

e-Appendix B

LEGISLATIVE MANDATES

Environmental Conservation Law

Article 49, Title 2 – State Land Acquisition

§ 49-0201	Definitions
§ 49-0203	State land acquisition policy
§ 49-0205	Comprehensive inventory of lands having statewide or regional significance
§ 49-0207	State land acquisition plan
§ 49-0209	Regional advisory committees
§ 49-0211	State land acquisition advisory council
§ 49-0213	Annual report
§ 49-0215	Annual budget request

§ 49-0201 Definitions

As used in this title, the following terms shall include and mean:

1. “Office” shall mean the state office of parks, recreation and historic preservation.
2. “Commissioners” shall mean the state commissioner of environmental conservation and the state commissioner of parks, recreation and historic preservation.

§ 49-0203 State land acquisition policy

1. The purpose of the land acquisition program of the department and the office is to provide for the conservation, protection, and preservation of open space, natural, historic and cultural resources and the enhancement of recreational opportunities.
2. The department and the office shall first consider in each acquisition whether acquisition of conservation easement or other less than full fee title interests would fulfill the purposes for which the particular acquisition is sought. If it is determined that a conservation easement or other interest would fulfill such purposes, the department or the office will use its best efforts to acquire such easement or interest, where practicable.
3. It is the policy of the state, acting through the department and the office, to pursue acquisitions through voluntary agreement to the maximum extent practicable to achieve the purposes of this article. Accordingly, the process of eminent domain shall only be used when reasonable efforts to obtain a voluntary agreement have been exhausted. Notwithstanding any provision of law to the contrary, the department and the office shall

tender to the owner of any lands proposed for acquisition by eminent domain an offer to purchase such lands for the value thereof as determined by the department or the office in accordance with section three hundred three of the eminent domain procedure law. Such offer must have been made for at least ninety days before the department or office makes a finding pursuant to article two of the eminent domain procedure law to acquire the land by eminent domain; however, such ninety day period shall not be required in those cases in which the respective commissioner has made a written determination that there is a significant risk of immediate and irreversible environmental degradation. In the event that the department or office undertakes the process of eminent domain and prior to the public hearing required by section two hundred one of the eminent domain procedures law, the respective commissioner shall give notice of such undertaking to the state land acquisition advisory council, created pursuant to section 49-0211 of this title. The foregoing provisions of this paragraph shall not apply to lands acquired pursuant to article sixteen or title thirteen of article twenty-seven of this chapter or lands with respect to which the owner has consented to the use of eminent domain or where the use of eminent domain is required to quiet title.

The commissioners shall also provide the state land acquisition advisory council with the determination and findings required by section two hundred four of the eminent domain procedure law.

§ 49-0205 Comprehensive inventory of lands having statewide or regional significance

1. In order to help provide a basis for a strategy for the preservation of land resources in the state and the preparation of the state land acquisition plan, the department and the office shall prepare a comprehensive inventory of protected and unprotected resources having statewide or regional environmental, historic, cultural or recreational significance. Such inventory shall include the following:
 - a. open space, forest land and park land owned by federal, state and local governmental entities;
 - b. forest land in private ownership under the terms of section four hundred eighty-a of the real property tax law;
 - c. wetlands protected by articles twenty-four and twenty-five of this chapter;
 - d. agricultural areas, including agricultural districts created pursuant to article twenty-five-AA of the agriculture and markets law as recommended by the commissioner of agriculture and markets;
 - e. water resources, including wild, scenic and recreational rivers, streams and aquifer recharge areas protected by article fifteen of this chapter;
 - f. marine and other coastal resources, including coastal erosion hazard areas protected by article thirty-four of this chapter;
 - g. open space lands, forest lands and park lands dedicated by other than governmental entities to ecological, wildlife management, forest management or recreational purposes; and
 - h. lands which possess statewide or regional significance for historic, cultural,

ecological, open space, outdoor recreation, resource protection or wildlife management purposes, including the purposes of restoring extirpated species.

2. Such inventory, in such segments and such form as may be readily available at any given time, shall be available to the regional land acquisition advisory committees and other members of the public.

