2)(f). The law's concern is that by reducing the allowable density in preservation zones, future construction of low and moderate income housing will end.

[18] Central Pine Barrens Joint Planning & Policy Commission, "The Pine Barrens Credit: Transferable Development Rights in Suffolk County, NY" (2010), available at http://pb/state.ny.us/pbc/pbc_overview.pdf.

[19] New York State created the Central Pine Barrens Joint Planning and Policy Commission in 1993 to oversee the creation of the TDR program aimed at protecting the sensitive Pine Barrens region of Suffolk County, New York. N.Y. Environmental Conservation L. §§ 57-0101 et seq. Amendments followed to the zoning codes of the towns of Brookhaven, Riverhead and Southhampton to implement the restrictions and TDR program. Information about the Commission's work can be found at /www.pb.state.ny.us.

[20] All designated landmarks can transfer development rights to nearby sites subject to a special permit from the City Planning Commission under Zoning Resolution § 74-79. The South Street Seaport Subdistrict, Theater Subdistrict, Special West Chelsea District, Special Hudson Yards District and pending East Midtown District also include TDR programs.

[21] NYC Zoning Resolution § 98-35.

[22] Charles V. Bagli, "Possible Deal May Bring Money to Repair Pier 40 in Manhattan," N.Y. Times, May 15, 2014.

[23] N.Y. Environmental Conservation L. § 49-0303 (defining conservation easements allowable by law).
[24] New York City zones land as residential, commercial or manufacturing, which provides the land with development rights and restrictions. Most parks, especially those that were parks before the 1961 zoning resolution, have no zoning designation.
[25] Unless it qualifies as de minimis and thus exempt from the public trust doctrine, the State Legislature must authorize the grant of an easement over parkland for nonpark purposes, including utilities.
[26] The zoning designations outlined above can be accessed at the website of the New York City Department of City Planning at http://www.nyc.gov/html/dcp/html/zone/zh_zmaptable.shtml.
[27] N.Y.S. General City L. § 81-d.
[28] New York City Zoning Resolution § 23-90.
[29] An incentive zoning scheme can require developers to provide specific capital improvements for the public (e.g., transit improvements) or provide payments for specific civic purposes. Id. § 81-d(3)(h).
[30] N.Y. General City L. §§ 81-d(3)(d) and (g).
[31] New York City Mayor Bill de Blasio, "Housing New York, A Five-Borough Ten-Year Plan," 2014.
[32] Disaster Relief Appropriations Act, 2013, Pub. L. No. 113-2, 127 Stat. 4 (allocating billions to various agencies, including $16 billion to the U.S. Department of Housing and Urban Development for Community Development Block Grants.)
[33] 70 Federal Register 69104 (November 18, 2013); 78 Federal Register 14329-01 (March 5, 2013).
[34] New York City Special Initiative for Rebuilding and Resiliency, June 2013, www.nyc.gov/SIRR.
[35] Disaster Relief Appropriations Act, Pub. L. No. 113-2, 127 Stat. 36 (January 29, 2013); 78 Federal Register 14329-01 (March 5, 2013).
[36] 78 Federal Register 14329-01 (March 5, 2013), p. 4.
[37] 24 CFR § 570.201 lists eligible activities; HUD guidance explains that operation and maintenance is generally not permitted. http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_17133.pdf Certain O&M-type activities necessary to arrest imminent dangers are allowed.
[38] Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914; Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, 112 Stat. 107; Moving Ahead for Progress in the 21st Century Act, Pub. L. 112-141, 126 Stat. 405.
[39] Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, 23 U.S.C 101.
[40] Governor Andrew Cuomo, "Governor Cuomo Announces $67 Million in Funding for Bicycle, Pedestrian and Multi-Use Path Enhancement Projects," January 15, 2014.
[41] The FTA provides detailed analysis of its annual appropriations to states by program. http://www.fta.dot.gov/12853_88.html
[42] 33 U.S.C. § 1344 (Section 404 for permits to discharge in navigable waters) and N.Y. Environmental Conservation L. § 25-0401 (broadly regulating activities impacting tidal wetlands).
[43] The U.S. Army Corps of Engineers' compensatory mitigation rule is codified at 33 CFR § 332.1 ("The purpose of this part is to establish standards and criteria for the use of all types of compensatory mitigation, including on-site and off-site permittee-responsible mitigation, mitigation banks, and in-lieu fee mitigation to offset unavoidable impacts to waters of the United States authorized through the issuance of Department of the Army (DA) permits pursuant to section 404 of the Clean Water Act").
[44] City of New York, "New York City Wetlands Strategy," May 2012.
[45] The press release and RFEI information are available at http://www.nycedc.com/press-release/nycedc-releases-request-expressions-interest-establish-first-wetlands-bank-new-york.
[46] The Urban Development Corporation (d/b/a Empire State Development Corporation) has the authority to create subsidiaries and is the likely entity to oversee the creation of new state public benefit corporations to address the goals outlined in this paper. For example, the Urban Development Corporation created the Moynihan Station Development Corporation in 1995 to oversee the conversion of the U.S. Post Office's Farley Building in Manhattan into a new commuter rail station. Phase 1 of the project, which will create commuter access to Amtrak and other improvements, is underway.
[47] *Matter of County of Monroe v City of Rochester*, 72 N.Y.2d 338 (1988).
[48] N.Y. Real Property Tax L. § 404.
[49] N.Y. Unconsolidated L. §§ 6255(8), 6262.
[50] UDC is empowered to create subsidiaries that have all of the parent corporation's powers. See, generally, N.Y.S. Unconsolidated L. §§ 6250 et seq.
[51] To bypass local property taxes, the state entity must own or control the land.

