

The Proposed Pier 5/Lower Concourse North/Bronx Point
Project Contravenes the Public Trust Doctrine

The New York City Council is reviewing the Lower Concourse North project - an affordable housing mixed use development located on the Harlem River waterfront north of 149th Street in the Bronx. This same parcel is also referred to as Bronx Point. It is known in the community as Pier 5, has long been earmarked parkland, and is an integral part of the vision of an expanded Mill Pond Park. The New York City Economic Development Corp. (EDC), in their eagerness to push through the development project, has not done its due diligence in determining the legal status of the land. We believe it is important for the City to do so both to honor its commitments to the community and to avoid potential litigation.

The land between the Harlem River and Exterior Street, north of 149th Street and south of the Major Deegan Access Road is Mill Pond Park. The genesis of this new park was the Yankee Stadium development deal in 2006. At that time, a piece of Mill Pond Park was mapped parkland in exchange for the City's taking of part of Macomb's Dam Park to build Yankee Stadium. The Yankee Stadium ULURP states that the "entire of Lot 2" is mapped parkland, and dedicated \$60 million to create Mill Pond Park. The project was only partially built as the City lacked the funds to continue to the end as Pier 5. The original plan was well publicized, and the whole park is even still visible on a kiosk in Mill Pond Park.

Our interest in ensuring the City keeps its commitment to use the public land as park is consistent with New York State's longstanding public policy of protecting parkland for the use of people as open space. To protect this public interest, New York State forces municipalities to get legislative approval from the State before it can repurpose parkland for another use. *"Once land has been dedicated to use as a park, it cannot be diverted for uses other than recreation, in whole or in part, temporarily or permanently, even for another public purpose, without legislative approval."* United States v. City of New York, 96 F.Supp.2d 195, 202 (E.D.N.Y. 2000). This clear law has been applied consistently since 1871.

So far, the City has avoided this requirement by issuing self-serving statements claiming that while the land has been under the control of the Parks Department, it is not parkland subject to alienation. We disagree.

The judicially developed "Public Trust Doctrine" requires alienation of any land dedicated as parkland. A dedication can be formal, such as through an official act by the governing body of the municipality, or may be implied. The portion of Mill Pond Park that was designated as parkland in exchange for the portion of Macomb's Dam Park that was lost to the community is formally dedicated parkland. The proposed development overlaps with this land.

Implied dedication of parkland occurs through actions which demonstrate that the government considers the land to be parkland or the public used it as a park. Examples include: a municipality publicly announcing its intention to purchase the lands specifically for use as a park, "master planning" for recreational purposes, budgeting for park purposes, or "mapping" lands as parkland. *Kenny v. Board of Trustees of Village of Garden City*, 735 N.Y.S.2d 606, 607 (App. Div. 2nd 2001) (property acquired for recreational purposes and used for recreation was instilled with public trust even though never officially dedicated).

We have collected voluminous evidence that the remainder of Mill Pond Park, even if unbuilt, has clearly been dedicated parkland through multiple city actions over a period of over a decade. We hope that you will consider this evidence before acting on the Lower Concourse North development project, which improperly gives public parkland to private developers. This is a precedent we hope no public official would support.