§ 49-0207 State land acquisition plan

1. The department and the office shall prepare a state land acquisition plan to guide selection of projects for state acquisition taking into account regional advisory committee priorities and the department's and office's assessment of need for land acquisition projects. Such plan shall include an identification of:
 - a. lands, by region and category, for which acquisition is of a high priority in order to carry out the purposes of this title;
 - b. lands, by region, having statewide or regional environmental, historic, cultural or recreational significance that are threatened with diminishment of resource value;
 - c. the department's and office's priorities of categories of land, by region, for future acquisition; and
 - d. lands, by region, having statewide or regional environmental, historic, cultural or recreational significance which should be considered for state acquisition, but which do not qualify for acquisition under present law.
2. Such plan shall include consideration of the inventory prepared pursuant to section 49-0205 of this title and shall identify those areas within the state which are not adequately protected in such categories.
3. In preparing such plan, the department and office shall:
 - a. conduct one or more public hearings in each of the department's administration regions.
 - b. consult with:
 - (i) the regional advisory committees;
 - (ii) officials of departments and agencies of the state having duties and responsibilities concerning the protection of open space and natural, environmental, historic, cultural or recreational resources;
 - (iii) officials and representatives of local governments in the state; and
 - (iv) persons, organizations and groups interested in the protection of open space and natural, environmental, historic, cultural or recreational resources of the state.
 - c. request and receive from any department, division, board, bureau, commission of any other agency of the state or any political subdivision thereof or any public authority such assistance and data as may be necessary to enable the department and office to carry out its responsibilities under this section.
4. The department and office shall prepare a draft plan and shall propose, no later than January

thirty-first, nineteen hundred ninety-one, a schedule of public hearings thereon.

5. On or before January thirty-first, nineteen hundred ninety-two and every three years thereafter, the department and office shall submit the plan to the governor, the majority leader of the senate and the speaker of the assembly. Upon approval by the governor such plan shall become a guide for the implementation of the acquisition programs of the department and office.

§ 49-0209 Regional advisory committees

1. There are hereby established regional advisory committees in each of the department's regions to provide the department and office with advice and recommendations from the public on the implementation of the land acquisition programs of the department and office and in order to provide the public with information regarding the activities of the department and office pursuant to this title.
2. Each regional committee shall:
 - a. recommend policies and priorities for protection of lands in the region potentially eligible for state acquisition;
 - b. recommend to the department and office specific studies or assessments which would assist in the development of land acquisition policies and priorities for the region;
 - c. establish working liaison relationships with neighboring regional advisory committees where such liaison will further overall land acquisition objectives;
 - d. develop guidelines for use in identifying priorities of land acquisition and recommending specific parcels for possible acquisition. Such guidelines may include:
 - (i) the priority ranking of properties for the region;
 - (ii) the degree to which an acquisition will help to meet a regional or statewide need;
 - (iii) the future costs and benefits which may be associated with the project;
 - (iv) the economic impact on adjacent parcels, the community or region and the local governments therein; and
 - (v) the ecological value of the project taking into account the type, variety and relative scarcity of the resources therein.
 - e. advise the commissioners and the state land acquisition advisory council annually with respect to plans and priorities for their respective region, and communicate at such other times as may be needed to fulfill its responsibilities.
 - f. review the state land acquisition plan prepared by the department and office pursuant to section 49-0207 of this title and make recommendations regarding such plan as it affects the region.
3. Regional advisory committee members shall be knowledgeable of, and concerned with, the land preservation, conservation, historic, cultural, recreation and acquisition goals of this chapter. No employee of the department or office shall serve on a regional committee. At any time that a member of a regional committee has or may have a direct or indirect financial

interest in or resulting from the acquisition or decision not to acquire an interest in land pursuant to this title, such member shall not participate in any discussion or deliberation of the committee concerning such acquisition.

4. A regional advisory committee shall consist of at least thirteen, and not more than twenty-three members. Each county outside the city of New York or the city of New York in the case of a county contained within the city of New York shall appoint members to its region's advisory committee in a manner designed to provide equal representation for all counties within a region on such committee, provided that the total number of local government appointees to a regional advisory committee shall not exceed one-half of the committee's membership. The commissioners shall appoint to each regional advisory committee additional members equal to one more than the total number of members eligible for appointment by local government. Each member of a regional advisory committee shall be a resident of that region, provided however, the commissioners may appoint to each regional advisory committee up to two members who are not residents of that region. Each regional committee shall meet as it may deem necessary to carry out its responsibilities.
5. Regional committees may request and shall receive from the department and the office such assistance and data as may be determined reasonable for the proper execution of their responsibilities.
6. Regional committees shall be established no later than September first, nineteen hundred ninety, and shall make initial recommendations no later than December first, nineteen hundred ninety, to the commissioners and the state land acquisition advisory council.