[52] The Urban Development Corporation and New York City entered into a 99 year lease for Roosevelt Island that required UDC to carry out a "general development plan" for affordable housing, transit, parks and other improvements. In 1984 UDC created a subsidiary, the Roosevelt Island Operating Corporation, to continue its duties on the Island.
[53] N.Y.S. General Municipal L. § 980-c.
[54] See the website of the New York City Department of Small Business Services for a listing of each of the 69 BIDs in the City, www.nyc.gov/html/sbs/html/neighborhood/bid.shtml.
[55] Bryant Park Corporation and Bryant Park Management Corporation, "Consolidated Financial Statements," June 30, 2013, pp. 3-4 (Prepared by KPMG accountants, available at www.bryantpark.org .
[56] New York City Department of Small Business Services, 2008-2009 Business Improvement District Profiles, p. 10 (listing income from the assessment of $1,439,000).
[57] N.Y.C. Admin. Code § 25-406; N.Y.S. General Municipal L. § 980-d(c).
[58] Neither the state or city laws contain any provision limiting taxation to commercial properties. In fact, the laws require the board of directors of the district management association to include residents. N.Y.C. Admin. Code § 25-414(b); N.Y.S. General Municipal L. § 980-n(d).
[59] N.Y.C. Admin. Code § 25-404(a).
[60] New York City Department of City Planning maintains an interactive census data map at http://maps.nyc.gov/census/.
[61] N.Y.S. General Municipal L. § 980-n(a).
[62] Annie Karni, "Advocates Eye Levy to Save Hudson River Park," Crain's New York Business, June 2, 2013; Dana Rubenstein, "Special Tax Sought to Fund Hudson River Park," N.Y. Times, March 14, 2011.
[63] The district's website is www.chicagoparkdistrict.com.
[64] http://parkscore.tpl.org/city.php?city=Chicago
[65] For more information about the Seattle Park District, visit the Kings County board of elections webpage at http://your.kingcounty.gov/elections2/contests/measureinfo.aspx?cid=53060&eid=1261
[66] A statewide coalition of environmental organizations, is advocating for greater EPF funding. Keep Protecting New York's website is www.keepprotectingny.com.
[67] N.Y.S. Environmental Conservation L. § 92-s.
[68] N.Y.S. Tax L. § 1402.
[69] According to the Trust for Public Land, New York ranks 22nd nationally in state spending for land conservation (per capita). When considering federal, state and local spending, New York ranks worse—29th. This information is taken from the Trust's draft April 2011 report, "Conservation Finance Feasibility Study, State of New York," which is on file with the author.
[70] Congress passed the Land and Water Conservation Fund act in 1964. 16 U.S.C. § 4601-5.
[71] U.S. Government Accountability Office, "High Risk Series, An Update," February 2013, p. 76, available at http://www.gao.gov/assets/660/652133.pdf.
[72] Land and Water Conservation Fund Coalition, "Fact Sheet," available at http://lwcfcoalition.org/files/LWCFInfo/LWCF_general_factsheet.pdf.
[73] The Land and Water Conservation Fund Coalition has produced a report marking the fiftieth anniversary of the law with details on its funding. See LWCF Coalition, *Land and Water Conservation Fund: 50 Years of Conserving America the Beautiful*, 2014, http://www.lwcfcoalition.org/files/LWCF_50thAnniversaryReport_FINAL.pdf
[74] Information on concession revenues is provided by the New York City Department of Parks and Recreation. For more information, see the concessions page of the department's website, www.nyc.gov/html/mocs/html/programs/franchise_concession_review.shtml.
[75] City Charter § 109.
[76] New York City Mayor Michael Bloomberg, Press Release, "Mayor Michael R. Bloomberg, Parks & Recreation Commission Adrian Benepe and the Randall's Island Sports Foundation Name New York City's Newest Athletic Facility Icahn Stadium," January 28, 2014.
[77] Prospect Park Alliance, Press Release, "Lakeside Receives $10 Million Gift from LeFrak Family," November 11, 2013.
[78] The New York City Bar Association released a comprehensive and highly critical report on CBAs on March 8, 2010. It is available from the association at http://www.nycbar.org/pdf/report/uploads/20071844-TheRoleofCommunityBenefitAgreementsinNYCLandUseProcess.pdf.
[79] N.Y. Finance L. § 67-b.
[80] Friends of Van Cortlandt Park v. City of New York, 95 N.Y.2d 623, 629 (defining the public trust doctrine as follows: "'no objects, however worthy, ... which have no connection with park purposes, should be permitted to

