



# Parkland Alienation

2014-MS-5



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# State of New York Office of the State Comptroller

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## **Division of Local Government and School Accountability**

May 2015

Dear Local Government Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is the report of our audit titled Parkland Alienation. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller  
Division of Local Government  
and School Accountability*

# Introduction

## Background

“Parkland alienation” occurs when a municipality wishes to sell, lease or discontinue the use of municipal parkland. Parkland alienation can be applicable to every municipal park<sup>1</sup> in New York 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 New York State Office of Parks, Recreation and Historic Preservation (State Parks) in the form of legislation enacted by the New York State Legislature (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 core legal basis governing the use of parkland comes from common law, called the “public trust doctrine.” The doctrine is defined by 150 years of State court decisions, which explain when municipalities must seek State legislative approval to alienate public parkland. Otherwise, it would be tempting for municipalities to view parkland as a fiscal resource that can be sold or leased to raise money or used for other government purposes to avoid paying for private land.

If a municipality accepts State funding for the acquisition or improvement of parkland or recreational facilities, certain other restrictions must be considered when requesting alienation approval. The restrictions depend upon the source of the funding that was provided to the municipality. The restrictions vary, but can include a restriction that requires legislative approval at a minimum, and in other cases, a requirement to provide substitute lands.

The role of State Parks in the process is to provide guidance to the municipality, concerned citizens, the Governor and the Legislature. State Parks will work with legislative sponsors making recommendations regarding provisions that might be included to assure the maximum protection of parklands. State Parks will then advise the Governor on the alienation bill passed by the Legislature prior to it being signed into law. In addition, State Parks may conduct a site inspection of the parkland in question to gather further information.

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<sup>1</sup> Parkland can either be dedicated for park purposes through a formal action or through implied dedication (based on how the land is used, i.e., a playground, or land mapped as a park for planning purposes).

State Parks outlines a 10-step process when officials are considering a change in the use of parkland or recreational areas:

1. Determine whether the proposed action is an alienation of parkland.
2. Explore other options to avoid using parkland.
3. Involve the public.
4. Notify State Parks.
5. Determine if State or federal funding has been allocated to the park.
6. Complete the Parkland Alienation Municipal Information Form.
7. Contact the local State legislative sponsor.
8. Draft legislation with the help of the legislative sponsor and State Parks Counsel's Office.
9. Conduct a review pursuant to the State Environmental Quality Review Act.
10. Pass a Municipal Home Rule Request.

We audited 11 municipalities including the Towns of Amherst, Clifton Park, East Greenbush, East Hampton, North Hempstead and Orangetown; the Counties of Onondaga and Nassau; the Villages of Port Jefferson and Round Lake; and the City of Rensselaer. Figure 1 provides relevant statistics for each municipality.

**Figure 1: Relevant Statistics for Audited Municipalities**

Municipality	County	2013 Budget (in millions)	Parkland (Acres)
Town of Amherst	Erie	\$58.9	4,247
Town of Clifton Park	Saratoga	\$17.7	960
Town of East Greenbush	Rensselaer	\$7.9	128
Town of East Hampton	Suffolk	\$28.5	248
Nassau County	Nassau	\$1,700	5,200
Town of North Hempstead	Nassau	\$65.6	882
Onondaga County	Onondaga	\$870.6	6,500
Town of Orangetown	Rockland	\$12.1	695
Village of Port Jefferson	Suffolk	\$9.5	185
City of Rensselaer	Rensselaer	\$13.2	673
Village of Round Lake	Saratoga	\$1.5	244

**Objective**

The objective of our audit was to assess municipalities' compliance with their parkland alienation bills (Legislation). Our audit addressed the following question:

- Have municipalities complied with the terms and conditions of their related parkland alienation Legislation?

**Scope and Methodology**

For the period January 1, 2011 through December 31, 2013, we interviewed municipal officials involved in the parkland alienation process and examined parkland alienation records, including leases, contracts, Board minutes and general ledger accounts, to determine whether municipalities followed the terms and conditions of their Legislation. We also conducted physical site visits, where appropriate, to view replacement parkland parcels.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix B of this report.

**Comments of Local Officials**

The results of our audit and recommendations have been discussed with local officials and their comments have been considered in preparing this report.

## Legislative Compliance

Municipally owned parkland and open space are nonrenewable resources which should be carefully preserved in all communities. In New York State, parkland cannot be sold, leased, exchanged or used for non-park purposes without authorization from the Legislature. Municipalities must seek the Legislature’s approval to alienate public parkland based on the core legal basis called the “public trust doctrine.” Otherwise, it would be tempting for municipalities to view parkland as a fiscal resource that can be sold or leased to raise money or used for other government uses to avoid paying for private land. In certain instances, when a municipality concludes that a change in parkland use may be necessary to advance a public purpose, a careful evaluation of the proposed change and the impacts expected from that change should be considered.

State Parks provides guidance for municipalities on what should be included in parkland alienation legislation in its *Handbook of the Alienation and Conversion of Municipal Parkland in New York*. The requirements specified in related legislation will vary depending upon whether or not State funds have been invested in the municipal park that is being considered for a potential change of use. The State Parks handbook specifically addresses the following items in regards to Legislation:

- Substitute lands and fair market value;
- Existence of federal funding;
- Utility easements;
- Leases for cellular towers;
- Leases of public facilities to private operators; and
- Language to avoid.

The handbook suggests, and State Parks strongly recommends, that in order to prevent a net loss of parkland to the public, each municipal Legislation require the purchase and dedication of replacement lands, and that the replacement parcel or parcels be clearly identified in the Legislation. In cases where there is no State or federal funding and substitute lands have not been identified, but the municipality intends to replace the alienated parkland, alternative language is

often included in the Legislation. 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 alienated.