§ 49-0211 State land acquisition advisory council

1. The council shall consist of seven members: the commissioner of environmental conservation and the commissioner of parks, recreation and historic preservation, and the following officials or their designees: the governor, the majority leader of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly. The governor shall appoint the chair. Persons serving as a member of the council pursuant to designation shall serve at the pleasure of the designating authority, without compensation, but shall be entitled to receive reimbursement of reasonable expenses necessarily incurred in the performance of their duties pursuant to the provisions of this title.
2. The provisions of section seventy-four of the public officers' law shall be applicable to the members of the council in connection with their duties under this article. At any time that a member of the council has or may have a direct or indirect financial interest in or resulting from the proposed acquisition or decision not to acquire land or an interest in land, such member shall not participate in any discussion or deliberation of the council concerning such land or interest.
3. The advisory council shall:

- a. advise and make recommendations to the commissioners regarding acquisition goals and priorities to ensure a balance of statewide and regional interests in acquisition;
 - b. have an opportunity to review and make recommendations regarding specific parcels proposed by the commissioners for acquisition prior to the approval by the department or the office of any parcel for acquisition; and
 - c. review the annual reporting of the regional advisory committees, the department and the office, and the state land acquisition plan.
4. Notwithstanding the provisions of article six of the public officer's law, no records of the advisory council shall be available for public inspection. Notwithstanding the provisions of article seven of the public officer's law, no meeting or proceeding of the advisory council shall be open to the public. All proceedings of the advisory council shall be confidential. Members of the advisory council may participate in a meeting by means of a conference telephone or similar communications equipment and may exchange information by mail.
5. In carrying out its responsibilities pursuant to this article, the council shall take into account the regional and state land acquisition priorities and policies.

§ 49-0213 Annual report

No later than January thirty-first, nineteen hundred ninety-one, and on an annual basis thereafter, the commissioners shall report on the departments and the office's land acquisition activities, including:

1. lands acquired, whether in fee title or by easement, funds obligated and disbursed and acreage obtained over the past year and cumulatively since the effective date of this title;
2. a description of the state's land acquisition plans and priorities for the coming year; and
3. the recommendations of the regional advisory committees.

§ 49-0215 Annual budget request

The commissioners' annual budget request for land acquisition reappropriations shall include an itemization of contracts obligated from such appropriations as of the date of such submission.



Environmental Conservation Law

Article 54, Title 3 – Open Space Land Conservation Projects

§ 54-0301 Definitions

§ 54-0303 Open space land conservation projects

§ 54-0301 Definitions

For purposes of this title, “open space land conservation projects” shall mean acquisition projects including the purchase of conservation easements undertaken by the commissioner and/or the commissioner of the office of parks, recreation and historic preservation listed in the state open space land acquisition plan prepared pursuant to title 2 of article 49 of this chapter.

§ 54-0303 Open space land conservation projects

1. The commissioner and the commissioner of the office of parks, recreation and historic preservation are authorized to undertake open space land conservation projects.
2. a. The commissioner of the office of parks, recreation and historic preservation may enter into an agreement for the maintenance and operation of open space land conservation projects in urban areas or metropolitan park projects by a municipality, or a not-for-profit corporation or unincorporated association which demonstrates to the commissioner's satisfaction that it is financially or otherwise capable of operating and maintaining the project for the benefit of the public and of maximizing public access to such project. Any such agreement shall contain such provisions as shall be necessary to ensure that its operation and maintenance are consistent with and in furtherance of this article and shall be subject to the approval of the director of the budget, the comptroller and, as to form, the attorney general.
b. Until March thirty-first, nineteen hundred ninety-six, the commissioner, pursuant to appropriation therefore and in order to further the purposes of article forty-six of this chapter, may make available to the Albany Pine Bush preserve commission, established by article forty-six of this chapter, moneys for the operation of such commission, including the management of lands under the jurisdiction of such commission in accordance with a management plan prepared as specified in section 46-0111 of this chapter.
3. The cost of an open space land conservation project shall include the cost of preparation of a management plan for the preservation and beneficial enjoyment of the land acquired except where such considerations have already been undertaken as part of an existing plan applicable to the newly acquired land.
4. To the fullest extent practicable, it is the policy of the state to promote an equitable regional distribution of open space land conservation funds, consistent with the purpose of this title, taking into account regional differences in real property values, ecological resources and recreational opportunities.