encroach upon [parkland] without legislative authority plainly conferred….'"), citing Williams v. Gallatin, 229 N.Y. 248, 128 N.E. 121 (1920).

[81] See id.

[82] State Comptroller, "Dinapoli: State's High Debt Limiting Options," www.osc.state.ny.us/press/releases/jan13/010713.htm (January 7, 2013); N.Y. State Constitution Article III, §§ 11, 23; Finance L. § 67-b. Bonds issued by some state authorities (e.g., Battery Park City Authority) are not subject to the debt limit so long as the bonds are not payable by the State. Moreover, tax-increment finance bonds, discussed elsewhere in this paper, are not subject to the debt limit.

[83] City Comptroller, "Fiscal Year 2013 Annual Report on Capital Debt and Obligations," December 2012; see also N.Y. State Constitution Article VII, § 4 (defining municipal debt limits).

[84] Dana Rubenstein, Mayor Continues City Parks Funding Policies, For Now," Capital New York, May 9, 2014.

[85] N.Y.S. General Municipal L. § 970-o.

[86] New York City Independent Budget Office, "Learning from Experience: A Primer on Tax Increment Financing," (September 2002), available at http://www.ibo.nyc.ny.us/iboreports/TIF-Sept2002.pdf.

[87] 16 U.S.C. §§2501-2514; see also the website of the National Park Service, www.nps.gov/uparr