We found that five of the 11 municipalities (45 percent) did not comply with all of the requirements of their Legislation, including Amherst, Clifton Park, Orangetown, Port Jefferson and Round Lake. Four of the municipalities, or 36 percent, (Amherst, Orangetown, Port Jefferson and Round Lake) did not take steps to determine the fair market value of the parklands alienated or replacement parcels, such as obtaining an appraisal, to help support that the municipalities received fair market value for their interests in the properties alienated between May 2011 and August 2012. In addition, Orangetown has not selected replacement parklands to satisfy its Legislation that was enacted between May 2011 and August 2012. One municipality (Clifton Park) has not yet used the proceeds from its parkland alienation transaction in July 2012 to make capital improvements or acquire new parkland as required by its Legislation. However, officials have placed the revenues received in a reserve account for the Town's parks. Meanwhile, Nassau County is still in the process of obtaining the required additional Legislation for its alienation. Therefore, the land authorized to be alienated has not yet been conveyed nor has replacement parkland been identified.

For example, the Town of Amherst was authorized to discontinue a parcel of parkland approximately 1.17 acres in size with the condition that the Town acquire .66 acres in replacement parkland. The Legislation stipulated that if the acquired parcels were not equal to or greater in fair market value than the lands being alienated, the Town should dedicate the difference by acquiring additional parklands or making capital improvements to existing park and recreational facilities. We found that the Town did not determine the fair market value of the alienated parkland that occurred in August 2012, such as obtaining an appraisal, to help support that the Town received equal or greater fair market value for the alienated parklands as provided for in the Legislation.

Meanwhile, the Town of East Hampton was authorized in August 2012 to alienate, transfer and convey its 50 percent interest in the Golf Center to the neighboring Town of Southampton, which held the other 50 percent interest. East Hampton successfully sold its 50 percent interest for \$2.2 million in 2012. Subsequent to the close of our audit, East Hampton purchased one parcel and is under contract to purchase another, which together are valued at over \$1.97 million as replacement parcels for the alienated parkland. In addition, the Town

is in the process of identifying a third parcel to equal the required replacement value of \$2.2 million.

The Village of Round Lake sought Legislation to discontinue parkland no longer needed for park purposes in August 2011. The Village leased the parcels to be used for a public utility/personal wireless facility. The Village did not determine the fair market value of the discontinued parkland prior to entering into a 2011 lease agreement. Therefore, the Village cannot assure that the lease revenues are equal to the parcel's fair market value.

The Town of Orangetown and Village of Port Jefferson also conveyed parkland in 2011 without determining the fair market values of the parcels to ensure that they received the appropriate fair market value for the transactions.

On a positive note, the Towns of East Greenbush, East Hampton and North Hempstead; the City of Rensselaer; and Onondaga County all met the requirements of their Legislation. Specifically, the Legislation for the Towns of East Hampton and North Hempstead and Onondaga County required an assessment of fair market value, with which each complied.

In many instances, municipal officials were not aware that a fair market value appraisal was required despite it being included in the Legislation. Municipal officials indicated that the alienation of the parklands always resulted in a benefit to the community. For example, the alienations resulted in:

- Obtaining additional parcels that were more suitable for park and recreation activities;
- Improving resident services (i.e., improved wireless service by the installation of cellular towers, water quality upgrades and electric transmission supply); and
- Generating additional revenue through leases.

Noncompliance with legislative requirements, such as ensuring that the municipalities receive at least fair market value for the parkland alienated, can result in a loss of parkland and open space for communities. Because parkland and open space are nonrenewable resources, municipalities must ensure that both are preserved for the enjoyment of future generations of New Yorkers.

## **Recommendations**

Municipal officials should:

1. Carefully review the requirements of their Legislation and ensure that they adhere to all of the requirements.
2. Acquire and dedicate additional parkland/recreational facilities or perform capital improvements on existing parkland/recreational facilities when needed in accordance with their Legislation.
3. Ensure that, when appropriate, a fair market value assessment is conducted, such as obtaining an appraisal, to help support that the fair market value of the parcel received was equal or greater than the parcel alienated.

## **APPENDIX A**

### **RESPONSE FROM LOCAL OFFICIALS**

We provided a draft copy of this global report to the 11 municipalities we audited and requested responses. We received response letters from three municipalities, Village of Port Jefferson, Town of East Hampton and Onondaga County, during the stated response period.

Onondaga County officials indicated that they had nothing further to add.

Village of Port Jefferson and Town of East Hampton officials' responses were not global in nature and any objections were duplicative of their responses to their individual letter reports. Please refer to their letter report responses.

## APPENDIX B

### AUDIT METHODOLOGY AND STANDARDS

We interviewed municipal officials to determine if processes were in place to ensure that the requirements of their Legislation were met and to gain an understanding of the processes and circumstances surrounding the alienations.

We reviewed the municipalities' parkland alienation records including, when available, the Parkland Alienation Municipal Information Form, State Environmental Quality Review, Municipal Home Rule Request, Board minutes, Board resolutions, contracts, leases, maps, surveys, planning records and other available documentation and correspondence. In addition, we reviewed general fund reports, capital plans and general ledger and check information when appropriate. Our audit included the following procedures:

- We reviewed the *Handbook of the Alienation and Conversion of Municipal Parkland in New York*, a publication issued by State Parks that outlines the process and the deliberations involved in the change of use of municipal parkland and open space.
- We reviewed New York State Parkland Alienation Legislation passed in 2011 through 2013.
- We reviewed Board minutes and resolutions regarding the parkland alienations.
- We reviewed contracts and agreements to determine if the terms and conditions were consistent with the Legislation.
- We traced all funds received from the parkland property transactions back to the general ledger and subsequent accounts.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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