5. No project, which was not listed on the state land acquisition plan as of the effective date of this title, shall be proposed for acquisition by the state under this title, pursuant to the state land acquisition plan, if any town, village or city within which such a project is located, by resolution, within ninety days of notification by the state of its interest in acquiring such project, objects to such acquisition. Such objection shall be transmitted to the commissioner through the regional land acquisition advisory committee and shall prevent the state from undertaking such acquisition.
6. No monies shall be expended for acquisition by eminent domain of any open space land conservation project except in accordance with the state land acquisition policy set forth in section 49-0203 of this chapter.
7. No monies shall be expended for open space land conservation projects except pursuant to an appropriation therefore.



Environmental Conservation Law

Article 54, Title 9 –

Park, Recreation & Historic Preservation Projects

- § 54-0901 Definitions
- § 54-0903 Approval and execution of projects
- § 54-0905 Municipal regulations; limitations
- § 54-0907 Contracts
- § 54-0909 Restriction on alienation
- § 54-0911 Rules and regulations

§ 54-0901 Definitions

As used in this title the following terms shall mean and include:

1. “Municipal park project” means a project undertaken by a municipality or a not-for-profit corporation for the acquisition, development or improvement of recreational facilities including construction of structures, roads and parking facilities.
2. “Historic preservation project” means a project undertaken by a municipality or a not-for-profit corporation to acquire, improve, restore or rehabilitate property listed on the state or national registers of historic places to protect the historic, cultural or architectural significance thereof, or undertaken by the office to improve, restore or rehabilitate state historic properties listed on the state or national registers of historic places to protect the historic, cultural or architectural significance thereof.
3. “Urban cultural park project” means a project undertaken by or through a municipality, public benefit corporation or a not-for-profit corporation for the acquisition and development of sites and facilities identified in a management plan prepared and approved by the commissioner in accordance with the provisions of section 35.05 of the parks, recreation and historic preservation law.

§ 54-0903 Approval and execution of projects

1. State historic preservation projects may be undertaken pursuant to the provisions of this article and other applicable provisions of law only with the approval of the commissioner.
2. All historic preservation projects, municipal park projects and urban cultural park projects shall be undertaken in the state of New York. Except for state projects undertaken by the office at state historic properties, the total amount of the state assistance payments toward the cost of any such project shall in no event exceed fifty percent of the cost. For the purpose of determining the amount of the state assistance payments, the cost of the project shall not be more than the amount set forth in the application for state assistance payments approved by the commissioner. The state assistance payments toward the cost of a project shall be

paid on audit and warrant of the state comptroller on a certificate of availability of the director of the budget.

3. a. The commissioner and a municipality may enter into a contract for the undertaking by the municipality of an historic preservation project. Such historic preservation projects shall be recommended to the commissioner by the governing body of the municipality and, when approved by the commissioner, may be undertaken by the municipality pursuant to this title and any other applicable provision of law.
b. The commissioner and a not-for-profit corporation may enter into a contract for the undertaking by the not-for-profit corporation of an historic preservation project. Such an historic preservation project shall be recommended to the commissioner by the governing body of a not-for-profit corporation which demonstrates to the satisfaction of the commissioner that it is capable of operating and maintaining such property for the benefit of the public. Upon approval by the commissioner, such project may be undertaken pursuant to the provisions of this title and any other applicable provision of law.
4. a. The commissioner and a municipality may enter into a contract for the undertaking by the municipality of a municipal park project. Municipal park projects shall be recommended to the commissioner by the governing body of the municipality, and when approved by the commissioner, may be undertaken by the municipality pursuant to this title and any other applicable provisions of law. The office shall assess existing parks and recreational opportunities in the municipalities where the municipal park project is located and shall give preference to projects which are in or primarily serve areas where demographic and other relevant data for such areas demonstrate that the areas are densely populated and have sustained physical deterioration, decay, neglect or disinvestment, or where a substantial proportion of the residential population is of low income or is otherwise disadvantaged and is underserved with respect to the existing recreational opportunities in the area.
b. The commissioner and a not-for-profit corporation may enter into a contract for the undertaking by the not-for-profit corporation of a municipal park project. Such a contract shall be contingent upon the approval of the governing body of each municipality in which the project is located. Such a project shall be recommended to the commissioner by the governing body of a not-for-profit corporation which demonstrates to the satisfaction of the commissioner that it is capable of operating and maintaining such project for the benefit of the public. Upon approval by the commissioner, such project may be undertaken pursuant to the provisions of this title and any other applicable provision of law. The office shall assess existing parks and recreational opportunities in the municipalities where the municipal park project is located and shall give preference to projects which are in or primarily serve areas where demographic and other relevant data for such areas demonstrate that the areas are densely populated and have sustained physical deterioration, decay, neglect or disinvestment, or where a substantial proportion of the residential population is of low income or is otherwise disadvantaged and is underserved with respect to the existing recreational opportunities in the area.

5. The commissioner and a municipality, public benefit corporation or not-for-profit corporation may enter into a contract, subject to the approval of the director of the budget, for the undertaking by or through the municipality, public benefit corporation or not-for-profit corporation of a local urban cultural park project including park-wide and district projects identified in a management plan prepared pursuant to section 35.05 of the parks, recreation and historic preservation law. Such projects shall be subject to an agreement by the local urban cultural park management entity to operate or cause to be operated any public facility resulting from such project.
6. No monies shall be expended for park, recreation and historic preservation projects except pursuant to an appropriation therefore.

§ 54-0905 Municipal regulations; limitations

A municipality which acquires, develops, improves, restores or rehabilitates property with funds made available pursuant to this title may establish reasonable rules and regulations by local law or otherwise to assure the proper administration and development thereof, provided that no such rule or regulation which restricts the use of such lands or facilities by non-residents of the municipality shall be effective without the approval of the commissioner.

§ 54-0907 Contracts

1. The commissioner shall impose such contractual requirements and conditions upon any municipality and any non-for-profit corporation which receive state assistance payments pursuant to this title as may be necessary and appropriate to ensure that a public benefit shall accrue from the use of public funds by such municipality or not-for-profit corporation. Such conditions shall include limitation on the right of the municipality or not-for-profit corporation to demolish or convey such property, provisions for public access or use where appropriate, the granting of facade easements to the state, a requirement that all plans for restoration, rehabilitation, improvement, demolition or other physical change must be subject to the commissioner's approval, and such other conditions which shall assure the preservation and protection of the project.
2. Any not-for-profit corporation which receives state assistance payments pursuant to this title for the acquisition of land for outdoor recreation or conservation purposes shall execute 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 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 other 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.

§ 54-0909 Restriction on alienation

1. 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 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 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.
2. 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 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, or sold, leased, exchanged, donated or otherwise disposed of without the express authority of an act of the legislature.

§ 54-0911 Rules and regulations

The commissioner shall adopt, prior to the acceptance of applications for municipal park, historic preservation and urban cultural park projects, rules and regulations which shall include eligibility requirements, application procedures, office ranking and review processes, project approval guidelines and criteria, and funding distribution necessary for all state assistance payment programs established pursuant to section 54-0903 of this title.



Agriculture & Markets Law

Article 2-C

Community Gardens

§ 31-h Office of community gardens; powers; duties.

1. The commissioner shall establish within the department an office of community gardens which shall have the authority and responsibility for carrying out the provisions of this article in cooperation with the state department of environmental conservation, the state education department, the department of state, cooperative extensions and other state agencies and municipalities.
2. The duties of the office shall include:
 - a. Upon request, the office shall assist in the identification of vacant public land within a given geographical location and provide information regarding agency jurisdiction and the relative suitability of such lands for community gardening purposes;
 - b. Serve as a coordinator on behalf of interested community groups and the appropriate state or local agencies to facilitate the use of vacant public lands for community garden use for not less than one growing season by receiving and forwarding with recommendation completed applications to the appropriate agency;
 - c. Support and encourage contact between community garden programs already in existence and those programs in the initial stages of development; and
 - d. Seek and provide such assistance, to the extent funds or grants may become available, for the purposes identified in this article.

§ 31-i Use of state owned land for community gardens.

1. Any state agency, department, board, public benefit corporation, public authority or commission with title to vacant public land may permit community organizations to use such lands for community gardening purposes. Such use of vacant public land may be conditioned on the community organization possessing liability insurance and accepting liability for injury or damage resulting from use of the vacant public land for community gardening purposes.
2. State agencies which have received an application for use of public lands for community garden purposes shall respond to the applicant within thirty days and make a final determination within one hundred eighty days.

